applications, and reports to be filed with the Commission, the information which they shall contain, and the time within which they shall be filed." It is under similar delegated authority (section 16, 15 U.S.C. 717o) that natural gas companies have been required to file testimony and exhibits in support of rate increases. (See § 154.63 of the regulations under the Natural Gas Act, 18 CFR 154.63.)

One respondent suggested that some provision be made for amending and supplementing testimony and exhibits after filing and before hearing to cover current changes. We do not believe that the proposed revision would prevent such amending and supplementing of testimony and exhibits so long as they are confined to interim changes. Several comments suggest that the proposed requirement should not apply to changes in fuel adjustment clauses, coordination and interchange arrangements, and short-term sales of temporary excess generating capability. We are unable to find any good reason for excluding these types of service from the requirements of the proposed rule.

The Commission finds:

(1) The notice and opportunity to participate in this rulemaking proceeding with respect to the matters presently before this Commission through the submission, in writing, of data, views, comments, and suggestions in the manner described above, are consistent and in accordance with the procedural requirements prescribed by 5 U.S.C. 553.

(2) The amendments to Part 35 of the regulations under the Federal Power Act in Chapter I, Title 18 of the Code of Federal Regulations, herein prescribed, are necessary and appropriate for the administration of the Federal Power Act.

(3) Since the amendment prescribed herein with respect to the $50,000 minimum amount is of a minor nature consistent with the prime purpose of the proposed rulemaking, further compliance with the notice provisions of 5 U.S.C. 553 is unnecessary.

The Commission, acting pursuant to the provisions of the Federal Power Act, as amended, particularly section 309 (49 Stat. 858, 16 U.S.C. 825h), orders:

(A) Paragraph (b) of § 35.13, in Part 35, Chapter I, Title 18, of the Code of Federal Regulations is hereby amended by adding the following new provisions:

§ 35.13 Filing of changes in rate schedules.

* * * * *

(b) * * *

(4) * * *

(v) To the extent that testimony and exhibits required to be filed pursuant to subparagraph (5) of this paragraph duplicate information required to be submitted pursuant to this subparagraph, such information need only be submitted with the testimony and exhibits filed pursuant to subparagraph (5) of this paragraph.

(5) (i) A utility filing for an increase in rates and charges shall be prepared to go forward at a hearing on reasonable notice on the data which have been submitted and sustain the burden of proof, imposed by the Federal Power Act, of establishing that its proposed charges are just and reasonable and not unduly discriminatory or preferential or otherwise unlawful within the meaning of the Act. The Commission is desirous of avoiding delay in processing rate filings. To this end, if the rate schedule provides for an increase in rate which exceeds $50,000 in revenues for the test period, the filing utility shall submit with its rate increase filing 60 days prior to the proposed effective date of such increased rates, testimony and exhibits of such composition, scope and format that they would serve as the company's case-in-chief in the event the matter is set for hearing. In addition to whatever material the utility chooses to submit as part of its case, except for increases resulting from changes made in fuel clauses and increases of rates comprising an integral part of coordination and interchange arrangements in the nature of power pooling transactions, the exhibits shall include full cost of service data, as identified in subparagraph (4) (iv) of this paragraph, statements A through O, and the accompanying testimony should include an explanation of these exhibits.

* * * * *

(B) The amendments herein adopted shall become effective 30 days from the date of issuance of this order.

(C) The Acting Secretary shall cause prompt publication of this order be made in the FEDERAL REGISTER.

By the Commission.

(SEAL) KENNETH F. PLUMB, *Acting Secretary.*

[FR Doc.71 4805 Filed 4-6-71;8:49 am]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter II—Corps of Engineers, Department of the Army

PART 209—ADMINISTRATIVE PROCEDURE

Permits for Discharges or Deposits Into Navigable Waters

On December 31, 1970, notice of proposed rule making was published in the FEDERAL REGISTER (35 F.R. 20005) which set forth the text of regulations proposed as § 209.131 relating to the policy, practice and procedure in connection with applications for permits authorizing discharges or deposits into navigable waters of the United States or into any tributary from which discharged matter shall float or be washed into a navigable water (33 U.S.C. 407).

Pursuant to the above notice, a number of comments have been received from interested persons, and due consideration has been given to all relevant matter presented. In light of the preceding, a number of revisions have been made in the rules as proposed.

In accordance with the statement in the notice of proposed rule making, § 209.131, as set forth below, is hereby adopted effective on publication (4-7-71).

§ 209.131 Permits for discharges or deposits into navigable waters.

(a) *Purpose and scope.* This section prescribes the policy, practice, and procedure to be followed by all Corps of Engineers installations and activities in connection with applications for permits authorizing discharges or deposits into navigable waters of the United States or into any tributary from which discharged or deposited matter shall float or be washed into a navigable water.

(b) *Law and Executive order authorizing permits.* (1) Section 13 of the Act approved March 3, 1899 (33 U.S.C. 407), hereafter referred to as the "Refuse Act," provides in part that it is unlawful "to throw, discharge, or deposit, or cause, suffer, or procure to be thrown, discharged, or deposited either from or out of any ship, barge, or other floating craft of any kind, or from the shore, wharf, manufacturing establishment, or mill of any kind, any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state, into any navigable water of the United States, or into any tributary of any navigable water from which the same shall float or be washed into such navigable waters; and it shall not be lawful to deposit or cause, suffer, or procure to be deposited material of any kind in any place on the banks of any navigable water, or on the bank of any tributary of any navigable water, where the same shall be liable to be washed into such navigable water * * * whereby navigation shall or may be impeded or obstructed: *Provided*, That nothing herein contained shall extend to, apply to, or prohibit the operations in connection with the improvement of navigable waters or construction of public works, considered necessary and proper by the U.S. officers supervising such improvement or public work: *And provided further*, That the Secretary of the Army, whenever in the judgment of the Chief of Engineers anchorage and navigation will not be injured thereby, may permit the deposit of any material above-mentioned in navigable waters, within limits to be defined and under conditions to be prescribed by him, provided application is made to him prior to depositing such material; and whenever any permit is so granted the conditions thereof shall be strictly complied with, and any violation thereof shall be unlawful."

(2) Executive Order No. 11574 (dated December 23, 1970) directs the implementation of a permit program under the authority of the Refuse Act and provides for the cooperation of affected Federal agencies in the administration of the program.

DSW 329398

STLCOPCB4076106

(c) *Related legislation.* (1) Section 21(b) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151 et seq.) (see particularly the Water Quality Improvement Act of 1970, Public Law 91-224, 84 Stat. 108), reflects the concern of the Congress with maintenance of applicable water quality standards and, subject to certain exceptions, requires any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities which may result in a discharge into the navigable waters of the United States to provide an appropriate certification that there is reasonable assurance that such activity will be conducted in a manner which will not violate applicable water quality standards.

(2) The concern of the Congress with the need to encourage the productive and enjoyable harmony between man and his environment and the need to promote efforts which will prevent or eliminate damage to the environment was manifested in the enactment of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347). Section 102 of that Act directs that

To the fullest extent possible: (1) The policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall—

* * * * *

(B) Identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decision-making along with economic and technical considerations. * * *.

(3) The concern of Congress with the quality of the aquatic environment as it affects the conservation, improvement and enjoyment of fish and wildlife resources is indicated in the Fish and Wildlife Act of 1956 (16 U.S.C. 742a et seq.), the Migratory Marine Game-Fish Act (16 U.S.C. 760c–760g) and the Fish and Wildlife Coordination Act (16 U.S.C. 661–666c). The latter Act provides in part that:

[W]henever the waters of any stream or other body of water are proposed or authorized to be impounded, diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purpose whatever, including navigation and drainage, by any department or agency of the United States, or by any public or private agency under Federal permit or license, such department or agency first shall consult with the U.S. Fish and Wildlife Service, Department of the Interior, and with the head of the agency exercising administration over the wildlife resources of the particular State wherein the impoundment, diversion, or other control facility is to be constructed, with a view to the conservation of wildlife resources * * *. (16 U.S.C. 662(a))

(See also Reorganization Plan No. 4 of 1970 which transferred certain functions from the Secretary of the Interior to the Secretary of Commerce.) As provided in paragraph (d)(6) of this section, advice as to the impact which a proposed discharge or deposit may or is likely to have on fish and wildlife resources is to be solicited from the appropriate Regional Coordinator or Field Representative of the Department of the Interior and the appropriate Regional Director of the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

(4) As amended, the Act of June 29, 1888 (33 U.S.C. 441 et seq.) authorizes Corps of Engineers' officers supervising the harbors of New York, Hampton Roads, and Baltimore to enforce provisions making unlawful unauthorized discharges or deposits. Section 421 of Title 33 of the United States Code makes unlawful certain discharges or deposits into Lake Michigan.

(d) *General policy.* (1) The Refuse Act is considered to apply to all direct and indirect discharges or deposits (except those flowing from streets and sewers and passing therefrom in a liquid state) by any person, firm or other entity, including discharges or deposits from municipal State, or Federal facilities or installations, into a navigable waterway or tributary or into a waste treatment system from which the same will flow into a navigable waterway or tributary. Discharges or deposits of water at a temperature different from that of the navigable waterway or tributary into which the same will flow are considered to be discharges or deposits to which the Refuse Act is applicable.

(2) The Refuse Act Permit Program is applicable to all discharges or deposits identified in subparagraph (1) of this paragraph except that the permit program is not applicable to:

(i) Discharges or deposits into a municipal or other public sewage treatment system;

(ii) Discharges or deposits from a municipal or other public sewage treatment system;

(iii) Discharges or deposits of storm water runoff flowing from public or private streets;

(iv) Discharges or deposits into a waste treatment system. (This exception does not apply to discharges or deposits from such a waste treatment system into a navigable waterway or tributary. Thus, for example, the operator (including, if applicable, agencies or instrumentalities of the Federal, State, or local governments) of a waste treatment system which receives industrial discharges and is not tied in with a municipal or other public sewage treatment system must apply for and receive a permit if the system discharges or deposits into a navigable waterway or tributary.)

(v) Discharges or deposits which are placed on the banks of a navigable waterway or tributary where the same shall be liable to be washed into such navigable water either by ordinary or high tides, or by storms or floods whereby navigation shall or may be impeded or obstructed; (This exception does not apply to discharges or deposits placed on banks which, because of gravity or the slope of the ground on which the discharge or deposit is placed, will flow into a navigable waterway or tributary. Such discharges or deposits will require a permit under the Refuse Act Permit Program.)

(vi) Discharges or deposits from ships or other watercraft into a navigable waterway or tributary.

The foregoing exceptions from the permit program shall not be deemed to affect the applicability of the Refuse Act itself to such discharges or deposits unless such discharges or deposits fall within the statutory exception for "that flowing from the streets and sewers and passing therefrom in a liquid state." In addition to these exceptions, the Refuse Act Permit Program is not applicable to public or private dredging or filling which shall continue to be subject to the permit program instituted pursuant to 33 U.S.C. 403.

(3) Except as provided for in subparagraph (2) of this paragraph, all persons, firms, or other entities wishing to discharge or deposit into waters covered by the Refuse Act must apply to the District Engineer in charge of the District where the proposed discharge or deposit is to occur for a permit under the Refuse Act Permit Program. Permits covering discharges from facilities which are now in existence but which were not in existence or lawfully under construction prior to April 3, 1970, must be applied for as soon as possible following the publication of this section in the FEDERAL REGISTER, but in no event later than July 1, 1971. All other persons, firms, or other entities wishing to discharge or deposit into waters covered by the Refuse Act are obligated to apply for a permit prior to July 1, 1971, except that persons, firms, or other entities wishing to commence discharges or deposits into waters covered by the Refuse Act on or after November 1, 1971, must file a completed application for a permit no less than 120 days in advance of the date on which it is desired to commence discharges or deposits.

(4) All discharges or deposits to which the Refuse Act is applicable (see subparagraph (1) of this paragraph) are unlawful unless authorized by an appropriate permit issued under the authority of the Secretary of the Army. The fact that official objection may not have been raised with respect to past or continuing discharges or deposits does not constitute authority to discharge or deposit or to continue to discharge or deposit in the absence of an appropriate permit. Any such discharges or deposits not authorized by an appropriate permit may result in the institution of legal proceedings in appropriate cases for violation of the provisions of the Refuse Act. Similarly, the mere filing of an application requesting permission to discharge or deposit into navigable waters or tributaries thereof will not preclude legal action in appropriate cases for Refuse Act violations. The institution of either a civil or criminal action by the Department of

DSW 329399

STLCOPCB4076107

Justice under the Refuse Act will not preclude the acceptance or continued processing of a permit application. Where a civil action to restrain a discharge or deposit which is the subject of the permit application that has been filed, and that action is disposed of other than by the dismissal of the case by the court, any permit which is issued shall include any requirements embodied in the resolution of the case.

(5) The decision as to whether or on what conditions a permit authorizing a deposit which is the subject of the permit issued under the Refuse Act will be based on an evaluation of the impact which the discharge or deposit may have on (i) anchorage and navigation, (ii) applicable water quality standards and related water quality considerations, including environmental values reflected in water quality standards, and (iii) fish and wildlife values not reflected in or adequately protected by applicable water quality standards, if any.

(6) Recognizing that, at the Federal level, responsibility for the protection of fish and wildlife resources lies primarily with the Department of the Interior and with the National Oceanic and Atmospheric Administration (NOAA) of the Department of Commerce, the appropriate Regional Director of the National Marine Fisheries Service of NOAA and the appropriate Regional Coordinator or Field Representative of the Department of the Interior will, upon the appropriate District Engineer's notification to the Regional Director of his intent to issue a permit, be given 15 days to make on the basis of available information and at any appropriate additional time, factual determinations concerning reasonable protection to fish and wildlife resources.

(7) Although the Refuse Act vests in the Secretary of the Army authority to determine whether or not a permit should or should not issue, it is recognized that responsibility for water quality improvement lies primarily with the States or, in particular instances, with appropriate interstate agencies or river basin commissions, and, at the Federal level, with the Environmental Protection Agency (EPA). Accordingly, EPA shall advise the Corps with respect to the meaning, content and application of water quality standards applicable to a proposed discharge or deposit and as to the impact which a proposed discharge or deposit may or is likely to have on applicable water quality standards and related water quality considerations, including environmental values reflected in water quality standards. Specifically, the Regional Representative of EPA will, as appropriate, identify and advise the District Engineer with respect to the following:

(i) The meaning and content of applicable water quality standards;

(ii) The application of water quality standards to the proposed discharge or deposit, including the likely impact of the proposed discharge or deposit on such water quality standards and related water quality considerations;

(iii) The permit conditions required to comply with applicable water quality standards;

(iv) The permit conditions required to carry out the purposes of the Federal Water Pollution Control Act where water quality standards are not applicable in whole or in part;

(v) The protection afforded fish and wildlife resources by water quality standards, if any;

(vi) The interstate water quality effect of the proposed discharge or deposit;

(vii) The recommended duration of a permit.

Regional Representatives will also provide District Engineers with a recommendation as to whether or not the permit applied for should or should not issue and the basis for that recommendation.

(8) Recognizing the expertise of EPA in matters related to water quality, District Engineers shall, except as provided in subparagraph (10) of this paragraph, accept such findings, determinations and interpretations as the Regional Representative of EPA may make respecting the applicability of water quality standards (including compliance with those standards in particular circumstances) and related water quality considerations, and shall deny a permit application in accordance with the recommendation of a Regional Representative if that recommendation is supported by a finding that the proposed discharge or deposit will not be in accordance with applicable water quality standards or relevant water quality considerations.

(9) If the Regional Representative of EPA finds that the proposed discharge or deposit will meet applicable water quality standards or that a permit can be conditioned so as to ensure compliance with applicable water quality standards, District Engineers shall accept the finding and shall include in any permit issued such conditions as the Regional Representative may have recommended respecting water quality standards and related water quality considerations. In any case the District Engineer may deny the requested permit if it appears that anchorage and navigation will be injured or that the proposed discharge or deposit will have a significant and unreasonable adverse impact on fish and wildlife resources.

(10) In any case where the District Engineer and the Regional Representative of EPA differ with respect to applicable water quality standards or related water quality considerations and are unable to reconcile their views as to whether or not a permit should be issued, or the terms and conditions of a permit, the District Engineer shall promptly forward the matter through channels to the Secretary of the Army to provide the Secretary with the opportunity to consult with the Administrator of EPA. Such consultation shall take place within 30 days of the date on which the Secretary receives the file from the District Engineer or within such additional period of time as the Secretary and the Administrator may agree upon. Following such consultation, the Secretary shall accept the findings, determinations, and interpretations of the Administrator as to water quality standards and related water quality considerations, shall direct that the permit be denied if the Administrator found or determined that the proposed discharge or deposit would violate applicable water quality standards, and shall otherwise give careful consideration to the recommendations of the Administrator before forwarding the case to the District Engineer with instructions as to its disposition.

(11) No permit will be issued:

(i) In cases where the applicant, pursuant to section 21(b)(1) of the Federal Water Pollution Control Act, as amended, is required to obtain a State or other appropriate certification that the discharge or deposit will not violate applicable water quality standards and such certification was denied;

(ii) For discharges or deposits of harmful quantities of oil, as defined pursuant to section 11 of the Federal Water Pollution Control Act;

(iii) If its issuance would be inconsistent with any finding, or determination, or interpretation of the Administrator pertaining to applicable water quality standards and related water quality considerations;

(iv) For materials designated as hazardous substances under regulations to be promulgated by the Administrator of EPA under section 12 of the Federal Water Pollution Control Act, as amended, except when the approval of the Administrator;

(v) If the proposed discharge or deposit will contain a toxic or other substance (other than materials designated as hazardous under regulations to be promulgated by the Administrator of EPA under section 12 of the Federal Water Pollution Control Act, as amended) and if, on the advice of the Regional Representative of EPA, it appears that a permit cannot be conditioned to ensure that the proposed discharge or deposit will not pose any significant risk to health or safety. District Engineers are precluded from issuing permits in such cases. The listing is not intended to identify all of the cases or circumstances in which the denial of a permit may be appropriate.

(e) *Authority to issue permits.* The Refuse Act provides that, "the Secretary of the Army, whenever in the judgment of the Chief of Engineers anchorage and navigation will not be injured thereby, may permit the deposit of any material * * * in navigable waters, within limits to be defined and under conditions to be prescribed by him * * *." The Chief of Engineers, in the exercise of his judgment under the Act, has made the general determination that anchorage and navigation will not be injured when the discharge or deposit permitted will cause no significant displacement of water or reduction in the navigable capacity of a waterway. Except as otherwise provided in this section, the Secretary of the Army

DSW 329400

STLCOPCB4076108

has authorized the Chief of Engineers and his authorized representatives to issue permits allowing discharges or deposits into navigable waters or tributaries thereof, if evaluation leads to the conclusion that (1) as determined by the Chief of Engineers, anchorage and navigation will not be injured thereby, and (2) issuance of a permit will not be inconsistent with the policy guidance prescribed in paragraph (d) of this section. Accordingly, within these limitations, District Engineers are authorized, except in cases which are to be referred to higher authority for decision (see paragraphs (d)(10) and (i)(7) of this section), to issue permits or to deny permit applications for discharges or deposits covered by the Refuse Act Permit Program.

(f) *Relationship to other corps permits.* (1) Operators of facilities constructed in navigable waters under a valid construction or other permit issued pursuant to section 10 or pursuant to sections 10 (33 U.S.C. 403) and 13 (33 U.S.C. 407) of the Rivers and Harbors Act approved March 3, 1899, must apply for and receive a new permit under the Refuse Act Permit Program in order to lawfully discharge into or place deposits in a navigable waterway or tributary.

(2) Any person wishing to undertake work in navigable waters which may also result in a discharge or deposit into such navigable waters or tributaries thereof must apply for a permit under section 403 for such work and for a permit under section 407 to cover any proposed discharge or deposit. However, if the work proposed to be undertaken in navigable waters is limited to the construction of a minor outfall structure (one which will not involve any significant amount of work, either construction or dredging and filling, in the navigable waterway) from which the proposed discharge or deposit will flow, District Engineers may in their discretion issue a single permit under this regulation (ER 1145-2-321). If a single permit is issued authorizing both work in navigable waters and a discharge or deposit, the permit should cite both sections 403 and 407 as authority for its issuance.

(g) *Information required with an application.* (1) An applicant for a permit involving a discharge or deposit into a navigable waterway or tributary thereof must file the required application form(s) with the District Engineer. A plant, facility, or other establishment which has multiple outlets from which discharges or deposits may flow may use a single application form to apply for a permit covering all proposed discharge(s) or deposit(s): *Provided, however,* That the discharge or deposit from each outlet shall be separately described and the outlet specifically identified. The form will also require information which will fully identify the character of the discharge(s) or deposit(s) and describe the monitoring devices and procedures which will be used to gather information and maintain records on discharges and deposits. Such information shall include, but need not be limited to, data pertaining to chemical content, water temperature differentials, toxins, sewage, amount and frequency of discharge or deposit and the type and quantity of solids involved, if any. If the discharge(s) or deposit(s) will include solids of any type, applicants will be required to (i) identify the proposed method of instrumentation to determine the effect of the deposit of solids on the waterway, and (ii) either assume responsibility for the periodic removal of such solids by dredging or agree to reimburse the United States for costs associated with such dredging.

(2) An application submitted by a corporation must be signed by the principal executive officer of that corporation or by an official of the rank of corporate vice president or above who reports directly to such principal executive officer and who has been designated by the principal executive officer to make such applications on behalf of the corporation. In the case of a partnership or a sole proprietorship, the application must be signed by a general partner or the proprietor. Each application must contain a certification by the person signing the application that he is familiar with the information provided and that to the best of his knowledge and belief such information is complete and accurate. Attention is directed to the provisions of 18 U.S.C. 1001 which provides for possible fines and imprisonment in the case of false statements.

(3) A fee of one hundred dollars ($100) will be charged in connection with each application for a permit under the Refuse Act Permit Program which involves no more than one outlet from which a discharge or deposit will flow. If there is more than one outlet from which a discharge or deposit will flow, an additional fifty dollars ($50) will be charged for each additional outlet. Such fee shall be used to help defray the cost of administering the program. Agencies or instrumentalities of Federal, State, or local governments will not be required to pay any fee in connection with the filing of an application for a permit required under the Refuse Act Permit Program. This fee structure will be reviewed from time to time as experience with the program is developed.

(h) *State certification.* (1) Section 21(b)(1) of the Federal Water Pollution Control Act, as amended, provides that "Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters of the United States, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge originates or will originate, that there is reasonable assurance, as determined by the State or interstate agency that such activity will be conducted in a manner which will not violate applicable water quality standards * * *. No license or permit shall be granted until the certification required by this section has been obtained or has been waived * * *," i.e., "if the [certifying agency] * * * fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed 1 year) after receipt of such request * * *." Six months shall generally be considered to be a reasonable period of time. If, however, special circumstances identified by either the District Engineer or the Regional Representative of EPA require that action on a permit application under the Refuse Act be taken within a more limited period of time, the District Engineer shall determine a reasonable lesser period of time, advise the Regional Representative and the certifying agency of the need for action by a particular date and that, if certification is not received by the date established, it will be considered that the requirement for certification has been waived. Similarly, if it appears that circumstances may reasonably require a period of time longer than 6 months, the District Engineer may afford the certifying agency up to 1 year to provide the required certification before determining what a waiver has occurred. District Engineers shall check with the certifying agency at the end of the allotted period of time before determining that a waiver has occurred. Sections 21 (b)(7) and (b)(8) of the Federal Water Pollution Control Act, as amended, identify circumstances in which permits of limited duration may issue without the certification required by section 21(b)(1). See paragraph (n) of this section.

(2) Except as provided in subparagraph (3) of this paragraph, discharges or deposits into navigable waters require certification pursuant to 21(b)(1). District Engineers will accept but will not fully process a permit application until the applicant has provided the required certification. If the application is not accompanied by the required certification the applicant shall (i) provide the appropriate certifying agency with a completed copy of the application form required to be filed by paragraph (g)(1) of this section, and (ii) file a copy of the certification application with the District Engineer. These steps will enable the District Engineer to determine if the certification required is being waived by inaction on the part of the certifying authority.

(3) In cases involving a discharge or deposit into a nonnavigable tributary, certification pursuant to 21(b) is not required. In cases involving a discharge or deposit into a navigable waterway from a facility which existed or was lawfully under construction prior to April 3, 1970, certification is not required until April 3, 1973. In either case, it will be the policy of the Corps of Engineers not to fully process a permit application until the applicant or the State has provided a written communication from the State describing the impact of the proposed

DSW 329401

STLCOPCB4076109

discharge or deposit and indicating the views of the State on the desirability of granting a permit. If such a written communication is not provided within a reasonable period of time this requirement shall be waived. Six months shall generally be considered to be a reasonable period of time. If, however, special circumstances identified by either the District Engineer or the Regional Representative of EPA require that action on a permit application be taken within a more limited period of time, the District Engineer shall determine a lesser reasonable period of time, advise the Regional Representative and the appropriate State agency that the written communication should be received by a particular date and that, if it is not received by the date established, action may be taken on the permit application without the written communication. Similarly, if it appears that circumstances may reasonably require a period of time longer than 6 months, the District Engineer may afford the State up to 1 year to provide the written communication before determining that a waiver has occurred. District Engineers shall check with the State at the end of the allotted period of time before determining that a waiver has occurred.

(4) As provided in subsection 21(b)(6) of the Federal Water Pollution Control Act, as amended, agencies or instrumentalities of the Federal Government will not be required to apply to the State or other certifying agency for a certification relative to the proposed discharge or deposit. Similarly, agencies or instrumentalities of the Federal Government will not be required to provide for one written communication described in subparagraph (3) of this paragraph.

(j) *Processing of permit applications.* (1) When an application for a permit is received, care should be taken to assure that the applicant has provided all of the information required by the application form and by this section. Copies of applications received and all other information received relating thereto will be promptly forwarded by the District Engineer to the Regional Representative of EPA for subsequent transmittal to the appropriate certifying or commenting agency.

(2) When all of the required information has been provided, including the required certification or written communication discussed in paragraph (h) of this section, the applicant shall be advised that his application is in order and that it will be processed as expeditiously as possible.

(3) When the application is found to be in order the District Engineer shall promptly forward a complete copy of the application or such additional information as has not already been furnished to the Regional Representative of EPA. Copies of the completed application should also be furnished to the appropriate Regional Director of the National Marine Fisheries Service of NOAA and to the appropriate Regional Coordinator or Field Representative of the Department of the Interior and, in cases involving a facility which has or will require a license from the Federal Power Commission (FPC) or the Atomic Energy Commission (AEC), to the FPC or the AEC. The Regional Representative of EPA will be asked to review the application and to (i) advise the District Engineer within 30 days whether the proposed discharge or deposit may affect the quality of waters of another State (as required by section 21(b)(2) of the Federal Water Pollution Control Act, as amended), and (ii) provide the other information identified in paragraph (d)(7) of this section within 45 days. If, however, additional time beyond said 45 days (or any extension thereof) is required to respond, the Regional Representative shall notify the District Engineer and shall advise him as to the additional period of time which will be required to provide such information. In cases where a Regional Representative does not provide such information and advice to a District Engineer within the time period specified herein (including any extensions of time required by the Regional Representative) the written advice furnished by a State or other certifying authority shall be considered by the District Engineer to be the advice of the Regional Representative, provided, however, that if the State or other certifying authority has waived its opportunity to certify or to otherwise comment on the permit application, the District Engineer may not take action on the permit application in the absence of an expression of views by the Regional Representative of EPA. In the event that the Regional Representative determines that the proposed discharge or deposit may affect the quality of the waters of another State and that other State determines that the proposed discharge will affect the quality of its waters so as to violate water quality standards, objects to the issuance of a permit, and requests a public hearing, the matter should be reported to the Chief of Engineers, Attention: ENGGC-K.

(4) When copies of the permit application are furnished to the representatives of EPA, NOAA and Interior, a public notice, as described in paragraph (j) of this section, will be posted in post offices and other public places in the vicinity of the site of the proposed discharge or deposit. A copy of the public notice shall also be sent to the applicant, to State, county, or municipal authorities, to the heads of State agencies having responsibility for water quality improvement and wildlife resources, and to the Chief of Engineers, Attention: ENGCW-ON. In addition, copies of the public notice shall be sent to all other parties known to be interested in the application, including navigation interests, adjacent property owners and conservation organizations. However, if, in the judgment of the District Engineer, sending individual notice to all other parties known to be interested in the application is considered to be impracticable because of the number of individual mailings that would be required, the public notice shall be published for 5 consecutive days in the local newspaper. If the local newspaper is not a daily, the public notice should be published in the local newspaper and for 5 consecutive days in a newspaper of general circulation in the area where the proposed discharge or deposit is to occur. If the notice is published in the newspaper(s), the applicant shall reimburse the District Engineer for the costs of publication.

(5) Water quality certifications pursuant to section 21(b) of the Federal Water Pollution Control Act, the comments of all governmental agencies on a permit application, and all information and data provided by an applicant or a permittee identifying the nature and frequency of a discharge or deposit shall be available for examination by the public in the Office of the District Engineer. All other information or data which may be submitted by an applicant in connection with a permit application or which may be furnished by a permittee in connection with required periodic reports shall also be available to the public unless the applicant or permittee specifically identifies and is able to demonstrate to the satisfaction of the Secretary of the Army or his authorized representative that the disclosure of such information or data to the general public would divulge methods or processes entitled to protection as trade secrets.

(6) If notice of the permit application evokes substantial public interest a public hearing may be held. Policy with respect to the holding and conduct of public hearings is discussed in paragraph (k) of this section.

(7) District Engineers may, consistent with the policy guidance contained in paragraph (d) of this section, and, after considering all of the information developed with respect to the permit application, including written or oral information presented in response to a public notice or at a public hearing, issue a permit with or without conditions, or deny it, provided, however, that if a District Engineer determines that issuance of a permit with or without conditions is appropriate but there is objection to the issuance of the proposed permit by the Regional Representative of EPA on grounds related to water quality, the matter must be forwarded to higher authority for resolution by the Secretary and the Administrator as provided for in paragraph (d)(10) of this section. If the Regional Representative of EPA does not object to the issuance of a permit and the District Engineer determines that issuance of a permit with or without conditions is appropriate but there is continuing objection to the issuance of a permit by either the Regional Coordinator or Field Representative of the Department of the Interior or the Regional Director of the National Marine Fisheries Service of NOAA on the grounds that the discharge or deposit will have a significant and unreasonable adverse impact on fish and wildlife resources, the District Engineer shall not proceed with the issuance of a permit if, immediately upon

DSW 329402

STLCOPCB4076110

receipt of notice from the District Engineer that he intends to issue a permit, such Regional Coordinator, Field Representative or Regional Director indicates to the District Engineer in writing that he wishes to bring his concerns to the attention of higher officials in Washington. In such cases, the proposed permit may be issued at the expiration of 30 days from the date of receipt of the letter from the Regional Coordinator, Field Representative or Regional Director unless, prior to that time, as a result of consultations in Washington, it is directed that the matter be forwarded to higher authority for resolution by the Secretary of the Army, the Administrator of EPA and, as appropriate the Secretary of Commerce or the Secretary of Interior. Thereafter, a permit will be issued only pursuant to and in accordance with instructions from such higher authority. Every effort should be made to resolve differences at the District Engineer level before referring the matter to higher authority.

(j) *Public notice.* (1) As required by paragraph (i)(4) of this section, a public notice will be issued after a permit application is determined to be in proper order. In cases where the permit applied for pertains to a discharge or deposit and does not involve construction or other work in navigable waters, the notice shall (i) state the name and address of the applicant, (ii) identify the waterway involved and provide a sketch showing the location of the proposed discharge or deposit, (iii) briefly identify the character and frequency of the discharge or deposit, (iv) include any other information which the views of the State on the permit application and (vi) provide 30 days within which interested parties may express their views concerning the permit application. All public notices involving a proposed discharge or deposit shall contain the following statement:

The decision as to whether or on what conditions a permit authorizing a discharge or deposit will or will not be issued under the Refuse Act will be based on an evaluation of the impact which the proposed discharge or deposit may have on (i) anchorage and navigation, (ii) applicable water quality standards and related water quality considerations, including environmental values reflected in water quality standard, and (iii) fish and wildlife values not reflected in or adequately protected by applicable water quality standards, if any.

In the event that individual states may, in connection with applications for certifications required by subsection 21(b)(1) of the Federal Water Pollution Control Act, as amended, wish to enter into arrangements for joint public notice concerning proposed discharges or deposits, the Chief of Engineers may, after consulting with the Environmental Protection Agency, approved mutually satisfactory arrangements.

(2) Comments received from interested parties within the period provided for in the public notice or within such extensions of time for filing such comments as may be granted by the District Engineer will be retained and will be considered in determining whether the permit applied for should be issued.

(3) In addition to advising the applicant in writing of the final action taken on his application, including the reasons therefor if the application is denied, the District or Division Engineer will provide a copy to any member of Congress who has expressed an interest in the particular permit application. Other persons interested in the final action taken on an application may contact the District Engineer.

(4) When objections to the issuance of a permit are received in response to a public notice, the Division or District Engineer will furnish the applicant with copies of the objections and afford him the opportunity to rebut or resolve the objections.

(k) *Public hearings.* (1) It is the policy of the Corps of Engineers to conduct the civil works program in an atmosphere of public understanding, trust, and mutual cooperation and in a manner responsive to the public interest. To this end, a public hearing may be helpful and will be held in connection with an application for a permit involving a discharge or deposit in navigable waters or tributaries thereof whenever, in the opinion of the District Engineer, such a hearing is advisable. In considering whether or not a public hearing is advisable, consideration will be given to the degree of interest by the public in the permit application, requests by the applicant or responsible Federal, State, or local authorities, or Public Members of the Congress, that a hearing be held, and the likelihood that information will be presented at the hearing that will be of assistance in determining whether the permit applied for should be issued. In this connection, a public hearing will not generally be held if there has been a prior hearing (local, State, or Federal) addressing the proposed discharge unless it clearly appears likely that the holding of a new hearing may result in the presentation of significant new information concerning the impact of the proposed discharge or deposit. The need for a hearing will be reported to the Division Engineer and his concurrence obtained. In certain circumstances a public hearing may be mandatory (see subparagraph (5) of this paragraph).

(2) In cases where it is determined that a public hearing should be held and it appears that the impact of the proposed discharge or deposit on applicable water quality standards or related water quality considerations will be an issue which will be raised at the hearing, the hearing shall be jointly held by both the District Engineer and the Regional Representative of EPA.

(3) The success of a public hearing depends upon the degree to which all interests are aware of the hearing and understand the issues involved. The following steps will be taken for each hearing:

(i) A public notice will be prepared and issued in clear, concise, objective style. The notice shall state the purpose of the hearing, provide details of time and place, and fully identify the location, character, and frequency of the proposed discharge or deposit.

(ii) The public notice will be given at least 30 days in advance of the hearing in the same manner as the public notice required under paragraph (j)(4) of this section. In addition, copies of the public notice will be provided to news media within the geographical area, and appropriate specialized news media for reaching interested groups and organizations.

(iii) As appropriate, supplementary informational matter, fact sheets, or more detailed news releases, will be distributed to the general or specialized news media.

(iv) Notice will be given to interested members of the Congress and Governors of the States involved.

(4) The hearing will be conducted in a manner that permits open and full discussion of any issues involved. A transcript of the hearing, together with copies of relevant documents, will become a part of the permit application record.

(5) In addition to the hearings which may be required by the policy specified in the preceding paragraphs, hearings are required under sections 21(b)(2) and 21(b)(4) of the Federal Water Pollution Control Act when (i) a State, other than the State of origin, objects to the issuance of a permit and requests a hearing on its objections or (ii) the Secretary of the Army proposes to suspend a Department of the Army permit upon notification by the certifying authority that applicable water quality standards will be violated. When a hearing is required pursuant to the Federal Water Pollution Control Act the matter should be reported to the Chief of Engineers, Attention: ENGGC-K. The Chief of Engineers will provide additional guidance with respect to holding of such hearings.

(6) In any case, when a District Engineer intends to schedule a public hearing he shall notify the Regional Representative of EPA not less than 10 days in advance of the deadline for the filing of comments by such Representative upon the permit application.

(l) *Environmental impact statement.* (1) Section 102(2)(C) of the National Environmental Policy Act of 1969 requires all Federal agencies, with respect to major Federal actions significantly affecting the quality of the human environment, to submit to the Council on Environmental Quality a detailed statement on:

(i) The environmental impact of the proposed action,

(ii) Any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) Alternatives to the proposed action,

(iv) The relationship between local short-term uses of man's environment

DSW 329403

STLCOPCB4076111

and the maintenance and enhancement of long-term productivity, and

(v) Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

(2) Section 102(2)(C) statements will not be required in permit cases where it is likely that the proposed discharge will not have any significant impact on the human environment. Moreover, the Council on Environmental Quality has advised that such statements will not be required where the only impact of proposed discharge or deposit will be on water quality and related water quality considerations because these matters are specifically addressed under subsections 21 (b) and (c), the Federal Water Pollution Control Act, as amended. However, such statements shall be required in connection with proposed discharges or deposits which may have a significant environmental impact unrelated to water quality. In cases in which a section 102(2)(C) statement may be required, the report of the District Engineer accompanying any case referred to higher authority (see paragraphs (d)(10) and (j)(5) of this section) will contain a separate section addressing the environmental impact of the proposed discharge or deposit, if any, and, if issuance of a permit is recommended, a draft section 102(2)(C) statement should be attached. In all other cases in which a section 102(2)(C) statement is required the District Engineer shall draft, consult with, and discuss the comments of any Federal, State, and local agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. In cases where the preparation of a 102(2)(C) statement is necessary, the District Engineer may require the applicant to furnish such information as he may consider necessary to prepare the required statement.

(m) *Publicity.* District Engineers will, in consultation with Regional Representatives, establish and maintain a program to assure that potential applicants for permits are informed of the requirements of this regulation and of the steps required to obtain permits for discharges into navigable waters. Whenever the District Engineer becomes aware of plans being developed by either private or public entities who will require permits in order to implement the plans, a letter will be sent to the potential permittee advising him of statutory requirements and the need to apply for a permit under this section.

(n) *Duration of permits issued.* (1) In cases where (i) certification pursuant to section 21(b) is required and has been received, (ii) certification is not required but the State has otherwise indicated that it has no objection to the issuance of a permit, or (iii) where certification or State views have not been received and the requirement for such certification or State views has been waived, but the Regional Representative of EPA has indicated that EPA has no objection to the issuance of a permit and issuance of such a permit is otherwise considered appropriate, a permit subject to revalidation at the expiration of 5 years may be issued: *Provided, however*, That a permit of longer duration and subject to such revalidation provisions as the District Engineer may consider appropriate may issue with the approval of the Administrator of EPA or his authorized representative.

(2) In cases involving a facility which was in existence or lawfully under construction prior to April 3, 1970, and it appears after evaluation that issuance of a Federal permit would be appropriate although certification pursuant to section 21(b) has not been provided, a permit may be issued, provided (i) that the permit will expire on April 2, 1973, and (ii) that it is conditioned so as to require annual demonstration by the permittee that the discharge or deposit is in compliance with applicable water quality implementation schedules.

(3) Permits of less than 5 years' duration may issue in appropriate cases and District Engineers shall give great weight to the advice of Regional Representatives of EPA on the appropriate duration for particular permits.

(o) (1) [Reserved]

(2) Permits shall include such special conditions as the Regional Representative of EPA may consider necessary or appropriate to insure compliance with applicable water quality standards and the purposes of the Federal Water Pollution Control Act. Permits shall also be subject to such special conditions as the District Engineer may, after consultation with State and local agencies, Interior, NOAA, and other appropriate Federal agencies, consider to be necessary or appropriate to insure that navigation and anchorage will not be injured, and to insure that the discharge or deposit will not have a significant and unreasonable adverse impact on fish and wildlife resources.

(p) *Violations of the Refuse Act or permit conditions.* Discharges or deposits which are not authorized by an appropriate permit issued under the authority of the Secretary of the Army are unlawful and may result in the institution of legal proceedings under the Refuse Act. When a permit has been issued discharges or deposits must be consistent with the terms and conditions of such permit. Discharges or deposits in violation of permit terms or conditions shall result in the institution of legal proceedings under the Refuse Act and/or the initiation of administrative proceedings to suspend or revoke the permit.

[Regs., Apr. 1, 1971, ENGCW-ON] (Sec. 7, 40 Stat. 268; 33 U.S.C. 1; sec. 3012, 70A Stat. 157; 10 U.S.C. 3012)

For the Adjutant General.

EDWIN A. DAYTON,
LTC, AGC, Chief, Plans Office, TAGO.

[FR Doc.71-4808 Filed 4-6-71;8:49 am]

Title 49—TRANSPORTATION

Subtitle A—Office of the Secretary of Transportation

[OST Docket No. 1; Amdt. 1-47]

PART 1—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES

Delegations of Authority

The purpose of this amendment is to delegate certain of the Secretary's functions under the Federal-Aid Highway and Highway Safety Acts of 1970 (Public Law 91-605) and the Federal Railroad Safety Act of 1970 (Public Law 91-458) to the Federal Highway Administrator and the National Highway Traffic Safety Administrator.

Since this amendment relates to Departmental management, procedures, and practices, notice and public procedure thereon is unnecessary and it may be made effective in less than 30 days after publication in the FEDERAL REGISTER.

In consideration of the foregoing, effective March 30, 1971, Part 1 of Title 49, Code of Federal Regulations, is amended as follows:

a. Paragraph (b) of § 1.48 is amended and new paragraphs (n) and (o) are added to read as follows:

§ 1.48 Delegations to Federal Highway Administrator.

The Federal Highway Administrator is delegated authority to—

* * * * *

(b) Administer the following laws related generally to highways:

(1) Chapters 1 (except sec. 141(b) and 135), 2, 3, and 5 of title 23, United States Code, including the apportionment of funds for Federal-Aid Highways once Congress approves estimates submitted by the Secretary;

(2) The Federal-Aid Highway Act of 1970 (except sec. 118) (84 Stat. 1713);

(3) The Federal-Aid Highway Act of 1968, as amended (82 Stat. 815);

(4) The Federal-Aid Highway Act of 1966, as amended (80 Stat. 766);

(5) The Federal-Aid Highway Act of 1962, as amended (76 Stat. 1145, 23 U.S.C. 307 note);

(6) The Federal-Aid Highway Act of 1954, as amended (68 Stat. 70);

(7) The Act of September 26, 1961, as amended (75 Stat. 670);

(8) The Highway Revenue Act of 1956, as amended (70 Stat. 387, 23 U.S.C. 120 note);

(9) The Highway Beautification Act of 1965, as amended (79 Stat. 1028, 23 U.S.C. 131 et seq. notes);

(10) The Alaska Omnibus Act, as amended (73 Stat. 141, 48 U.S.C. 21, note prec.);

(11) The Joint Resolution of August 28, 1965, as amended (79 Stat. 578, 23 U.S.C. 101 et seq., notes);

(12) Section 502(c) of the General Bridge Act of 1946, as amended (60 Stat. 847, 33 U.S.C. 525(c));

DSW 329404

STLCOPCB4076112