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# federal register

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 906

**[Docket No. FV99–906–2 FR]**

## Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas; Increased Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule increases the assessment rate from $0.11 to $0.12 per 7/10 bushel carton of oranges and grapefruit established for the Texas Valley Citrus Committee (Committee) under Marketing Order No. 906 for the 1999–2000 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. Authorization to assess orange and grapefruit handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began on August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** August 21, 1999.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Cavazos, Marketing Assistant, McAllen Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1313 E. Hackberry, McAllen, TX 78501; telephone: (956) 682–2833, Fax: (956) 682–5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

**SUPPLEMENTARY INFORMATION:** Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

This rule is issued under Marketing Agreement and Order No. 906, as amended (7 CFR part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, orange and grapefruit handlers in the Lower Rio Grande Valley in Texas are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable oranges and grapefruit beginning August 1, 1999, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 1999–2000 and subsequent fiscal periods from $0.11 to $0.12 per 7/10 bushel carton of oranges and grapefruit handled.

The Texas orange and grapefruit marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Texas oranges and grapefruit. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1998–99 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate of $0.11 per 7/10 bushel carton that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on June 8, 1999, and unanimously recommended 1999–2000 expenditures of $1,148,850 and an assessment rate of $0.12 per 7/10 bushel carton of oranges and grapefruit handled. In comparison, last year's budgeted expenditures were $1,181,950. The assessment rate of $0.12 is $0.01 higher than the rate previously in effect. The Committee has operated under a lower assessment rate in recent years and used available reserve funds to make up most of the difference between assessment income and expenses. Since 1994, the Committee's reserve has decreased from almost $400,000 to

slightly under $120,000. Thus, the Committee recommended increasing the assessment rate because the previous rate would not have generated enough income to cover 1999–2000 expenses, and the Committee only wanted to use a limited amount of reserve funds to meet expenses. The Committee wanted to ensure that adequate reserve funds were available to meet unexpected expenses.

The major expenditures recommended by the Committee for the 1999–2000 fiscal period include $739,000 for advertising and promotion, $179,000 for the Mexican Fruit Fly program, $109,781 for management and administration of the program, and $73,369 for compliance. Budgeted expenses for these items in 1998–99 were $768,700, $179,000, $109,781, and $73,369, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Texas oranges and grapefruit. Texas orange and grapefruit shipments for the year are estimated at 9.5 million 7/10 bushel cartons, which should provide $1,140,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve (currently $119,402) will be kept within the maximum of one fiscal period's expenses permitted by the order (§ 906.35).

The assessment rate established by this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1999–2000 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 315 producers of oranges and grapefruit in the production area and 16 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Texas orange and grapefruit producers and handlers may be classified as small entities.

Last year, 5 of the 16 handlers (31 percent) each shipped over 625,000 7/10 bushel cartons of oranges and grapefruit. Using an average f.o.b. price of $8.00 per carton, these handlers could be considered large businesses by the SBA, and the remaining 11 handlers (69 percent) could be considered small businesses. Of the approximately 315 producers within the production area, few have sufficient acreage to generate sales in excess of $500,000; therefore, a majority of producers of Texas oranges and grapefruit may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 1999–2000 and subsequent fiscal periods from $0.11 to $0.12 per 7/10 bushel carton of oranges and grapefruit. The Committee unanimously recommended 1999–2000 expenditures of $1,148,850 and an assessment rate of $0.12 per 7/10 bushel carton. The assessment rate of $0.12 is $0.01 higher than the 1998–99 rate. The Committee recommended increasing the assessment rate because the previous rate would not have generated enough income to cover 1999–2000 expenses, and the Committee only wanted to use a limited amount of reserve funds to meet expenses. The Committee wanted to ensure that adequate reserve funds were available to meet unexpected expenses. As mentioned earlier, the quantity of assessable oranges and grapefruit for the 1999–2000 season is estimated at 9.5 million 7/10 bushel cartons. Assessment income, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 1999–2000 fiscal period include $739,000 for advertising and promotion, $179,000 for the Mexican Fruit Fly program, $109,781 for management and administration of the marketing order program, and $73,369, for compliance. Budgeted expenses for these items in 1998–99 were $768,700, $179,000, $109,781, and $73,369, respectively.

Many producers are still recovering from the devastating freezes of 1983 and 1989 that virtually destroyed the Texas citrus industry. Most trees in the production area were planted within the past ten years and have not yet reached full maturity. As a result, yields are still somewhat low and profit to the producers is marginal. Also, a general oversupply of citrus from other domestic sources and foreign countries depressed prices. The Committee recommended increasing the assessment rate to $0.12 per 7/10 bushel carton because the previous rate would not have generated enough income to cover 1999–2000 expenses, and the Committee only wanted to use a limited amount of reserve funds ($5,850) to meet expenses. Interest income totaling $3,000 will also be used to cover program expenses in 1999–2000. At the end of the 1999–2000 fiscal period the reserve is expected to be $113,552.

The Committee reviewed and unanimously recommended 1999–2000 expenditures of $1,148,850, which included a decrease in the advertising and promotion program. Budgeted expenses for the Mexican Fruit Fly program were left the same as last year. In arriving at the budget, the Committee considered information from various sources, including the Executive Committee. The Committee considered leaving the established lower assessment rate unchanged. The Committee, however, concluded that retaining the previous rate of assessment for the 1999–2000 fiscal period would have reduced the Committee's reserve to an unacceptable level. Alternative expenditure levels were discussed based upon the relative value of the advertising and promotion program to the Texas citrus industry. The assessment rate of $0.12 per 7/10 bushel carton of assessable oranges and

grapefruit was determined by dividing the total recommended budget by the quantity of assessable oranges and grapefruit estimated at 9.5 million 7/10 bushel cartons for the 1999–2000 fiscal period. The $0.12 rate should provide $1,140,000 in assessment income. The additional $8,850 will come from the Committee's reserve and interest income.

A review of historical information and preliminary information pertaining to the 1999–2000 fiscal period indicates that the f.o.b. price for the 1999–2000 season could range from $4.75 and $12.50 per 7/10 bushel carton of oranges and grapefruit depending upon the fruit variety, size, and quality. Therefore, the estimated assessment revenue for the 1999–2000 fiscal period as a percentage of total pack-out revenue could range between .96 and 2.5 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Texas orange and grapefruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 8, 1999, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Texas orange and grapefruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on July 19, 1999 (64 FR 38597). Copies of the proposed rule were also mailed or sent via facsimile to all Texas orange and grapefruit handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register. A 20-day comment period ending August 9, 1999, was provided for interested persons to respond to the proposal. No comments were received.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 1999–2000 fiscal period began on August 1, 1999, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable oranges and grapefruit handled during such fiscal period, and handlers will begin harvesting their fruit in early September. The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. Further, handlers are aware of this rule which was unanimously recommended by the Committee at a public meeting. Also, a 20-day comment period was provided for in the proposed rule.

### List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 906 is amended as follows:

## PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR part 906 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 906.235 is revised to read as follows:

### § 906.235 Assessment rate.

On and after August 1, 1999, an assessment rate of $0.12 per 7/10 bushel carton is established for oranges and grapefruit grown in the Lower Rio Grande Valley in Texas.

Dated: August 17, 1999.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 99–21673 Filed 8–19–99; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF AGRICULTURE

## Agricultural Marketing Service

## 7 CFR Part 966

**[Docket No. FV98–966–2 IFR]**

## Tomatoes Grown in Florida; Partial Exemption From the Handling Regulation for Producer Field-Packed Tomatoes

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule amends a prior interim final rule that changed the handling requirements prescribed under the Florida tomato marketing order (order). The order regulates the handling of tomatoes grown in Florida and is administered locally by the Florida Tomato Committee (committee). The prior interim final rule exempted shipments of producer field-packed tomatoes from container net weight requirements and the requirement that all tomatoes must be packed at registered handler facilities. This rule exempts shipments of certain-sized producer field-packed tomatoes from a maximum size requirement specified in the handling regulation. These changes allow the industry to pack a higher colored, riper tomato to meet the demand of the expanding market for vine-ripe tomatoes. This facilitates the movement of Florida tomatoes and should ultimately improve returns to producers.

**DATES:** Effective October 10, 1999; comments received by October 19, 1999 will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Christian D. Nissen, Regional Manager, Southeast Marketing Field Office, F&V, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883–2276; telephone: (941) 299–4770, Fax: (941) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration

Branch, F&V, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

**SUPPLEMENTARY INFORMATION:** Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

This rule is issued under Marketing Agreement No. 125 and Order No. 966 (7 CFR part 966), both as amended, regulating the handling of tomatoes grown in Florida, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Under the order, tomatoes produced in the production area and shipped to fresh market channels outside the regulated area are required to meet grade, size, inspection, and container requirements. These requirements apply during the period October 10 through June 15 each year. Current requirements include a minimum grade of U.S. No. 2 and a minimum size of 2 9/32 inches in diameter. Current pack and container requirements outline the types of information that needs to appear on a container, weight restrictions the packed containers must meet, and that the containers must be packed at registered handler facilities.

Section 966.52 of the order provides authority for the modification, suspension, and termination of regulations. It includes the authority to establish and modify pack and container requirements for tomatoes grown in the defined production area and handled under the order. Section 966.323 of the order's rules and regulations specifies the handling regulation for Florida tomatoes.

This rule amends an interim final rule published in the **Federal Register** on October 13, 1998 (63 FR 54556). That rule, which was based on a unanimous recommendation from the committee made at a meeting on September 11, 1998, changed the handling regulation under the order by defining producer field-packed tomatoes and allowing handlers to ship field-packed tomatoes exempt from net weight requirements. That rule also exempted producer field-packed tomatoes from the requirement that all tomatoes be packed at registered handler facilities. Currently, those tomatoes are subject to all other provisions of the handling regulation, including established grade, size, pack, and inspection requirements. Those tomatoes are also subject to assessments.

This amended interim final rule, which is based on a unanimous recommendation from the committee made at a meeting on May 26, 1999, exempts shipments of certain-sized producer field-packed tomatoes from a maximum diameter requirement specified in the handling regulation. Specifically, field-packed tomatoes designated as size ''6 × 6'' may be larger than 2 27/32 inches in diameter. This rule makes a related change to the labeling requirement for 6 × 6-sized field-packed tomatoes. The field-packed tomato exemption is also revised for clarity.

Producer field-packed tomatoes are tomatoes which at the time of inspection are No. 3 color or higher (according to color classification requirements in the U.S. tomato standards), that are picked and place-packed in new containers in the field by a producer as defined in § 966.150 of the rules and regulations. The tomatoes are then transferred to a registered handler's facility for final preparation for market and for inspection.

Most tomatoes from Florida are packed and shipped at the mature green stage. Shipments of mature green tomatoes represented approximately 88 percent of total fresh shipments during the 1997–98 season. Tomatoes are picked and packed at the mature green stage to facilitate handling. The vast majority of mature green tomatoes are packed using a mechanized process. The tomatoes are brought to the packing house where they are run across sizing equipment, and then are packed in volume fill containers. At the mature green stage, the tomatoes are firm and are able to tolerate the packing process. This process is efficient and facilitates packing in volume.

However, when trying to pack a tomato that is more ripe and mature, the process used to pack mature greens is not as effective. This is because as the tomato begins to ripen it begins to soften. Tomatoes of No. 3 color and above cannot tolerate the rigors of the mechanized handling process. This packing process bruises and damages riper tomatoes, increasing the volume of culls and those that fail inspection for grade.

Under this exemption, producer field-packed tomatoes are only handled once, when such tomatoes are picked and packed in the field. Field-packed tomatoes are not subject to the rigors of a mechanical process. Under this process, the tomatoes are still sized, cleaned, and packed by hand. This process of picking and packing in the field makes it substantially easier to pack a tomato of higher color and ripeness. As per the requirement for all packed tomatoes for shipment outside the regulated area, new boxes must be used. The tomatoes are delivered to a registered handler for final preparation for market. The tomatoes are inspected for grade, size, and proper pack after delivery to the registered handler's facility.

However, since this exemption has been available and growers and handlers have been utilizing it, a problem has emerged. Because the tomatoes are packed in the field, the tomatoes are sized by hand, not using the precision of sizing belts. While field packed tomatoes are successfully meeting minimum size requirements, some lots are having difficulty meeting the maximum size requirements as specified for the 6 × 6 size designation.

Currently, § 966.323(a)(2)(i) specifies that all tomatoes packed by a registered handler must meet a minimum size requirement of 2 9/32 inches in diameter. That section also requires that all such

tomatoes must be sized with proper equipment in one of three specified ranges of diameter. For example, tomatoes designated as ''6 × 7'' must be a minimum of 2 9/32 inches in diameter and a maximum of 2 19/32 inches in diameter. Tomatoes designated as ''6 × 6'' must be a minimum of 2 17/32 inches in diameter and a maximum of 2 27/32 inches in diameter. Tomatoes designated as ''5 × 6'' must be a minimum of 2 25/32 inches in diameter with no maximum size requirement. Finally, to allow for variations incident to proper sizing, not more than a total of 10 percent, by count, of the tomatoes in the lot may be smaller than the specified minimum diameter or larger than the maximum diameter.

Since the handling regulation was changed in October 1998 to exempt field-packed tomatoes from certain handling requirements, some 6 × 6-sized lots have failed inspection due to oversized tomatoes in the pack. As stated above, 6 × 6-sized lots of tomatoes must meet both minimum and maximum size requirements, within specified tolerances. Tomatoes that are run over a sizing belt in a packing house have little difficulty in meeting these requirements. However, producers packing tomatoes in the field must use hand-sizers. It is relatively easy to pick to a minimum size. However, it is much more difficult to pick tomatoes within a range of fractions of an inch.

Presenting a packed lot of tomatoes for inspection, and having it fail is costly. The handler can either find an outlet other than the fresh market for the tomatoes or rework the lot so it passes inspection. In the case of field packed tomatoes, reworking a lot is substantially more difficult. The tomatoes cannot be dumped then run across the machinery again to ensure that they meet inspection, but must be sorted through by hand. This is extremely time-consuming, and because the fruit is ripe, can cause additional bruising. In most cases, it is one or two tomatoes in a box that cause it to fail for size. Thus, the committee met in May 1999 and recommended this change for producer field-packed tomatoes.

The committee recommended that 6 × 6-sized producer field-packed tomatoes be exempt from the 2 27/32 inch maximum diameter requirement specified in § 966.323(a)(2)(i) of the handling regulation. This change will allow for additional oversized tomatoes, without the lot failing for size. While this change does allow for additional larger tomatoes to be included in the 6 × 6 pack, there is still a distinction between it and the 5 × 6. The 6 × 6 pack is an opportunity to sell a smaller tomato. This change provides some additional flexibility to address sizing problems relating to packing in the field. The 5 × 6 tomato is still the premium size, demanding the higher price. For this reason, the vast majority of tomatoes that meet the size requirements for 5 × 6 will continue to be packed in a 5 × 6 container. Also, according to the committee, buyers should not object to oversized fruit in the 6 × 6 pack because they have the option of grading it out for a premium product or passing it on to their customers as a larger tomato at a less expensive price.

The committee also recommended a related change in the labeling requirement specified in § 966.323(a)(2)(iii) of the handling regulation. Currently, that section requires that only ''6 × 7,'' ''6 × 6,'' or ''5 × 6'' be used to indicate the respective size designation on containers of tomatoes. The committee recommended that shipments of 6 × 6-sized producer field-packed tomatoes be marked as ''6 × 6 and larger'' to more accurately reflect the contents of the container which could include 5 × 6-sized tomatoes. The words ''and larger'' will not be required on 5 × 6-sized field-packed tomatoes because that is the largest designated size defined by a minimum diameter and includes all sizes above that minimum.

In evaluating alternatives to this change, such as increasing the percentage tolerance for oversize, it was concluded that the changes provided in this amended interim final rule are the better and more effective way to accomplish the committee's goal. Containers will be marked ''6 × 6 and larger'' which will separate them from the standard 6 × 6 and will tell buyers that the package includes some larger tomatoes. And, as stated earlier, while this does provide for additional larger tomatoes to be packed in a 6 × 6 pack, it should not blur the distinction between a 6 × 6 and 5 × 6.

The committee continues to focus on ways to be competitive, develop new markets, and increase producer returns. The October 1998 changes which added a definition of field-packed tomatoes to the handling regulation, along with certain exemptions for such tomatoes, have provided the industry with more flexibility and additional marketing opportunities. The committee believes that the availability of producer field-packed tomatoes will increase the volume of vine-ripe tomatoes available from Florida. This has been a market that has been expanding and not traditionally served by much volume from the Florida tomato industry. The October 1998 changes have allowed producers to harvest tomatoes that might otherwise have been left in the field. Handlers may be willing to pay a higher price for producer field-packed tomatoes which, when combined with additional tomato sales, should increase returns to producers. The additional exemptions for field-packed tomatoes designated as size 6 × 6 recommended by the committee in May 1999 will provide even more opportunities for the Florida tomato industry to market such tomatoes.

Section 8e of the Act requires that whenever grade, size, quality or maturity requirements are in effect for certain commodities under a domestic marketing order, including tomatoes, imports of that commodity must meet the same or comparable requirements. However, the Act does not authorize the imposition of pack and container requirements on imports, when such requirements are in effect under a domestic marketing order. Therefore, no change is necessary in the tomato import regulation as a result of this action.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 65 handlers of Florida tomatoes who are subject to regulation under the order and approximately 75 tomato producers in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (SBA) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000 (13 CFR 121.601).

Based on available industry and committee data, the average annual f.o.b. price for fresh Florida tomatoes during the 1997–98 season was around $9.11 per 25 pound equivalent, and total fresh shipments for the 1997–98 season are estimated at 47.6 million 25 pound equivalent cartons of tomatoes.

Committee data indicates that approximately 20 percent of the Florida handlers handle 80 percent of the total volume shipped outside the regulated area. Based on this information, the shipment information for the 1997–98 season, and the 1997–98 season average price, the majority of handlers would be classified as small entities as defined by the SBA. The majority of producers of Florida tomatoes also may be classified as small entities.

This rule amends a prior interim final rule that changed the handling regulation specified in § 966.323 under the order. The prior interim final rule was published in the **Federal Register** on October 13, 1998 (63 FR 54556). That rule modified § 966.323 by adding a definition for producer field-packed tomatoes, and exempting such tomatoes from container net weight requirements and the requirement that all tomatoes must be packed at registered handler facilities.

In addition, this amended interim final rule exempts shipments of field-packed tomatoes designated as size 6 × 6 from a maximum diameter requirement of 2 27/32 inches specified in § 966.323(a)(2)(i). This rule makes a related change in the labeling requirement specified in § 966.323(a)(2)(iii) whereby shipments of 6 × 6-sized producer field-packed tomatoes must be marked as ''6 × 6 and larger'' to more accurately reflect the contents of the container. Authority for these changes is provided in § 966.52 of the order.

This amendment with its additional flexibility is expected to have a positive impact on affected entities. The committee believes that allowing ripe tomatoes to be place packed in the field has enabled the Florida tomato industry to meet a strong and growing consumer demand for red, mature tomatoes. This has facilitated the movement of Florida tomatoes and helped to improve producer returns.

This rule will provide additional handling flexibility and cost savings. While field packed tomatoes are successfully meeting minimum size requirements, some lots are having difficulty meeting the maximum size requirements as specified for the 6 × 6 size designation. Tomatoes designated as ''6 × 6'' must be a minimum of 2 17/32 inches in diameter and a maximum of 2 27/32 inches in diameter. Tomatoes that are run over a sizing belt in a packing house have little difficulty in meeting these requirements. However, producers packing tomatoes in the field must use hand-sizers. It is relatively easy to pick to a minimum size. However, it is much more difficult to pick tomatoes within a range of fractions of an inch. Presenting a packed lot of tomatoes for inspection, and having it fail is costly. The handler can either find an outlet other than the fresh market for the tomatoes or rework the lot so it passes inspection. In the case of field packed tomatoes, reworking a lot is substantially more difficult. The tomatoes cannot be dumped then run across the machinery again to ensure that they meet inspection, but must be sorted through by hand. This is costly and time-consuming, and because the fruit is ripe, can cause additional bruising. This change will allow for additional oversized tomatoes, without the lot failing for size, providing additional flexibility and reducing reworking costs.

These changes are intended to provide additional flexibility for all those covered under the order. The opportunities and benefits of this rule are expected to be equally available to all tomato handlers and producers regardless of their size of operation. These changes have a beneficial impact on producers and handlers since tomato handlers can make additional supplies of tomatoes available to meet consumer needs consistent with crop and market conditions.

Regarding alternatives to the recommended action, the committee concluded that providing certain exemptions for field-packed tomatoes would allow the Florida tomato industry to meet a growing consumer demand for vine-ripe tomatoes. In addition, continuing to require 6 × 6-sized field-packed tomatoes to meet a maximum size requirement would discourage producers from packing such fruit because some of the packs would fail inspection. In evaluating alternatives to this change, such as increasing the percentage tolerance for oversize, it was concluded that the changes provided in this amended interim final rule are the better and more effective way to accomplish the committee's goal. Containers will be marked ''6 × 6 and larger'' which will separate them from the standard 6 × 6 and will tell buyers that the package includes some larger tomatoes. And, as stated earlier, while this does provide for additional larger tomatoes to be packed in a 6 × 6 pack, it does not blur the distinction between a 6 × 6 and 5 × 6. Thus, the recommended change was determined to be the most viable course of action.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large tomato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the committee's meetings on September 11, 1998, and May 23, 1999, were widely publicized throughout the tomato industry and all interested persons were invited to attend the meetings and participate in committee deliberations. Like all committee meetings, the September 1998 and May 1999 meetings were public meetings and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

As previously stated, an interim final rule regarding field-packed tomatoes was published in the **Federal Register** on October 13, 1998 (63 FR 54556). A 60-day comment period was provided to allow interested persons to respond to the rule. Copies of the rule were mailed by committee staff to all committee members and tomato handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. Four comments were received regarding the rule. These comments and any submitted regarding this amendment will be addressed in the rule finalizing this action. This interim final rule is effective October 10, 1999. This date is the beginning of the new Florida tomato shipping season.

After consideration of all relevant material presented, including the committee's recommendations and other information, it is found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This rule invites comments on changes to the handling requirements currently prescribed under the Florida tomato marketing order. Any comments received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect because: (1) These changes relax current requirements; (2) the 1999–2000 Florida tomato season begins October 10; (3) the committee unanimously recommended these changes at public meetings and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

**List of Subjects in 7 CFR Part 966**

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

For the reasons set forth in the preamble, 7 CFR part 966 is amended as follows:

## PART 966—TOMATOES GROWN IN FLORIDA

1. The authority citation for 7 CFR part 966 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 966.323 is amended by revising the last sentence of paragraph (d)(1) to read as follows:

**§ 966.323 Handling regulation.**

* * * * *

(d) *Exemption.* (1) * * * Producer field-packed tomatoes must meet all of the requirements of this section except for the following: the container net weight requirements specified in paragraph (a)(3)(i) of this section; the requirement that each container or lid shall be marked to indicate the designated net weight specified in paragraph (a)(3)(ii) of this section; the requirement that all containers must be packed at registered handler facilities as specified in paragraph (a)(3)(ii) of this section; the requirement that such tomatoes designated as size 6 × 6 must meet the maximum diameter requirement specified in paragraph (a)(2)(i) of this section and the labeling requirement specified in paragraph (a)(2)(iii) of this section: *Provided*, That ''6 × 6 and larger'' is used to indicate the listed size designation on containers.

* * * * *

Dated: August 17, 1999.

**Eric M. Forman,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 99–21674 Filed 8–19–99; 8:45 am]

BILLING CODE 3410–02–P

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 1220

**[No. LS–98–001]**

## Soybean Promotion and Research Program: Procedures to Request a Referendum

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes procedures for soybean producers to request a referendum on the Soybean Promotion and Research Order (Order) as authorized under the Soybean Promotion, Research, and Consumer Information Act (Act). The Act provides that the Secretary, 5 years after the conduct of the initial referendum, shall give soybean producers the opportunity to request an additional referendum on the Order. Individual producers and other producer entities will be provided the opportunity to request a referendum during a specified period announced by the Secretary of Agriculture (Secretary), at the county Farm Service Agency (FSA) office where FSA maintains and processes the producer's administrative farm records. For the producer not participating in FSA programs, the opportunity to request a referendum will be provided at the county FSA office serving the county where the producer owns or rents land. Participation in the Request for Referendum is not mandatory. This final rule establishes the procedures for conducting the required Request for Referendum.

**EFFECTIVE DATES:** August 21, 1999.

**FOR FURTHER INFORMATION CONTACT:** Ralph L. Tapp, Chief; Marketing Programs Branch; Livestock and Seed Program; Agricultural Marketing Service (AMS), USDA; STOP–0251; 14th and Independence Avenue, SW.; Washington, D.C. 20250–0251. Telephone number 202/720–1115.

**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding: Proposed Rule—Soybean Promotion and Research Program: Procedures to Request a Referendum published September 4, 1998 (63 FR 47200); Proposed Rule—Soybean Promotion and Research Program: Request for Referendum published April 16, 1999 (64 FR 18831).

### Executive Order 12866 and 12988 and the Regulatory Flexibility Act and the Paperwork Reduction Act

This final rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect. This rule would not preempt state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 1971 of the Act, a person subject to the Order may file with the Secretary a petition stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with law and request a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing the Secretary will rule on the petition. The statute provides that the district court of the United States in any district in which the petitioner resides or carries on business has jurisdiction to review the Secretary's decision if a complaint for that purpose is filed not later than 20 days after the date of the entry of the Secretary's decision.

Further, § 1974 of the Act provides, with certain exceptions, that nothing in the Act may be construed to preempt or supersede any other program relating to soybean promotion, research, consumer information, or industry information organized and operated under the laws of the United States or any State. One exception in the Act concerns assessments collected by the Qualified State Soybean Boards (QSSBs). The exception provides that to ensure adequate funding of the operations of QSSBs under the Act, no State law or regulation may limit or have the effect of limiting the full amount of assessments that a QSSB in that State may collect, and which is authorized to be credited under the Act. Another exception concerns certain referendums conducted during specified periods by a State relating to the continuation or termination of a QSSB or State soybean assessment.

Pursuant to requirements set forth in the Regulatory Flexibility Act (5 United States Code (U.S.C.) 601 *et seq.*), the Administrator of AMS has considered the economic effect of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small business entities.

According to the statistical survey initiated by the Department of Agriculture (Department), there are 600,813 soybean producers who will be eligible to participate in the Request for Referendum. The majority of producers subject to the Order are small businesses under the criteria established by the Small Business Administration.

The requirements set forth in this rule are substantially similar to the rules that established the eligibility and participation requirements for a July 26, 1995, soybean producer poll published as a final rule on March 22, 1995 (60 FR 15027), in the **Federal Register**.

The procedures to request a referendum will not impose a substantial burden or have a significant

impact on persons subject to the Order. Further, participation is not mandatory. Not all persons subject to the Order are expected to participate. The Department will determine producer eligibility.

In compliance with OMB regulations [5 CFR Part 1320] which implements the Paperwork Reduction Act [44 U.S.C. 3501 *et seq.*], the information collection requirements contained in this final rule have been previously approved by OMB and were assigned OMB control number 0581–0093. The information collection requirements in this final rule include the following:

(1) Any eligible person who requests a referendum must legibly print his/her name, or if applicable, the producer entity represented, address, telephone number, and county on the ''Request for a Soybean Referendum'' form (Form LS–51–1). Each person must read the certification statement on the form and sign it certifying that he/she or the producer entity represented meets the eligibility requirements. Form LS–51–1 shall be obtained in person, by mail, or by facsimile from the county FSA office where FSA maintains and processes the producer's administrative farm records or at the county FSA office serving the county where the producer owns or rents land. Form LS–51–1 may be returned in person, by mail, or by facsimile to the same county FSA office where the form was obtained. A producer or producer entity representative who obtains Form LS–51–1 in person during the Request for Referendum period from the appropriate county FSA office may complete Form LS–51–1 at that time. The estimated average time burden for completing the procedure is 5 minutes per person.

(2) Using information from each returned Form LS–51–1, county FSA personnel shall enter the producer's name, and if applicable, producer entity representative and the date received (and the postmarked date for mailed requests), and the method the form was received on the ''List of Soybean Producers Requesting a Referendum'' (Form LS–51–2). This information may be used for the purpose of challenging the eligibility of producers. Many county FSA offices will use more than one Form LS–51–2 depending on the number of producers requesting a referendum. Because only county FSA office personnel would be required to complete Form LS–51–2, the time required to complete this form is not included in the estimated average reporting burden for a producer.

**Background**

The Act (7 U.S.C. 6301–6311) provides for the establishment of a coordinated program of promotion and research designed to strengthen the soybean industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for soybeans and soybean products. The program is financed by an assessment of 0.5 of one percent of the net market price of soybeans sold by producers. Pursuant to the Act, an Order was made effective July 9, 1991, and the collection of assessments began September 1, 1991.

The Act required that an initial referendum be conducted no earlier than 18 months and no later than 36 months after the issuance of the Order to determine whether the Order should be continued.

The initial referendum was conducted on February 9, 1994. On April 1, 1994, the Secretary announced that of the 85,606 valid ballots cast, 46,060 (53.8 percent) were in favor of continuing the Order and the remaining 39,546 votes (46.2 percent) were against continuing the Order. The Act required approval by a simple majority for the Order to continue.

The Act also required that within 18 months after the Secretary announced the results of the initial referendum, the Secretary would conduct a poll among producers to determine if producers favored a referendum on the continuance of the payment of refunds under the Order.

A July 25, 1995, nationwide poll of soybean producers did not generate sufficient support for a refund referendum to be held. A refund referendum would have been held if at least 20 percent (not in excess of one-fifth of which may be producers in any one State) of the 381,000 producers (76,200) nationwide requested it. Only 48,782 soybean producers participated in the poll. Consequently, refunds were discontinued on October 1, 1995.

The Act also specifies that the Secretary shall, 5 years after the conduct of the initial referendum and every 5 years thereafter, provide soybean producers an opportunity to request a referendum on the Order.

For all such referendums, if the Secretary determines that at least 10 percent of U.S. producers engaged in growing soybeans (not in excess of one-fifth of which may be producers in any one State) support the conduct of a referendum, the Secretary must conduct a referendum within 1 year of that determination. If these requirements are not met, no referendum would be conducted.

For the purposes of the Request for Referendum, the Secretary will use the results of the recent AMS statistical survey of soybean producers obtained from an FSA soybean producer list. The survey showed that there are 600,813 soybean producers in the United States.

The Act provides that producers shall have an opportunity to request a referendum by mail or in person during a period established by the Secretary. Eligible persons must certify on an official form that they were engaged in the growing of soybeans during a representative period specified by the Secretary, and indicate that they favor the conduct of a referendum. The Request for Referendum period will be a 4-week period as determined by the Secretary and announced at a later date. The representative period for which a producer was engaged in the growing of soybeans and subject to the assessment will be January 1, 1997, through the last day of the Request for Referendum period. The date of the Request for Referendum period will be announced in a Notice published in the **Federal Register** and as specified in § 1220.20. The Act also provides that a Request for Referendum may be made at county Cooperative State Research, Education, and Extension Service offices or county FSA offices. The regulations provide that soybean producers will request a referendum at county FSA offices. Providing producers an opportunity to Request a Referendum at FSA offices will give producers the greatest opportunity to request a referendum.

On September 4, 1998, the Department published in the **Federal Register** (63 FR 47200) a proposed rule that set forth procedures to be followed in conducting the Request for Referendum with comments due in the Department by October 5, 1998. The proposed rule included provisions concerning definitions, supervision of the process for requesting a referendum, eligibility, certification and request procedures, counting and reporting results and disposition of the forms and records. It also proposed that the Request for Referendum be conducted at the county FSA offices so FSA employees could assist AMS by determining eligibility, counting ballots, and reporting results.

The Department received 12 comments in response to the September 4, 1998, proposed rule. All comments received were from State and national soybean organizations. Ten comments were filed on time and two comments were filed after the comment period ended. The late comments generally expressed the same views as the timely comments. Of the 12 comments received, 6 comments expressed the belief that the 381,000 soybean farms reported by the 1992 Census of Agriculture (Census) and initially

proposed by the Department as the total number of soybean producers grossly understates the true number of soybean producers. Furthermore, the commenters believed that the 1992 Census data (1) Was outdated, (2) did not provide a proper basis for determining the number of soybean producers, and (3) did not reflect the current number of producers which they believed had increased since the enactment of the 1996 Farm Bill. Two commenters recommended that the Department utilize the results of the United Soybean Board's (Board) recent survey of soybean producers, which was based on FSA's data, or use other relevant information to determine the number of soybean farmers eligible to request a referendum. The Board's survey suggested that there could be as many as 649,000 soybean producers in the United States which is significantly more soybean producers than reflected in the 1992 Census data. Accordingly, the Department contracted with an independent surveyor to conduct a survey of soybean producers. The Department used an FSA list of approximately 970,000 producers who produced soybeans, or who produced forage or hay which may have included soybeans during crop years 1995–97. The Department developed a survey and the surveyor contacted a statistically sample of 2,401 producers selected from the list of 970,000 producers to determine the number of individuals and firms which meet the definition of a soybean producer contained in the Act. Those persons interviewed by the surveyor were asked to indicate whether they were a soybean producer only after listening to the definition of a soybean producer as set forth in § 1967 of the Act which was read by the surveyor. The definition of producer is ''any person engaged in the growing of soybeans in the United States who owns, or who shares the ownership and risk of loss of, such soybeans.'' On March 5, 1999, the Department received the results of the soybean producer survey. Based on the results of the survey, the sample of soybean producers indicated 600,813 United States soybean producers would be eligible to participate in the Request for Referendum. On April 16, 1999, the Department published in the **Federal Register** (64 FR 18831) a proposal to change the number of eligible soybean producers from the 381,000 soybean producers published in the September 4, 1999, proposed rule (63 FR 47200) to 600,813 soybean producers based on the results of the Department's statistical survey. Comments were due in the Department by May 17, 1999.

The Department received nine written comments on the amended proposed rule primarily from State and national soybean organizations. Seven comments were filed on time and two comments were filed after the comment period closed. The late comments generally expressed the same view as the timely comments.

Of the seven comments filed on time, six comments supported the Department's revised estimate of the number of soybean producers eligible to participate in the Request for Referendum as published in the April 16, 1999, proposed rule. The commenters generally expressed the view that basing the number of U.S. soybean producers on the number of ''soybean farms'' as reported in the Census understated the number of ''soybean producers'' eligible to participate in the request for referendum. They believed that the revised number based on the survey was much more consistent with the Act's definition of a soybean producer which is ''any person engaged in growing soybeans in the U.S. who owns or who shares the ownership and risk of loss of such soybeans.'' They pointed out that given the structure of many farming operations, more than one producer could be connected to a single farm. One comment did not support the change in the number of eligible producers. The commenter believed the difference between the Census number for 1997 of 354,692 and the statistically derived number of 600,813 was too large. The commenter also believed that an exact number could be obtained from the various State checkoff offices. However, the types of records maintained would not provide appropriate information.

Based on the comments received and all available information including the Department's soybean producer survey, 600,813 soybean producers will be used as the number of producers eligible to participate in the Request for Referendum. A soybean referendum will be conducted if requested by 10 percent of the total number of eligible U.S. soybean producers (not in excess of one-fifth of which may be producers in any one State) engaged in the growing of soybeans.

The other substantive changes suggested by commenters on the September 4, 1998, proposed rule and not addressed in the April 16, 1999, proposed rule are discussed below. For the reader's convenience, the discussion is organized by the same topic headings and in the same order that the topics appear in the proposed rule.

*Section 1220.33 Time and Place for Requesting a Referendum*

Two commenters suggested that the 4 week Request for Referendum was too long. One of the commenters believed that the in person Request for Referendum period as proposed by the Department should be reduced to a 2-week period and that a 2-week period would provide farmers with an adequate opportunity to request a referendum while reducing the potential for confusion during the administration of the request process. The other commenter suggested that the Request for Referendum period should be conducted in two stages. In the first stage, FSA should have the ability to respond to requests for a form either by facsimile and/or mail 2 weeks prior to the beginning of the in person request period. This would allow farmers the opportunity to submit by mail or by facsimile a form in a timely fashion and would give FSA plenty of opportunity to provide the forms through the mail to the person requesting the form. The person requesting the form would have a sufficient amount of time to drop off the form during a visit to the FSA office or mail the form back to the FSA office. Secondly, the commenter believed the in person request period should be no longer than 2 weeks. The Department has determined that the Request for Referendum period will be 4 weeks to ensure that those producers who wish to participate in the Request for Referendum will have ample opportunity to do so. Furthermore, the Department believes a 2-week Request for Referendum period is too short to ensure that all eligible producers have sufficient time to request a referendum, particularly if Form LS–51–1 is requested by mail. Finally, the Department believes that the two-stage Request for Referendum would unnecessarily complicate the process which could lead to confusion. Accordingly these suggestions are not adopted.

*Section 1220.36 Certification and Request Procedure.*

Two commenters suggested that obtaining Form LS–51–1—Producer Request for Referendum—by telephone be eliminated because they believed permitting participation by telephone would pose significant administrative problems during the Request for Referendum. The commenters also believe that mistakes would be made in obtaining information by telephone and that in person or written requests (including request by fax), assures greater accuracy. The commenters

further believed that having a written record of request form solicitations would enable county FSA offices to better address complaints from producers claiming that they did not receive Form LS–51–1 as requested. The Department believes this suggestion has merit. Since there will be a 4-week Request for Referendum period, producers will have ample time to request and receive Form LS–51–1 in person, by mail, or by facsimile. Accordingly, Form LS–51–1 will not be available by telephone request.

*Section 1220.42 FSA County Office Report; Section 1220.43 FSA State Office; Report; and Section 1220.44 Reporting Results.*

One commenter suggested that the county FSA offices be required to submit reports to State FSA offices no later than 10 business days following the counting of the requests; State FSA offices be required to submit reports to the Administrator, FSA, no later than 5 business days following their receipt of FSA county office reports; and the Administrator, FSA, be required to submit State reports to the Administrator, AMS, no later than 5 business days following receipt of the State reports. The Department concurs that both county and State FSA reports should be submitted to the Administrator, FSA, and subsequently to the Administrator, AMS, in a timely manner. However, the Department does not believe that such timeframes for submitting reports on the results of the Request for Referendum should be included in the rule, because it would not allow the necessary flexibility to adjust reporting time for events beyond the control of the reporting office. Timely submissions will be stressed in the instructions provided to county and State FSA offices by FSA and AMS headquarters. Accordingly, this suggestion is not adopted.

### Additional Comments

One commenter recommended that the Request for Referendum period begin on Monday, March 1, 1999, and continue through March 29, 1999. At the time comments were received and reviewed, the Department concurred that the Request for Referendum be conducted on or about the dates suggested. However, because of the delay in establishing the number of producers eligible to participate in the Request for Referendum, a later period must be established. The Department will conduct the Request for Referendum at the earliest practicable date following the effective date of this final rule.

The final rule sets forth procedures for producers to request a referendum as authorized under the Act, including definitions, eligibility, certification and request procedures, reporting results, and disposition of the forms and records. FSA will coordinate State and county FSA roles in conducting the Request for Referendum by (1) Determining producer eligibility, (2) canvassing and counting requests, and (3) reporting the results.

### Effective Date

Pursuant to 5 U.S.C. 533, it is found and determined that good cause exists for not postponing the effective date of the action until 30 days after publication of this rule in the **Federal Register**. Such action will assist in timely implementation of this rule consistent with the provisions of the Act. This rule establishes the procedures for conducting a request for referendum required by the Act and should become effective as soon as possible in order to begin preparations for the Request for Referendum.

### List of Subjects in 7 CFR Part 1220

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Reporting and recordkeeping requirements, Soybeans.

For the reasons set forth in the preamble, title 7 of the CFR part 1220 is amended as follows:

## PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION:

1. The authority citation for part 1220, continues to read as follows:

**Authority:** 7 U.S.C. 6301–6311.

2. In part 1220, subpart F is added to read as follows:

### Subpart F—Procedures to Request a Referendum

#### Definitions

Sec.
1220.10 Act.
1220.11 Administrator, AMS.
1220.12 Administrator, FSA.
1220.13 Department.
1220.14 Farm Service Agency.
1220.15 Farm Service Agency County Committee.
1220.16 Farm Service Agency County Executive Director.
1220.17 Order.
1220.18 Person.
1220.19 Producer.
1220.20 Public notice.
1220.21 Representative period.
1220.22 Secretary.
1220.23 Soybeans.
1220.24 State and United States.

#### Procedures

1220.30 General.
1220.31 Supervision of the process for requesting a referendum.
1220.32 Eligibility.
1220.33 Time and place for requesting a referendum.
1220.34 Facilities.
1220.35 Certification and request form.
1220.36 Certification and request procedure.
1220.37 List of producers requesting a referendum.
1220.38 Challenge of eligibility.
1220.39 Canvassing.
1220.40 Counting requests.
1220.41 Public review.
1220.42 FSA county office report.
1220.43 FSA State office report.
1220.44 Reporting results.
1220.45 Disposition of records.
1220.46 Instructions and forms.

### Subpart F—Procedures to Request a Referendum

#### Definitions

**§ 1220.10 Act.**

The term *Act* means the Soybean, Promotion, Research, and Consumer Information Act set forth in title XIX, subtitle E, of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101–624), and any amendments thereto.

**§ 1220.11 Administrator, AMS.**

The term *Administrator, AMS*, means the Administrator of the Agricultural Marketing Service, or any officer or employee of the Department to whom there has been delegated or may be delegated the authority to act in the Administrator's stead.

**§ 1220.12 Administrator, FSA.**

The term *Administrator, FSA*, means the Administrator, of the Farm Service Agency, or any officer or employee of the Department to whom there has been delegated or may be delegated the authority to act in the Administrator's stead.

**§ 1220.13 Department.**

The term *Department* means the United States Department of Agriculture.

**§ 1220.14 Farm Service Agency.**

The term *Farm Service Agency*, also referred to as ''FSA,'' means the Farm Service Agency of the Department.

**§ 1220.15 Farm Service Agency County Committee.**

The term *Farm Service Agency County Committee*, also referred to as ''FSA County Committee or COC,'' means the group of persons within a county who are elected to act as the

Farm Service Agency County Committee.

**§ 1220.16 Farm Service Agency County Executive Director.**

The term *Farm Service Agency County Executive Director,* also referred to as ''CED,'' means the person employed by the FSA County Committee to execute the policies of the FSA County Committee and to be responsible for the day-to-day operation of the FSA county office, or the person acting in such capacity.

**§ 1220.17 Order.**

The term *Order* means the Soybean Promotion and Research Order.

**§ 1220.18 Person.**

The term *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

**§ 1220.19 Producer.**

The term *Producer* means any person engaged in the growing of soybeans in the United States, who owns or shares the ownership and risk of loss of such soybeans.

**§ 1220.20 Public notice.**

The term *Public Notice* means a notice published in the **Federal Register**, not later than 60 days prior to the last day of the Request for Referendum period that provides information regarding the Request for Referendum period. Such notification shall include, but not be limited to, explanation of producers' rights; procedures to request a referendum, the purpose, dates of the Request for Referendum period, location for conducting the Request for Referendum, and eligibility requirements. Additionally, the Board is required to provide producers, in writing, this same information during that same time period. Other pertinent information shall also be provided, without advertising expense, through press releases by State and county FSA offices and other appropriate Government offices, by means of newspapers, electronic media, county newsletter, and the like.

**§ 1220.21 Representative period.**

The term *Representative period* means the period designated by the Secretary pursuant to Section 1970 of the Act.

**§ 1220.22 Secretary.**

The term *Secretary* means the Secretary of Agriculture of the United States Department of Agriculture or any other officer or employee of the Department to whom there has been delegated or to whom there may be delegated the authority to act in the Secretary's stead.

**§ 1220.23 Soybeans.**

The term *Soybeans* means all varieties of glycine max or glycine soja.

**§ 1220.24 State and United States.**

The terms *State* and *United States* include the 50 States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

## Procedures

**§ 1220.30 General.**

An opportunity to request a referendum shall be provided to U.S. soybean producers to determine whether eligible producers favor the conduct of a referendum and the Request for Referendum shall be carried out in accordance with this subpart.

(a) The opportunity to request a referendum shall be provided at the county FSA offices.

(b) If the Secretary determines, based on results of the Request for Referendum, that no less than 10 percent (not in excess of one-fifth of which may be producers in any one State) of all producers have requested a referendum on the Order, a referendum would be held within 1 year of that determination.

(c) If the Secretary determines, based on the results of the Request for Referendum, that the requirements in paragraph (b) of this section were not met, a referendum would not be conducted.

(d) For purposes of paragraphs (b) and (c) of this section, the number of soybean producers in the United States is determined to be 600,813.

**§ 1220.31 Supervision of the process for requesting a referendum.**

The Administrator, AMS, shall be responsible for supervising the process of permitting producers to request a referendum in accordance with this subpart.

**§ 1220.32 Eligibility.**

(a) *Eligible producers.* Each person who was a producer during the representative period is provided the opportunity to request a referendum. Each producer entity is entitled to only one request.

(b) *Proxy registration.* Proxy registration is not authorized except that an officer or employee of a corporate producer, or any guardian, administrator, executor, or trustee of a producer's estate, or an authorized representative of any eligible producer entity (other than an individual producer), such as a corporation or partnership, may request a referendum on behalf of that entity. Any individual who requests a referendum on behalf of any producer entity, shall certify that he/she is authorized by such entity to take such action.

(c) *Joint and group interest.* A group of individuals, such as members of a family, joint tenants, tenants in common, a partnership, owners of community property, or a corporation engaged in the production of soybeans as a producer entity shall be entitled to make only one request for a referendum; provided, however, that any individual member of a group who is an eligible producer separate from the group may request a referendum separately.

**§ 1220.33 Time and place for requesting a referendum.**

The opportunity to request a referendum shall be provided during a 4-week period beginning and ending on a date determined by the Secretary. Eligible persons shall have the opportunity to request a referendum by following the procedures in § 1220.36 during the normal business hours of each county FSA office.

**§ 1220.34 Facilities**

Each county FSA office shall provide adequate facilities and space to permit producers to complete Form LS–51–1.

**§ 1220.35 Certification and request form.**

Form LS–51–1 shall be used to request a referendum and certify producer eligibility. The form does not require a ''yes'' or ''no.'' Individual producers and representatives of other producer entities should read the form carefully. By completing and signing the form, the individual simultaneously registers, certifies eligibility and requests that a referendum be conducted.

**§ 1220.36 Certification and request procedure.**

(a) To request that a referendum be conducted, each eligible producer shall, during the Request for Referendum period, be provided the opportunity to request a referendum during a specified period announced by the Secretary, at the county FSA office where FSA maintains and processes the producer's administrative farm records. For the producer not participating in FSA programs, the opportunity to request a referendum would be provided at the county FSA office serving the county where the producer owns or rents land. Each eligible producer shall be required to complete Form LS–51–1 in its

entirety and sign it. The producer must legibly print his/her name and, if applicable, the producer entity represented, address, county, and telephone number. The producer must read the certification statement on Form LS–51–1 and sign it certifying that he/she or the producer entity represented was a producer of soybeans during the representative period and is requesting a referendum. Only a completed and signed Form LS–51–1 shall be considered a valid request for a referendum.

(b) To request a referendum eligible producers may obtain Form LS–51–1 in person, by mail, or by facsimile during the Request for Referendum period from the county FSA office where FSA maintains and processes the producer's administrative farm records. For the producer not participating in FSA programs, the opportunity to request a referendum would be provided at the county FSA office serving the county where the producer owns or rents land. Producers or producer entities may return Form LS–51–1 in person, by mail, or facsimile. Form's LS–51–1 returned in person or by facsimile, must be received in the appropriate county FSA office no later than the last business day of the Request for Referendum period to be considered a valid request. However, Form's LS–51–1 mailed to the county FSA office must be postmarked no later than the last business day of the Request for Referendum period and be received in the county FSA office no later than 10 business days after the last business day of the Request for Referendum period to be considered a valid request for a referendum.

(c) Eligible participants who obtain form LS–51–1 in person at the appropriate county office may complete, and return by hand the form the same day.

**§ 1220.37 List of producers requesting a referendum.**

(a) The county FSA personnel shall enter on the ''List of Soybean Producers Requesting a Referendum'' form (Form LS–51–2), the following information for each returned Form LS–51–1: name of individual soybean producer or other producer entity, name of producer entity representative, if applicable, postmarked date of a mailed Form LS–51–1 and the date it was received in the county FSA office where FSA maintains and processes the producer's administrative farm records or at the county FSA office serving the county where the producer owns or rents land, the date Form LS–51–1 was received by facsimile or in person in the county FSA office where FSA maintains and processes the producer's administrative farm records or at the county FSA office serving the county where the producer owns or rents land. For any challenges of a producer's or producer entities' eligibility, the county FSA personnel would make a ''check mark'' in the space provided on Form LS–51–2 indicating a producer's or producer entities' eligibility has been challenged. After the challenge is resolved ''eligible'' or ''ineligible'' would be entered in the space provided on Form LS–51–2.

(b) County FSA offices shall, at all times, maintain control of the master (original) copy of Forms LS–51–1 and LS–51–2. A copy of each Form LS–51–2 shall be posted and made available for public inspection each day beginning on the first business day of the Request for Referendum period through the 11th business day following the last business day of the Request for Referendum period. An updated copy of Form LS–51–2 shall be posted in the county FSA office during normal business office hours in a conspicuous location.

**§ 1220.38 Challenge of eligibility.**

(a) *Who may challenge.* Any person may challenge a producer's or producer entity's eligibility to request a referendum. Each challenge must be in writing include the full name of the individual or other producer entity being challenged; be made on a separate piece of paper; and be signed by the challenger. The Secretary may issue other guidelines as the Secretary deems necessary.

(b) *Challenge period.* A challenge of a person's eligibility to request a referendum may be made on any business day during the 4-week Request for Referendum period through the 11th business day after the Request for Referendum period.

(c) *Challenged names.* Producers whose eligibility is challenged shall be so noted with a ''checkmark'' in the space provided on Form LS–51–2.

(d) *Determination of challenges.* The FSA County Committee (COC) or designee, acting on behalf of the Administrator, AMS, shall make a determination concerning the challenge and shall notify challenged producers as soon as practicable, but no later than the 14th business day after the end of the request for referendum period. If the COC or designee is unable to determine whether a person was a producer during the representative period, the COC or designee may require the person challenged to submit records such as sales documents or similar documents to verify producer status during the representative period.

(e) *Appeal.* A person declared to be ineligible by the COC or designee, acting on behalf of the Administrator, AMS, may file an appeal at the county FSA office within 3 business days after notification by the county FSA office of its decision. Such person may be required to provide documentation such as sales documents or similar documents in order to demonstrate eligibility. An appeal shall be determined by the COC or designee as soon as practicable, but in all cases not later than the 18th business day after the last day of the Request for Referendum period. The determination of the COC or designee on an appeal shall be final.

(f) *Resolved challenges.* A challenge shall be determined to have been resolved if the determination of the COC or designee, acting on behalf of the Administrator, AMS, is not appealed within the time allowed for appeal or there has been a determination by the COC or designee after an appeal. After the challenge has been resolved, the county FSA office shall write either ''eligible'' or ''ineligible'' in the space provided on Form LS–51–2.

**§ 1220.39 Canvassing**

Canvassing of Forms LS–51–1 and LS–51–2 shall take place as soon as possible after the opening of county FSA offices on the 19th business day following the Request for Referendum period. Such canvassing shall be under the supervision of the CED or designee, acting on behalf of the Administrator, AMS, who shall make a determination as to the number of valid or invalid requests for a referendum.

(a) Invalid requests for a referendum. An invalid request for a referendum may include the following:

(1) Form LS–51–1 is not signed and/or all required information has not been provided;

(2) Form LS–51–1 returned in person or by facsimile was not received by the last business day of the Request for Referendum period;

(3) Form LS–51–1 returned by mail was not postmarked by the last business day of the Request for Referendum period;

(4) Form LS–51–1 returned by mail was not received in the county FSA office by the 10th business day after the Request for Referendum period;

(5) Form LS–51–1 is mutilated or marked in such a way that any required information on the form is illegible; and/or

(6) Form LS–51–1 not returned to the appropriate county FSA office.

(b) Any Form LS–51–1 determined invalid shall not be considered as a request for a referendum.

**§ 1220.40 Counting requests.**

The requests for a referendum shall be counted by the COC or designee on the 19th business day after the last business day of the Request for Referendum period. Requests for a referendum shall be counted as follows:

(a) Total number of producers registering to request a referendum;

(b) Number of eligible producers requesting a referendum;

(c) Number of challenged producers deemed ineligible;

(d) Number of challenged producers; and

(e) Number of invalid requests for a referendum.

**§ 1220.41 Public review.**

The public may witness the counting from an area designated by the FSA County Executive Director (CED) or designee, acting on behalf of the Administrator, AMS, but may not interfere with the process.

**§ 1220.42 FSA county office report.**

The county FSA office report shall be certified as accurate and complete by the CED or designee, acting on behalf of the Administrator, AMS. Such report shall include, the information listed in §§ 1220.39 and 1220.40. The county FSA office shall notify the FSA State office of the results of the Request for Referendum on a form provided by the Administrator, FSA. Each county FSA office shall transmit the results in its county to the FSA State office. The results in each county may be made available to the public upon notification by the Administrator, FSA, that the final results have been released by the Secretary. A copy of the report shall be posted for 30 days following the date of notification by the Administrator, FSA, in the county FSA office in a conspicuous place accessible to the public. One copy shall be kept on file in the county FSA office for a period of at least 12 months after notification by FSA that the final results have been released by the Secretary.

**§ 1220.43 FSA State office report.**

Each FSA State office shall transmit to the Administrator, FSA, a report summarizing the data contained in each of the reports from the county FSA office on a State report form provided by the Administrator, FSA. The State FSA office shall maintain one copy of the summary where it shall be available for public inspection upon request for a period of not less that 12 months after the results have been released.

**§ 1220.44 Reporting results.**

(a) The Administrator, FSA, shall submit to the Administrator, AMS, the reports from all State FSA offices. The Administrator, AMS, shall tabulate the results of the Request for Referendum. The Department will issue an official press release announcing the results of the Request for Referendum and publish the same results in the **Federal Register**. Subsequently, State reports and related papers shall be available for public inspection upon request during normal business hours in the Marketing Programs Branch office, Livestock and Seed Program, AMS, USDA, Room 2627 South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC.

(b) If the Secretary deems necessary, a State report or county report shall be reexamined and checked by such persons who may be designated by the Secretary.

**§ 1220.45 Disposition of records.**

Forms LS–51–1 and LS–51–2 and county reports shall be placed in sealed containers under the supervision of the CED or designee, acting on behalf of the Administrator, AMS, and such container shall be marked with ''Request for Soybean Referendum.'' Such records shall remain in the secured custody of the CED or designee for a period of not less than 12 months after the date of notification by the Administrator, FSA, that the final results have been announced by the Secretary. If the county FSA office receives no notice to the contrary from the Administrator, FSA, by the end of the 12 month period, the CED or designee shall destroy the records.

**§ 1220.46 Instructions and forms.**

The Administrator, AMS, is hereby authorized to prescribe additional instructions and forms not inconsistent with the provisions of this subpart.

Dated: August 17, 1999.

**Barry L. Carpenter,**

*Deputy Administrator, Livestock and Seed Program.*

[FR Doc. 99–21672 Filed 8–19–99; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF AGRICULTURE

## Animal and Plant Health Inspection Service

## 9 CFR Part 113

**[Docket No. 97–103–2]**

## Viruses, Serums, Toxins, and Analogous Products; Update of Incorporation by Reference for Rabies Vaccine

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations pertaining to the standard requirements for rabies vaccine, killed virus, so that they incorporate the latest edition of a guide to laboratory techniques. The regulations currently refer to the previous edition of that guide, which was published in 1973. This action will ensure that the latest edition of the guide is incorporated by reference and used in conducting potency tests during the production of inactivated (killed) veterinary rabies vaccines.

**EFFECTIVE DATES:** September 20, 1999. The incorporation by reference provided for by this rule is approved by the Director of the Federal Register as of September 20, 1999.

**FOR FURTHER INFORMATION CONTACT:** Dr. David A. Espeseth, Special Assistant to the Deputy Administrator, Veterinary Services, Center for Veterinary Biologics, Licensing and Policy Development, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1231; (301) 734–8245.

**SUPPLEMENTARY INFORMATION:**

### Background

The regulations in 9 CFR part 113 pertain to standard requirements for the preparation of veterinary biological products. A standard requirement consists of test methods, procedures, and criteria established by the Animal and Plant Health Inspection Service (APHIS) to determine that a veterinary biological product is pure, safe, potent, and efficacious and not worthless, dangerous, contaminated, or harmful.

''Laboratory Techniques in Rabies,'' which is a guide to laboratory

techniques for rabies research and diagnosis and for the production of vaccine and immunoglobulin and which is published by the World Health Organization (WHO), is incorporated by reference into the Code of Federal Regulations at 9 CFR 113.209(b)(1). In 1996, the WHO published a fourth edition of ''Laboratory Techniques in Rabies'' (edited by F.X. Meslin, M.M. Kaplan, and H. Koprowski), but the incorporation by reference in § 113.209(b)(1) still refers to the 1973 third edition of that guide.

On March 4, 1999, we published in the **Federal Register** (64 FR 10400–10402, Docket No. 97–103–1) a proposed rule to amend the regulations in § 113.209(b)(1) so that they refer to the fourth edition of ''Laboratory Techniques in Rabies'' in order for the latest version to be incorporated by reference and used. In that document, we also proposed to update several provisions of the regulations to make them consistent with the guidelines contained in the fourth edition and to ensure that the regulations met the requirements of the Office of the Federal Register regarding the proper language of incorporation.

We solicited comments concerning our proposal for 60 days ending May 3, 1999. We did not receive any comments. Therefore, for the reasons given in the proposed rule, we are adopting the proposed rule as a final rule, without change.

## Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have considered the potential effects of this action on small entities. We have identified four producers of rabies vaccine as the entities potentially affected by this rule. Those producers fall into one of two standard industrial classification (SIC) categories, either SIC 2836 (Biological Products, Except Diagnostic Substances) or SIC 2834 (Pharmaceutical Preparations). According to Small Business Administration (SBA) criteria, a business in SIC 2836 is considered to be a small entity if it has 500 or fewer employees, and a business in SIC 2834 is considered to be a small entity if it has 750 or fewer employees. Under those criteria, none of the four producers identified are small entities.

''Laboratory Techniques in Rabies'' is a guide to laboratory techniques for rabies research and diagnosis and for the production of vaccine and immunoglobulin that is incorporated by reference into the standard requirements regulations in 9 CFR 113.209(b)(1). This rule amends those regulations so that the language used in the guide's incorporation by reference is correct and ensures that the current edition of the guide is incorporated by reference and used.

The testing required under § 113.209(b)(1) will remain the same. However, some retesting may be required due to change in the international standard for the $LD_{50}$ of the challenge dose. We expect that the cost of a retest, which is estimated to be approximately $2,400 for the mice and animal care, will have minimal economic effect on the producers of rabies vaccines, none of which are small entities under SBA criteria.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

## Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

## Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Virus-Serum-Toxin Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

## Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

## List of Subjects in 9 CFR Part 113

Animal biologics, Exports, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 113 as follows:

## PART 113—STANDARD REQUIREMENTS

1. The authority citation for part 113 continues to read as follows:

**Authority:** 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.2(d).

2. In § 113.209, paragraphs (b)(1) and (d)(3) are revised to read as follows:

### § 113.209 Rabies Vaccine, Killed Virus.

* * * * *

(b) * * *

(1) The preinactivation virus titer must be established as soon as possible after harvest by at least five separate virus titrations. A mean relative potency value of the vaccine to be used in the host animal potency test must be established by at least five replicate potency tests conducted in accordance with the standard NIH test for potency in chapter 37 of ''Laboratory Techniques in Rabies,'' Fourth Edition (1996), edited by F.X. Meslin, M.M. Kaplan, and H. Koprowski, World Health Organization, Geneva, Switzerland (ISBN 92 4 154479 1). The provisions of chapter 37 of ''Laboratory Techniques in Rabies,'' Fourth Edition (1996), are the minimum standards for achieving compliance with this section and are incorporated by reference. These provisions state that the challenge virus standard to be used as the challenge in the NIH test and the reference vaccine for the test are available from the national control authority. In the United States, that authority is the Animal and Plant Health Inspection Service's Center for Veterinary Biologics Laboratory, located at 1800 Dayton Avenue, P.O. Box 844, Ames, IA 50010; phone (515) 239–8331; fax (515) 239–8673. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the World Health Organization Publications Center USA, 49 Sheridan Avenue, Albany, NY 12210. Copies may be inspected at the Animal and Plant Health Inspection Service, Center for Veterinary Biologics, Licensing and Policy Development, 4700 River Road, Riverdale, MD, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

* * * * *

(d) * * *

(3) *Potency test.* Bulk or final container samples of completed product from each serial must be tested for potency by tests conducted in accordance with the standard NIH test for potency in Chapter 37 of ''Laboratory Techniques in Rabies,'' Fourth Edition

(1996), which is incorporated by reference at paragraph (b)(1) of this section. The relative potency of each serial must be at least equal to that used in an approved host animal immunogenicity test.

Done in Washington, DC, this 13th day of August, 1999.

**Bobby R. Acord,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 99–21595 Filed 8–19–99; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 99–NE–14–AD; Amendment 39–11257; AD 99–17–09]**

**RIN 2120–AA64**

## Airworthiness Directives; Allison Engine Company, Inc AE 2100A and AE 2100C Series Turboprop Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to Allison Engine Company, Inc AE 2100A and AE 2100C series turboprop engines. This action requires initial and repetitive visual inspections of the propeller gearbox (PGB) and power section (P/S) strut fittings for notches and cracks, and, if necessary, replacement with serviceable parts. In addition, this action requires removing and replacing strut fittings as well as reworking them to the latest configuration identified by a new part number (P/N). This amendment is prompted by reports of P/S strut fitting notches and cracks. The actions specified in this AD are intended to prevent PGB and P/S strut fitting cracks, which could result in PGB misalignment, in-flight engine shutdown, and possible loss of the propeller.

**DATES:** Effective September 7, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of September 7, 1999.

Comments for inclusion in the Rules Docket must be received on or before October 19, 1999.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–14AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ane-adcomment@faa.gov''. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Rolls-Royce Allison, P.O. Box 420, Speed Code R–01B, Indianapolis, IN 46202–0420; telephone (317) 230–2720, fax (317) 230–3381. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Chung-Der Young, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone (847) 294–7309, fax (847) 294–7834.

**SUPPLEMENTARY INFORMATION:** The Federal Aviation Administration (FAA) has received reports of propeller gearbox (PGB) and power section (P/S) strut fitting failures on Allison Engine Company AE 2100A and AE 2100C series turboprop engine. The investigation revealed small radius notched strut fittings on 90% of the engines inspected. Four of the P/S strut fittings were cracked, and one of the PGB strut fittings was cracked. The notched fittings cause a concentrated stress region that can lead to cracks in the notched strut fitting areas. This condition, if not corrected, could result in PGB and P/S strut fitting cracks, which could result in propeller gearbox misalignment, inflight engine shutdown, and possible loss of the propeller.

The FAA has reviewed and approved the technical contents of Rolls-Royce Alert Service Bulletin (ASB) AE 2100A–A–72–193, also designated AE 2100C–A–72–143, Revision 1, dated October 20, 1998, that describes procedures for visual inspections of PGB and P/S strut fittings for notches and cracks; and ASB AE 2100A–A–72–197, also designated AE 2100C–A–72–149, dated May 19, 1999, describes the procedures to remove and replace strut fittings as well as rework them to the latest configuration identified by a new part number (P/N). Rolls-Royce has acquired the Allison Engine Company and now publishes the service documents (including manuals and bulletins) for Allison engines.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design, this AD is being issued to prevent PGB and P/S strut fitting failures. This AD requires visual inspections of PGB and P/S strut fittings for notches and cracks. If the affected parts are found cracked, this AD requires, prior to further flight, replacement with serviceable parts. If notched fittings are found on both struts, this AD requires repetitive inspections at intervals not to exceed 100 hours time-in-service (TIS). If notched fittings are found on only one strut, the repetitive inspection intervals is 400 hours TIS. In addition, this AD requires removing and replacing strut fittings as well as reworking them to the latest configuration identified by a new P/N. The actions are required to be accomplished in accordance with the ASBs described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

### Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenters' ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NE–14–AD.'' The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

## Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**99–17–09 Allison Engine Company, Inc:** Amendment 39–11257. Docket 99–NE–14–AD.

*Applicability:* Allison Engine Company, Inc. AE 2100A and AE 2100C series turboprop engines, installed on but not limited to SAAB 2000 series and Industri Pesawat Terbang Nusantara (IPTN) N–250 series aircraft.

**Note 1:** This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent propeller gearbox (PGB) and power section (P/S) strut fitting cracks, which could result in PGB misalignment, in-flight engine shutdown, and possible loss of the propeller, accomplish the following:

(a) Perform initial and repetitive visual inspections of the PGB and P/S strut fittings for notches and cracks, and, if necessary, replace with serviceable parts, in accordance with Rolls-Royce Alert Service Bulletin (ASB) AE 2100A–A–72–193, also designated AE 2100C–A–72–143, Revision 1, dated October 20, 1998, as follows:

(1) Perform the initial inspection within 100 hours time-in-service (TIS) after the effective date of this AD. Record findings in Table 1 at the end of the ASB to determine the inspection interval.

(2) If parts are found cracked, prior to further flight, remove from service cracked propeller gearboxes or power section strut fittings and replace with serviceable parts.

(3) If both strut fittings are found notched, thereafter inspect at intervals not to exceed 100 hours timein-service (TIS) since last inspection.

(4) If one strut fitting is found notched, thereafter inspect at intervals not to exceed 400 hours TIS since last inspection.

(5) If no parts are found cracked and neither strut fitting is found notched, no repetitive inspections are required, and rework the strut fittings in accordance with paragraph(b) of this AD.

(b) Perform one of the following in accordance with Rolls-Royce ASB AE 2100A–A–72–197, also designated AE 2100CA–72–149, dated May 19, 1999:

(1) Remove the old PGB and P/S strut fittings and install the new serviceable strut fittings in accordance with the strut fittings part number charts in paragraph (4) of the ASB.

(2) Rework the existing parts within the schedule determined by the inspection results of paragraph (a) of this AD in accordance with the Rolls-Royce ASB AE 2100A–A–72–193, or AE 2100C–A–72–143, Revision 1, dated October 20, 1998, page 12, Table 1, entries in the ''Answer'' column, as follows:

(i) If two ''Yes'' entries are contained in the ''Answer Column'', rework within the next 100 hour TIS after the inspection performed in accordance with paragraph (a) of this AD.

(ii) If one ''Yes'' entry is contained in the ''Answer Column'', or there are no ''Yes'' entries in the ''Answer Column'' refer to Section 2 in Rolls-Royce ASB AE 2100A–A–72197, also designated AE 2100C–A–72–149, dated May 19, 1999, for the affected PGB and P/S strut fittings rework or replace instructions.

(iii) Following completion of the rework, mark affected parts in accordance with the following configuration chart:

| New P/N | Name | Old P/N | QTY/ENG |
|---|---|---|---|
| 23071762 | Fitting, Strut (RH), Propeller Gearbox | 23055218 | 1 |
| 23071763 | Fitting, Strut (LH), Propeller Gearbox | 23055217 | 1 |
| 23071764 | Fitting, Strut (RH), Power Section | 23055228, 23057098 | 1 |
| 23071765 | Fitting, Strut (LH), Power Section | 23055229, 23057099 | 1 |

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Aircraft Certification Office.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a

location where the inspection requirements of this AD can be accomplished.

(e) The actions required by this AD shall be done in accordance with the following Rolls-Royce ASBs:

| Document No. | Pages | Revision | Date |
|---|---|---|---|
| AE 2100A–A–72–193/AE 2100C–A–72–143 Total pages: 12. | 1–12 | 1 | October 20, 1998. |
| ASB AE 2100A–A–72–197/AE 2100C–A–72–149 Total pages: 25 | 1–25 | Original | May 19, 1999. |

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce Allison, P.O. Box 420, Speed Code R–01B, Indianapolis, IN 46202–0420; telephone (317) 230–2720, fax (317) 230–3381. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(f) This amendment becomes effective on September 7, 1999.

Issued in Burlington, Massachusetts, on August 11, 1999.

**David A. Downey,**

*Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 99–21330 Filed 8–19–99; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 98–NM–315–AD; Amendment 39–11261; AD 99–17–13]**

**RIN 2120–AA64**

## Airworthiness Directives; Lockheed Model L–1011–385 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Lockheed Model L–1011–385 series airplanes, that requires repetitive inspections to detect discrepancies of the lower actuator pins and/or bushings of the horizontal stabilizer, and replacement of any discrepant component with a new component. Replacement of all four actuator pins and bushings terminates the repetitive inspections. This amendment is prompted by a report indicating that a fractured lower actuator pin of the horizontal stabilizer was detected. The actions specified by this AD are intended to detect and correct discrepancies of the lower actuator pins and bushings of the horizontal stabilizer, which could result in reduced structural integrity of the horizontal stabilizer control system, and consequent reduced controllability of the airplane.

**DATES:** Effective September 24, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of September 24, 1999.

**ADDRESSES:** The service information referenced in this AD may be obtained from Lockheed Martin Aircraft & Logistics Center, 120 Orion Street, Greenville, South Carolina 29605. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Thomas Peters, Program Manager, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30337–2748; telephone (770) 703–6063; fax (770) 703–6097.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Lockheed Model L–1011–385 series airplanes was published in the **Federal Register** on April 16, 1999 (64 FR 18842). That action proposed to require repetitive inspections to detect discrepancies of the lower actuator pins and/or bushings of the horizontal stabilizer, and replacement of any discrepant component with a new component. Replacement of all four actuator pins and bushings terminates the repetitive inspections.

### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

### Explanation of Change Made to Proposal

The FAA has added ''Note 2'' to the final rule to clarify that the 12,000 flight cycle life limit imposed on the lower actuator pins of the stabilizer by AD 92–16–19, amendment 39–8329 (57 FR 36892, August 17, 1992), is not affected by this rulemaking.

### Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

### Cost Impact

There are approximately 235 airplanes of the affected design in the worldwide fleet. The FAA estimates that 117 airplanes of U.S. registry will be affected by this AD.

It will take approximately 4 work hours per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $28,080, or $240 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional terminating action that is provided by this AD action, it would take approximately 2 work hours to accomplish it, at an average labor rate of $60 per work hour. Required parts would cost approximately $4,550 per set of four pins and bushings, per airplane. Based

on these figures, the cost impact of the accomplishment of the optional terminating action would be $4,670 per airplane.

## Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

## Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**99–17–13 Lockheed:** Amendment 39–11261. Docket 98–NM–315–AD.

*Applicability:* Model L–1011–385–1, –1–14, –1–15, and –3 series airplanes, as listed in Lockheed Service Bulletin 093–27–306, dated January 14, 1998; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To detect and correct discrepancies of the lower actuator pins and bushings of the horizontal stabilizer, which could result in reduced structural integrity of the horizontal stabilizer control system, and consequent reduced controllability of the airplane, accomplish the following:

**Initial Inspection**

(a) Except as provided by paragraph (a)(3) of this AD: Perform an inspection to detect discrepancies (e.g., damage, cracking), of the lower actuator pins and/or bushings of the horizontal stabilizer using one of the three inspection methods (borescope, eddy current, or magnetic particle) listed in Lockheed Service Bulletin 093–27–306, dated January 14, 1998, in accordance with that service bulletin, at the time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable.

(1) For airplanes that have accumulated fewer than 3,500 flight cycles since replacement of the actuator pins or bushings as of the effective date of this AD: Inspect within 3,500 flight cycles since replacement, or within 6 months after the effective date of this AD, whichever occurs later.

(2) For airplanes that have accumulated 3,500 or more flight cycles, but fewer than 5,000 flight cycles, since replacement of the actuator pins or bushings as of the effective date of this AD: Inspect within 60 days after the accumulation of 5,000 flight cycles since replacement, or within 6 months after the effective date of this AD, whichever occurs first.

(3) For airplanes that have accumulated 5,000 or more flight cycles since replacement of the actuator pins or bushings as of the effective date of this AD: Perform a magnetic particle inspection within 60 days after the effective date of this AD.

**Note 2:** The 12,000 flight cycle life limit imposed on the lower actuator pins of the stabilizer by AD 92–16–19, amendment 39–8329 (57 FR 36892, August 17, 1992), is not affected by this rulemaking.

**Repetitive Inspections**

(b) Thereafter, repeat the inspection required by paragraph (a) of this AD in accordance with Lockheed Service Bulletin 093–27–306, dated January 14, 1998, at the interval specified in paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of this AD; as applicable; until the actions specified in paragraph (d) of this AD have been accomplished.

(1) If the immediately preceding inspection was performed using borescope or eddy current procedures, and fewer than 5,000 flight cycles have accumulated since the most recent replacement of the actuator pins or bushings: Within 350 flight cycles after accomplishment of the initial inspection, perform a borescope, eddy current, or magnetic particle inspection. Repeat the inspection using a borescope or eddy current technique, as applicable, thereafter at intervals not to exceed 350 flight cycles.

(2) If the immediately preceding inspection was performed using borescope or eddy current procedures, and 5,000 or more flight cycles have accumulated since the most recent replacement of the actuator pins or bushings: Within 350 flight cycles after accomplishment of the initial inspection, perform a magnetic particle inspection. Repeat the magnetic particle inspection thereafter at intervals not to exceed 1,000 flight cycles.

(3) If the immediately preceding inspection was performed using magnetic particle procedures, and fewer than 5,000 flight cycles have accumulated since the most recent replacement of the actuator pins or bushings: Perform a borescope, eddy current, or magnetic particle inspection within 1,000 flight cycles.

(4) If the immediately preceding inspection was performed using magnetic particle procedures, and 5,000 or more flight cycles have accumulated since the most recent replacement of the actuator pins or bushings: Perform a magnetic particle inspection with 1,000 flight cycles. Repeat the magnetic particle inspection thereafter at intervals not to exceed 1,000 flight cycles.

**Corrective Action**

(c) If any discrepancy (e.g., damage, cracking) is detected during any inspection required by this AD, prior to further flight, accomplish paragraph (c)(1) or (c)(2) of this AD, as applicable, in accordance with Lockheed Service Bulletin 093–27–306, dated January 14, 1998.

(1) If any discrepancy is detected after performing a borescope or eddy current inspection, perform a magnetic particle inspection.

(2) If any discrepancy is detected after performing a magnetic particle inspection, replace the discrepant component with a new component. Accomplishment of this replacement terminates the repetitive inspections for that component.

**Terminating Action**

(d) Replacement of all four actuator pins and bushings with new actuator pins and bushings, in accordance with Lockheed Service Bulletin 093–27–306, dated January 14, 1998, constitutes terminating action for the repetitive inspections required by this AD.

**Alternative Methods of Compliance**

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who

may add comments and then send it to the Manager, Atlanta ACO.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

**Special Flight Permits**

(f) Special flight permits may be issued in accordance with § § 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Incorporation by Reference**

(g) The actions shall be done in accordance with Lockheed Service Bulletin 093–27–306, dated January 14, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Lockheed Martin Aircraft & Logistics Center, 120 Orion Street, Greenville, South Carolina 29605. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on September 24, 1999.

Issued in Renton, Washington, on August 10, 1999.

**D.L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 99–21363 Filed 8–19–99; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 99–NM–55–AD; Amendment 39–11262; AD 99–17–14]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier Model DHC–8 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model DHC–8 series airplanes, that requires a one-time inspection of the spring assemblies located in the rudder control feel unit to verify that dual rate configuration springs are installed; and revising the Airplane Flight Manual to prohibit airplane operation from runways less than 75 feet wide, if necessary. This amendment also requires eventual replacement of any single rate configuration springs with dual rate configuration springs, which terminates the requirement for the AFM revision. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent an asymmetric rudder force condition, which could result in reduced controllability of the airplane and consequent potential for center line deviation.

**DATES:** Effective September 24, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 24, 1999.

**ADDRESSES:** The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** James E. Delisio, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7521; fax (516) 568–2716.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–8 series airplanes was published in the **Federal Register** on June 22, 1999 (64 FR 33232). That action proposed to require a one-time inspection of the spring assemblies located in the rudder control feel unit to verify that dual rate configuration springs are installed; and revising the Airplane Flight Manual to prohibit airplane operation from runways less than 75 feet wide, if necessary. That proposal also would require eventual replacement of any single rate configuration springs with dual rate configuration springs, which would terminate the requirement for the AFM revision.

### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

### Explanation of Change Made to Proposal

The FAA has added a note to the final rule to clarify the definition of a general visual inspection.

### Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

### Cost Impact

The FAA estimates that 235 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $14,100, or $60 per airplane.

It will take approximately 10 work hours per airplane to accomplish the required replacement, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the replacement required by this AD on U.S. operators is estimated to be $141,000, or $600 per airplane.

If accomplished, it will take approximately 1 work hour per airplane to accomplish the AFM revision, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AFM revision on U.S. operators, if accomplished, is estimated to be $14,100, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

### Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612,

it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

## Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**99–17–14 Bombardier, Inc. (Formerly de Havilland, Inc.):** Amendment 39–11262. Docket 99–NM–55–AD.

*Applicability:* Model DHC–8 series airplanes, as listed in Bombardier Alert Service Bulletin S.B. A8–27–82, dated July 10, 1998; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent an asymmetric rudder force condition, which could result in reduced controllability of the airplane and consequent potential for center line deviation, accomplish the following:

**General Visual Inspection**

(a) Within 100 flight hours or 14 days after the effective date of this AD, whichever occurs later: Perform a one-time visual inspection of the spring assemblies located in the rudder control feel unit to verify that dual rate configuration springs are installed, in accordance with Bombardier Alert Service Bulletin S.B. A8–27–82, dated July 10, 1998.

(1) If dual rate configuration springs are installed, no further action is required by this AD.

**Note 2:** For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

**AFM Revision**

(2) If any single rate configuration springs are installed, prior to further flight:

Revise the Limitations Section of the de Havilland Dash 8 Airplane Flight Manual (AFM) to include the following statement. This action may be accomplished by inserting a copy of this AD into the AFM.

''OPERATION FROM RUNWAYS LESS THAN 75 FEET WIDE IS PROHIBITED.''

**Terminating Action**

(b) At the next scheduled maintenance visit, but no later than 36 months after the effective date of this AD: Replace any single rate configuration springs located in the rudder control feel unit with dual rate configuration springs, in accordance with Part C through Part H inclusive, of the Accomplishment Instructions of Bombardier Alert Service Bulletin S.B. A8–27–82, dated July 10, 1998. Such replacement constitutes terminating action for the requirements of this AD. After the replacement has been accomplished, the AFM limitation required by paragraph (a)(2) of this AD may be removed from the AFM.

**Spares Paragraph**

(c) As of the effective date of this AD, no person shall install any spring assembly having part number 82760050–003 on any airplane.

**Alternative Methods of Compliance**

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

**Special Flight Permits**

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Incorporation by Reference**

(f) Except as provided by paragraph (a)(2), the actions shall be done in accordance with Bombardier Alert Service Bulletin S.B. A8–27–82, dated July 10, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 4:** The subject of this AD is addressed in Canadian airworthiness directives CF–98–39, dated October 23, 1998, and CF–98–39R1, dated December 31, 1998.

(g) This amendment becomes effective on September 24, 1999.

Issued in Renton, Washington, on August 10, 1999.

**D. L. Riggin, Acting**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 99–21362 Filed 8–19–99; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 99–NE–22–AD; Amendment 39–11263; AD 99–17–16]**

**RIN 2120–AA64**

## Airworthiness Directives; Pratt & Whitney PW4000 Series Turbofan Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to Pratt & Whitney (PW) PW4000 series turbofan engines, that requires short term criteria for limiting

the number of engines with potentially reduced stability on each airplane to no more than one engine, would require initial and repetitive on-wing or test cell cold-engine high pressure compressor (HPC) stability tests, would require removal of engines from service that fail on-wing test acceptance criteria, and would allow a follow-on test cell stability test. The AD also establishes required intervals for stability testing of the remaining engine with potentially reduced stability on the airplane and requirements for reporting test data. This amendment is prompted by a report of a dual-engine HPC surge event and reports of single-engine HPC surge events during the takeoff and climb phases of flight. The actions specified by this AD are intended to prevent an HPC surge event, which could result in engine power loss at a critical phase of flight such as takeoff or climb.

**DATES:** Effective date September 24, 1999. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 24, 1999.

**ADDRESSES:** The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770, fax (860) 565-4503. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Peter White, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7128, fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Pratt & Whitney PW4000 series turbofan engines was published in the **Federal Register** on April 22, 1999 (64 FR 19726). That action proposed to require short term criteria for limiting the number of engines with potentially reduced stability on each airplane to no more than one engine, would require initial and repetitive on-wing or test cell cold-engine high pressure compressor (HPC) stability tests for all affected PW4000 series engines, would require removal from service of engines that fail on-wing test criteria, and would allow a follow-on test-cell stability test. Initial on-wing or test cell stability testing is required to limit the number of engines on the airplane to no more than one engine that has exceeded the initial threshold. The AD also establishes requirements to perform a stability test of the remaining engine with potentially reduced stability on the airplane. These tests are performed in accordance with Pratt & Whitney (PW) Special Instructions (SI) 49F–96, dated August 9, 1996; PW SI 7F–96, dated January 10, 1996; PW PW4000 Engine Manual (EM) Temporary Revisions (TR) 71–0016, 71–0025, and 71–0030, all dated April 13, 1999; PW EM 50A605 Section 71–00–00, Testing-20, PW EM 50A443 Section 71–00–00, Testing -20, and PW EM 50A822, Section 71–00–00, Testing -20, all dated June 15, 1999; PW SI 32F–99, dated April 13, 1999; and PW Cactus Wire C042 G 930902, dated September 2, 1993, which describe procedures for assessing the stability of PW4000 engines.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

### Questions About Table Formats

One commenter notes that the formatting of Tables 1 and 2 as published in the **Federal Register** is somewhat unusual and not to standard guidelines. The FAA disagrees. The tables appeared as intended when published in the Federal Register. When obtaining the document from the Internet, however, if not downloaded in a specific file format, the formatting of the document may be lost and the document may appear quite different. The problems described are functions of the method in which the document is accessed, not in how it was published.

### Request to Change Reference to McDonnell Douglas MD–11 to Boeing MD–11

One commenter believes that the reference to the MD–11 airplane is incorrect. The NPRM refers to it as the McDonnell Douglas MD–11. The commenter notes that the McDonnell Douglas company was bought by the Boeing Co., and should therefore be the Boeing MD–11. The FAA does not agree. The FAA refers to the product by the name that currently appears on the Type Certificate Data Sheet, which is still McDonnell Douglas MD–11.

### Questions about Applicability of PW4000 Phase 3 Configuration Engines

Several commenters question whether or not PW4000 Phase 3 engines are affected by this AD, and request that the proposed rule be modified to more clearly identify Phase 3 engines in the applicability section. The FAA does not agree. The applicability section of the AD lists those model PW4000 engines to which the AD applies. Note 1 reminds operators that this AD applies to all products mentioned in the applicability section, no matter how modified, altered, or repaired. The AD therefore applies to Phase 3 configuration engines of any listed model.

One commenter noted that the new production PW4056 engines they are receiving do not list three of the SB's listed in the definition of ''first run, full up engines'' in their SB incorporation summaries. The FAA agrees. Paragraph (a)(1)(iii) of the AD has been changed to include as ''first run, full up engines'' those PW4056, PW4156, and PW4156A original manufacture engines that incorporate a (-3) suffix, denoting the Phase 3 configuration that incorporates the intent of these SB's.

One commenter notes that AD 98–23–08 does not affect Phase 3 engines, and recommends a similar approach for this AD, with a more liberal retest interval for the Phase 3 engines. The FAA disagrees. The fleet has been thoroughly evaluated to search for any subpopulations that exhibit a different wear-out threshold, and to select the most appropriate initial threshold for each apparent population. The evaluation of the Phase 3 engine population does not justify a distinct initial threshold, except in the case of first run, full up PW4056, PW4156, and PW4156A engines, which receive unique initial thresholds.

One commenter suggests that PW SB 72–514 be modified to read ''PW 72–514 (or 72–504)'', in the definition of first run, full up engines. The FAA disagrees. SB 72–514 incorporates the larger HPT nozzle, which lowers compressor op-line, increasing surge margin. SB 72–504 references several SB's, and is the engine manufacturer's documentation detailing conversion of a standard PW4052/4056 engine to a Phase 3. As they involve the extensive modification of ''used'' engines, converted engines do not meet the requirements of a ''first run'' engine. In addition, the larger area HPT nozzle is a critical part of the first run, full up engine definition, as it offers a significant benefit to operability. To include recent shipment engines where these SB's are not listed in the SB incorporation paperwork, paragraph (a)(1)(iii) of the AD has been changed to include those PW4056, 4156, and 4156A original manufacture, first run engines that incorporate a (-3) suffix after the data plate engine model designation as

first run, full up engines for purposes of using that initial threshold in Table 1.

**Question About Higher Initial Threshold for PW4158 Engines**

One commenter notes that PW4056 engines receive a lower initial threshold than did the PW4158 engines, and questions whether or not this is in error. The FAA concludes that the PW4158 population demonstrates a relatively high cyclic threshold for surge occurrence for its thrust rating level. This fleet operates with a high average take-off derate level, and based on its demonstrated surge rate, this subfleet receives a higher initial threshold.

**Requests for Credit for Previously Accomplished Tests**

Several commenters state that the proposed rule is not clear as to whether or not credit is allowed for previously accomplished tests, and requested that the AD be more specific. The FAA agrees in part. The AD states that compliance is ''required as indicated, unless accomplished previously.'' Any previously accomplished testing performed in accordance with the requirements of this AD is acceptable, and tests performed to other than the procedures specified in the AD are not acceptable as having previously accomplished the requirements of the AD. However, paragraphs (b) and (g) have been changed based on comments received. Changes were made to the cold-engine fuel spike test definition to cover additional tests performed under the instructions supplied in PW Cactus Wire ID C042 G 930902 ZRH, issued September 2, 1993. This instruction was omitted from the NPRM, and its inclusion in this AD will allow acceptance of additional testing performed in the past.

One commenter questions if operators can define engines as either tested or untested on the effective date of the AD if previously accomplished testing is acceptable. The FAA determines that this approach is acceptable. Operators who have done prior acceptable testing on engines may take credit for that testing and proceed with repetitive testing based on the test schedule defined by the AD, or they may ignore the previously accomplished testing and comply with the requirements of the AD for initial and repetitive testing as if the engines had not been previously tested. The FAA strongly encourages operators with previously tested engines that have failed those previous stability tests to remove those engines from service immediately. The FAA, however, has determined that it is not necessary to include a requirement in this AD to remove previously tested engines from service based on a failure of the previous test. Surveys indicate that few, if any, such engines remain in service, and to include such a requirement in the final rule would necessitate a delay in this rulemaking.

In addition, one commenter notes that operators who test more frequently than required by the AD will be penalized, as they will, in some cases, be forced to remove an engine before the 800 cycle repetitive interval, if the engine fails a stability test. The commenter requests a time after test failure before which engines tested more frequently than the 800-cycle interval must be removed. The FAA disagrees. It is not consistent with safe practices to allow an engine with known reduced stability to remain in service.

**Requests To Exempt Pilot Training Cycles From ''Cycles in Service''**

Two commenters note confusion regarding the term ''Cycles in Service.'' They feel that this term should be more clearly defined. One requests that pilot training cycles, performed at a reduced thrust rating, should not be counted for the purposes of the AD. The FAA disagrees. The term ''Cycles in Service'' refers to the standard cycles counted for life tracking, and is generally viewed as any flight consisting of one takeoff and landing. The FAA has determined not to create a separate cycle counting procedure for this AD.

**Request for Definition of ''HPC Overhaul''**

Several commenters note that the term ''HPC Overhaul'' needs to be defined. The FAA agrees. Paragraph (g) of the AD has been changed to use the term ''overhaul'' and a new paragraph has been added to define an HPC overhaul as a stage 12 through stage 15 HPC tip clearance restoration.

Several commenters also pointed out that this definition should include HPC stages 12 through 15, not 12 through 14. The FAA agrees. This final rule has been changed accordingly.

One commenter requests that the term overhaul be avoided, and that repair be substituted in its place. The FAA disagrees. The level of work required to perform a stage 12 through stage 15 HPC tip clearance restoration is better viewed as an overhaul than a repair. In addition, the use of overhaul is consistent with the manufacturer's service documentation.

**Request To Eliminate the Term ''On-Wing''**

One commenter notes that the words ''on-wing'' should be eliminated from paragraph (a)(1), as these tests do not need to be performed on-wing, as the cold-engine fuel spike test is also acceptable. The FAA agrees. The words ''on-wing'' have been removed from paragraph (a)(1).

**Request To Add Initial Threshold to Untested Engines Limits**

Several commenters note that certain AD references appear to limit the airplane more strictly than intended in that compliance statements refer to limiting the airplane to no more than one, or no untested engines, without referencing the initial threshold exceedance. The FAA agrees. Paragraph (e) has been changed to include reference to the initial threshold.

**Request To Allow Airplanes To Remain in Revenue Service After Test Failure or Exceeding Initial Threshold**

One commenter requests that engines be allowed to remain in revenue service for a certain time after a threshold exceedance or test failure. The FAA disagrees. This AD is intended to remove from service engines identified to have low stability, or potentially reduced stability, from service immediately. It would not be consistent to allow further usage of engines known to be at a higher potential to surge during the takeoff phase of flight in-revenue service.

**Request To Allow A Nonrevenue Flight**

Several commenters object to the proposal that requires removing engines that fail a stability test or exceed a threshold prior to further flight. These commenters note that the stability tests, which require running an engine on the ground at high power for extended lengths of time, may not be performed at all locations due to noise concerns. These commenters request that a nonrevenue flight provision be added so that they can return airplanes to a maintenance facility where engine removal may be performed after the engine has failed a stability test. The FAA agrees in part. As proposed, the provision in the AD allowing special flight permits was intended to cover only the situation where an engine stability test was overdue and the aircraft needed to be moved to a location where that test could be performed. The FAA has determined that allowing ferry flights, after an engine fails a stability test to move the aircraft to a location where engine removal can be performed, is acceptable if the flight is made under specified conditions to minimize the risk of engine surge during that flight. The special flight provision in the final rule

has therefore been changed to allow nonrevenue flights after an engine fails a stability test. The FAA has determined, however, that ferry flights should continue to be handled under the provisions of the special flight permit authority contained in part 21. Operators can coordinate with the FAA office that oversees their operation to minimize the time required to issue a special flight permit.

**Request for Clarification of Reporting Requirements**

Several commenters note confusion regarding the reporting requirements. The FAA agrees. Paragraph (k) of the final rule, which contains the reporting requirement, has been changed to include a time limit within which reports must be made and to include an email address.

Several commenters requested that the reporting requirements be changed to allow submittal of the data directly to PW. The FAA disagrees. The current Office of Management and Budget (OMB) approval for reporting requirements in AD's does not cover the submission of reports directly to manufacturers. The FAA is working to broaden the OMB's approval to cover that situation, but until that new approval is in place, reporting must be directly to the FAA. In addition, reporting to the FAA will allow the FAA to monitor the consistency of the collected test results to past history, verify the assumptions in the risk assessment, monitor fleet impact, monitor trends in the surge rate, and ensure that the desired level of safety is maintained.

**Request for Clarification of How To Select Initial Threshold When the Electronic Engine Control (EEC) Programming Plug Is Used**

One commenter notes that engine thrust rating changes can be accomplished in accordance with the manufacturer's instructions via the EEC programming plug, and requests clarification regarding how to select the initial threshold in these cases. The FAA agrees that clarification is needed, and has added a new paragraph (a)(3) that provides that in those cases where a thrust rating change has been made the highest thrust rating selected in the affected HPC overhaul period is to be used for determining the initial threshold.

**Request To Redefine the Unsafe Condition**

Several commenters feel that the unsafe condition should be defined as a dual-engine surge event, and that the AD goes too far in mandating safety by requiring that all engines be evaluated, rather than all but one engine, as in the airplane manufacturer's service documentation. The FAA disagrees. The FAA has concluded that the present single-engine surge rate and the increased likelihood of a dual-engine surge event, constitute an unsafe condition. Since these surges occur during a critical phase of flight (take-off or early climb), they place an extra demand on the flight crew during a high-workload period. While an airplane may be designed to be able to take-off with one engine inoperative, and procedures are in place for engine failures in flight, accident history indicates that a high percentage of single-engine failures result in accident or incidents due to combination with another failure or malfunction. For this reason, this rule addresses not only the dual-engine surge, but also the rate of single-engine surge.

**Request To Allow Boeing Service Bulletin as an Alternate Method of Compliance**

One commenter requests that compliance with Boeing service bulletins 767–72A0034, dated April 16, 1999, and SB 747–72A2038, dated April 16, 1999, be allowed as an alternate method of compliance. The FAA does not agree. The Boeing service bulletins allow one engine on an airplane to remain untested. Because the FAA has determined that the rate of single-engine surge events must also be addressed, allowing one engine on an airplane to remain untested would conflict with the goal of reducing the rate of single-engine surge events. Therefore, the Boeing service bulletins addressing this problem are only for reference, and are not approved as an alternate method of compliance.

**Request To Tighten the Testing Intervals**

One commenter feels that the proposed rule is not aggressive enough in evaluating the PW4000 fleet for low-stability engines, and that more aggressive initial and repetitive testing intervals and deadlines need to be established. The FAA disagrees. The compliance cyclic thresholds and calendar end dates were selected based on a detailed risk analysis to evaluate the effectiveness of the fleet management plan. Compliance thresholds were established at levels predicted to establish a very low rate of surge. The compliance deadlines were selected to minimize risk balanced with the logistical complications of achieving fleet-wide compliance considering the number of affected engines. This plan was carefully evaluated to provide the intended level of safety without unnecessarily requiring the grounding of aircraft.

**Request To Allow In-situ Borescope Blending of HPC Airfoils for Minor Damage**

One commenter notes that the definition of first run, full up engines does not allow in-situ borescope blending of the HPC airfoils for minor foreign object damage (FOD), and requests that the Final Rule be modified to allow this operation. The FAA agrees. Paragraphs (a)(iii) and (g)(3) and (g)(4) have been changed to replace ''no work performed on the HPC or HPT gaspaths'', to read ''have not had a separation of a major engine flange since new, with the exception of the 'A' or 'T' flanges.'' These changes will allow operators to consider engines that have undergone only in-situ borescope blending of the HPC airfoils for FOD to be a first run, full-up engines, and will also allow removal of the inlet and tailpipe.

**Request for Definition of Actions To Return an Engine to Service**

One commenter feels that the proposed rule must state required action to return a failed engine to service after stability test failure. The commenter feels it would be appropriate to require that HPC tip clearances on S12 through S15 blades be restored to manual limits. The FAA disagrees. The FAA has determined that it is not necessary to require blade tip restoration in all cases. The stability tests required prior to returning an engine to service will ensure that engines that do not receive stage 12 through stage 15 tip clearance restoration are adequately assessed before leaving the shop. In addition, tip clearance restoration is encouraged by resetting the initial threshold interval for those engines having undergone an HPC overhaul. HPC tip clearance restoration provides an increase in surge margin; however, other actions may also adequately restore surge margin, such as installation of the cutback HPT guide vane to lower compressor operating line.

**Concern About Engine Manual Temporary Revisions**

Two commenters note that the proposed rule references Engine Manual Temporary Revisions, and are concerned that once these changes are incorporated permanently into the manuals, a noncompliance issue will arise. The FAA does not agree. References to Temporary Manual

Revisions are included in the final rule primarily to allow credit for tests conducted previously in accordance with the instructions included in those documents. Since the issuance of the NPRM, those Temporary Manual Revisions have been incorporated into the Engine Manual, and this final rule includes the Engine Manual references as well. Copies of the Temporary Manual Revisions should always be available, however, through the manufacturer as stated in the AD under **ADDRESSES**.

**Request To Change the Definition of a Shop Visit**

One commenter was concerned that the text omitting the Cold-Engine Fuel Spike test requirement in certain cases was too restrictive, and that the phrase ''The shop visit was only for replacement of a line replaceable unit, with no other work done'' should be expanded to include a broader population. The FAA agrees. Paragraph (g)(3) of the proposed rule, which appears as paragraph (g)(4) in this final rule, has been changed to reference engines that have not had a major flange separation.

**Request To Include an Engine With an Overhauled HPC as a Replacement for an Engine That Has Failed Stability Testing**

Two commenters request that paragraph (d) be modified to include engines which have received HPC overhaul as acceptable replacements for an engine which has failed a stability assessment test. The FAA agrees. The final rule includes a definition of a serviceable engine in paragraph (j) to define more clearly return to service requirements and the text in paragraphs (a) and (d) has been modified.

**Request To Eliminate the Cyclic Limits and Use Only Calendar Dates**

One commenter requests that the final rule be modified to reference only calendar end dates, and to omit the cyclic accumulation caps. The FAA disagrees. The wearout of the compressor is tied directly to cyclic usage and not dates on the calendar. In addition, use of calendar dates only to determine initial and repetitive inspection thresholds may allow high-usage engines to accumulate excessive wear before being evaluated. The FAA will maintain the cyclic limits to ensure that engines do not accumulate excessive wear prior to a stability assessment.

**Request To Eliminate the Calendar End Dates and Use Only the Cyclic Limits**

One commenter requests that the final rule be modified to reference only the cyclic limits, and to omit the calendar end dates. The FAA disagrees. Omission of the calendar end date would allow low usage engines to remain in service for an extended period without being evaluated. Based on the risk analysis, the FAA has determined that calendar end dates are necessary to ensure that all engines are evaluated for reduced stability margin by the specified dates, and to hasten compliance of low usage engines.

**Request To Include Statement About Engines That Are Not Installed on Airplanes**

One commenter notes that the AD applies to engines that are both on and off the airplane, so the applicability statement should be changed to specify ''engines installed on, or intended to be installed on.'' The FAA does not agree. The accomplishment instructions of the AD address engines in the shop and detail actions that must be taken ''prior to return to service.'' The phrase ''installed on but not limited to'' that appears in the applicability statement of AD's that apply to aircraft engines is intended only to provide some information as to the types of aircraft on which operators might find the affected engines. The phrase does not affect the applicability of the AD and does not limit the AD to only those engines installed on the listed airplanes. Therefore, it is unnecessary to add the requested phrase to the applicability statement.

**Concern About the Financial Impact of This AD Upon the Worldwide Fleet**

One commenter notes that financial impact quadruples if the worldwide fleet, and not just the domestic fleet, is considered. The commenter also notes that due to the large number of affected engines, and a large time requirement to incorporate corrective action, the potential exists for an adverse effect on the airline industry. The FAA agrees in part, and has considered the affects on the worldwide fleet in determining the necessary required actions to maintain an acceptable level of safety. The economic analysis required by Executive Order, however, considers only the affects on domestic operators.

**Changes to the Economic Analysis**

One commenter questioned the fleet size used for the financial impact analysis, and provided a different fleet size for use in the calculations. The FAA agrees, and has modified the economic analysis to reflect the fleet size provided.

**Request for Incorporation of HPC Cutback Stators and HPC Overhaul as Terminating Action for This AD**

One commenter requests that the FAA reference incorporation of the HPC Cutback Stators and HPC overhaul as terminating action to the repetitive testing requirements of this AD. The FAA disagrees. At this time, the Cutback HPC Stator configuration has not been certified, and therefore cannot be referenced as terminating action. The FAA will continue to monitor the fleet-wide trend analysis as inspection results are reported and will incorporate terminating action into this AD by further rulemaking once that terminating action becomes available.

**Question About the Timeliness of This AD**

One commenter notes that this problem has existed since 1992, when the first surge event occurred, and that the rate has been steadily decreasing to a much lower rate today. The commenter feels that the FAA should have issued this kind of AD years ago when the rate was much higher. The FAA does not agree. While the FAA does not dispute that single engine surge rates may have been higher in the past, until recently, surge events were considered independent events, and the primary concern was with the dual-engine surge possibility. Because statistically, the probability of a dual-engine occurrence for the same cause as two single independent events is the square of the single engine probability, the probability of a dual-engine occurrence was calculated as being extremely remote. However, recent events have highlighted the need to re-examine that calculation and it underlying assumptions. The FAA now believes that unidentified common causes exist that can push reduced surge margin engines into a surge. If multiple reduced-surge margin engines are operating on an airplane when these yet unidentified influences exist, a multiple engine event is a stronger possibility. The FAA views single-engine events as a leading contributing factor in accidents when combined with other complicating factors such as crew response, other failures, etc. The FAA has focussed more strongly on defects that affect the critical phases of flight where crew workload is high and which have a high rate of occurrence. For this reason, and due to an event which occurred last year involving a single engine PW4000 surge and crew response, the FAA issued AD 98–23–08

to address that issue, and is now issuing this AD to address the overall single-engine surge rate, as well as the dual-engine event concern.

### Concern About the Reliability of the E1E Test

One commenter expresses concern regarding the implementation of the E1E test, believing it to be an unreliable tool in determining whether or not an engine is prone to a Group 3 surge. The FAA does not agree. The E1E test, the Cool Bodie test, and the Cold-Engine Fuel Spike tests have statistically proven themselves strong indicators of the likelihood of an engine to surge in subsequent service. While individual engines may provide different test results, the PW4000 fleet as a whole shows a strong correlation between these evaluations and the likelihood of a subsequent Group 3 surge event.

### Request To Allow a Retest After Water Washing an Engine That Failed the Initial Tests

One commenter requests that engines which fail an E1E test be allowed a second test opportunity after a water wash is performed. The FAA does not agree. The database upon which the correlations were based comes from a sampling of status engines in the fleet. Those engines were not typically water washed prior to accomplishing the test. It is unknown whether allowing such a retest would invalidate the assumptions upon which the management plan was based. It is also unknown how long any benefit derived from the water-washing might be expected to last before returning to the prior unwashed level.

### Editorial Changes for Clarity

One commenter requests that the word ''untested'' be replaced with ''not previously tested'' in the Final Rule. The FAA agrees. The word ''untested'' has been changed to ''has not been previously tested'' in paragraph (a) of this AD.

### Administrative Changes and Corrections

Several minor format, typographical and administrative corrections were incorporated as appropriate.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 1,975 engines of the affected design in the worldwide fleet. The FAA estimates that 495 engines installed on airplane of U.S. registry would be affected by this proposed AD. The FAA also estimates that, on average, approximately 190 on-wing tests, 74 test cell stability tests, 16 engine removals, and 22 HPC overhauls will be required annually. It is estimated that the cost to industry of an on-wing stability test will average $2,000, a test cell stability test will average $12,000, an engine removal is approximately $5,000, and an HPC overhaul will cost approximately $400,000. Based on these figures, the total average annual cost impact of the proposed AD to U.S. operators is estimated to be $10,148,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**99–17–16 Pratt & Whitney:** Amendment 39–11263. Docket 99–NE–22–AD.

*Applicability:* Pratt & Whitney PW4050, PW4052, PW4056, PW4060, PW4060A, PW4060C, PW4062, PW4152, PW4156, PW4156A, PW4158, PW4160, PW4460, PW4462 and PW4650 turbofan engines installed on, but not limited to certain models of Boeing 747, Boeing 767, Airbus Industrie A300, Airbus Industrie A310, and McDonnell Douglas MD–11 series airplanes.

**Note 1:** This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent a high pressure compressor (HPC) surge event, which could result in engine power loss at a critical phase of flight such as takeoff or climb, accomplish the following:

(a) Limit the number of engines on each airplane to no more than one engine that has not been previously tested and has exceeded the initial threshold specified in Table 1 of this AD, within 1,000 HPC cycles in service (CIS) from the effective date of this AD or by December 31, 1999, whichever comes first, by one of the following methods:

(1) Conduct an initial stability test on engines listed in Table 1 of this AD, which have accumulated cycles equal to or greater than the associated initial threshold listed in Table 1 of this AD, as follows:

(i) Perform either a Cool Bodie stability test in accordance with PW Special Instruction 7F–96, dated January 10, 1996. Refer to Table 2 of this AD for disposition instructions. Or;

(ii) Perform an E1E stability test in accordance with paragraphs A through D and F through H of the Run On-Wing E1E Testing section of PW Special Instructions 49F–96, dated August 9, 1996. Refer to Table 2 of this AD for disposition instructions.

(iii) For purposes of this AD, the initial threshold for PW4056, PW4156, and PW4156A, first run, full-up engines, applies only to engines that have incorporated service bulletins PW4ENG 72–474, 72–477, 72–484, 72–575, 72–485, 72-486, and 72–514 at original manufacture, and have not had a separation of a major engine flange, with the exception of the ''A'' flange or the ''T'' flange, since new. PW4056, PW4156, and PW4156A original manufacture engines that have a (-3) suffix after the data plate engine model

designation, denoting the ''Phase 3'' configuration, are allowed to use the PW4056, PW4156, and PW4156A first run, full up engine initial threshold in Table 1 if, since new, they have not had a separation of a major engine flange, with the exception of the ''A'' flange or ''T'' flange.

(2) Remove from service those engines listed in Table 1 of this AD with HPC's that have accumulated cycles equal to or greater than the initial threshold listed in Table 1 of this AD, and replace with a serviceable engine.

(3) When a thrust rating change has been made in accordance with the manufacturer's instructions utilizing the Electronic Engine Control (EEC) programming plug in the affected HPC overhaul period, the initial threshold associated with the highest thrust rating must be utilized.

TABLE 1.—INITIAL HPC AND ENGINES CYCLES THRESHOLDS

| Models | Initial threshold |
|---|---|
| PW4052, PW4152, PW4158, PW4050, PW4650. | 2400 HPC cycles since new or since HPC overhaul. |
| PW4056*, PW4156*, PW4156A*. | 1700 engine cycles since new. |
| PW4056, PW4156, PW4156A. | 1200 HPC cycles since new or HPC overhaul. |
| PW4060, PW4060A, PW4060C, PW4062, PW4160, PW4460, PW4462. | 1200 HPC cycles since new or since HPC overhaul. |

* First Run, Full Up Engines

TABLE 2.—ON-WING ACCEPTANCE CRITERIA

| Test type | Test result | Disposition |
|---|---|---|
| Cool Bodie | Pass | Continue in service. |
| In accordance with SI 7F–96, dated January 10, 1996. | Failure | Remove from service or conduct E1E. If <0.020 continue in service. If E1E is ≥0.020 remove from service, prior to further flight. |
| E1E | <0.020 | Continue in Service. |
| In accordance with SI 49F–96, dated August 9, 1996. | ≥0.020 but ≤0.032 | Conduct Cool Bodie, if pass continue in service. If fail remove engine from service, prior to further flight. |
| | >0.032 | Remove from service, prior to further flight. |

(b) For engines removed from service in accordance with paragraph (a) of this AD, a cold-engine fuel spike stability test (Testing–20) may be done in accordance with the associated PW4000 Engine Manual (EM) Temporary Revisions (TR's) 71–0016, 71–0025, and 71–0030, all dated March 15, 1999, or PW4000 EM 50A443, 50A822, or 50A605, Section 71–00–00, Testing–20, pages 1301–1316, dated June 15, 1999, or PW SI 32F–99, dated April 13, 1999. Cold-Engine fuel spike testing using a surge margin analysis control (SMAC) full authority digital electronic control (FADEC) P/N 50D341–SKX13041, P/N 50D341–SKX02, or P/N 53D063–SK07, and performed in conjunction with PW Cactus Wire C042 G 930902 ZRH, dated September 02, 1993,will also be acceptable for meeting the testing requirements of this AD. Engines must pass this test cell stability test to be returned to service.

(c) Repeat stability tests in accordance with paragraph (a)(1)(i) or (a)(1)(ii) on engines that meet the acceptance criteria of Table 2 of this AD or pass a test cell stability test in accordance with paragraph (b) before accumulating 800 CIS since last stability test.

(d) Remove from service engines that do not meet the acceptance criteria of Table 2, prior to further flight and replace with a serviceable engine.

(e) Conduct stability tests on the remaining engines on each airplane that exceed the initial threshold defined in Table 1 of this AD before accumulating 1800 engine CIS after the effective date of this AD or by December 31, 2000, whichever comes first, in accordance with paragraph (a) or (b) of this AD.

(f) Engines that have not reached the initial threshold specified in Table 1 of this AD by 1000 engine CIS after the effective date of this AD, or by December 31, 1999, whichever comes first, must be tested before the engine reaches the initial threshold so that no more than one engine per airplane that has exceeded its initial threshold has not been tested. After accumulating 1800 CIS or December 31, 2000,whichever comes first, the engines must be managed so that all engines have been tested in accordance with the initial thresholds specified in Table 1 of this AD or the repetitive 800 CIS threshold requirement of this AD.

(g) After the effective date of this AD, a cold-engine fuel spike stability test (Testing–20) must be performed in accordance with PW Temporary Revision 71–0016, 71–0025, or 71–0030, all dated March 15, 1999; PW EM 50A605 Section 71–00–00, Testing–20, PW EM 50A443 Section 71–00–00, Testing–20, and PW EM 50A822, Section 71–00–00, Testing 20, all dated June 15, 1999; or PW SI 32F–99, dated April 13, 1999; or PW Cactus Wire C042 G 930902 ZRH, dated September 02, 1993 before an engine can be returned to service after having undergone maintenance in the shop, except under any of the following conditions:

(1) The HPC was overhauled, or replaced with an overhauled HPC, or

(2) The HPC was replaced with an HPC that is new from production with no time in service, or

(3) Less than 800 CIS have passed since the last accomplishment of Testing–20, unless a major engine flange, except the ''A'' flange or the ''T'' flange, was separated during the shop visit, or

(4) The shop visit was only for replacement of a line replaceable unit, with no other work done, unless a major engine flange, except the ''A'' flange or the ''T'' flange, was separated during the shop visit.

**Note 2:** Boeing SB 767–72A0034, dated April 16, 1999, and SB 747–72A2038, dated April 16, 1999, include instructions similar to those contained in this AD, however, these SB's are not approved as alternate methods of compliance with this AD.

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(i) Special flight permits may be issued in accordance with § § 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished, provided that in the case where an aircraft has an engine that has failed a stability assessment the following conditions are made part of the special flight permit:

(1) The engine must be operated for at least 20 minutes at Ground Idle prior to initiating the takeoff, or for 5 minutes at 1.2 Engine Pressure Ratio (EPR);

(2) If applicable, the Environmental Control System (ECS) bleed must be shut off prior to setting takeoff power, and left off until 5 minutes after power set;

(3) The affected engine must be operated at the appropriate minimum approved derated thrust for safe takeoff and climb in order to minimize the risk of a takeoff surge; and

(4) Only one engine per airplane may have failed a stability assessment to perform this flight.

(j) For the purposes of this AD, the following definitions apply:

(1) An HPC overhaul is defined as whenever the HPC stage 12 through 15 blade tip clearances are restored to the clearances specified in the applicable fits and clearances section of the engine manual during the shop visit.

(2) A serviceable engine is defined as an engine that either:

(i) Has not exceeded the initial threshold specified in Table 1 of this AD, or

(ii) Has passed a stability test performed in accordance with paragraphs (a)(1)(i) or (a)(1)(ii) or (b) or (g) of this AD within the last 800 CIS.

(k) Report the results of the stability assessment tests to the Manager, Engine Certification Office, 12 New England Executive Park, Burlington, MA 01803–5299, or by electronic mail to ''Robert.Guyotte@faa.gov.'' Data to be reported includes:

(1) Engine serial number;

(2) Type and date of the test;

(3) Results of the test (include E1E value if applicable);

(4) Position of engine on the airplane;

(5) Disposition of the engine after the test; and

(6) Time and cycles since compressor overhaul, total time on engine, and total cycles at the time of the test.

Results are due to the FAA New England Office within 60 days of test date, or for previously accomplished tests for which retroactive credit is taken, within 60 days of the effective date of this AD.

Reporting requirements have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 2120–0056.

(l) The stability assessment tests shall be done in accordance with the following Pratt & Whitney service documentation:

| Document No. | Pages | Revision | Date |
|---|---|---|---|
| SI 7F–96 | All | Original | January 10, 1996. |
| SI 32F–99 | All | Original | April 13, 1999. |
| SI 49F–96 | All | Original | August 9, 1996. |
| TR 71–0016 | All | Original | March 15, 1999. |
| TR 71–0025 | All | Original | March 15, 1999. |
| TR 71–0030 | All | Original | March 15, 1999. |
| EM 50A443, Section 71–00–00 | All | Original | June 15, 1999. |
| EM 50A605, Section 71–00–00 | All | Original | June 15, 1999. |
| EM 50A822, Section 71–00–00 | All | Original | June 15, 1999. |
| PW Cactus Wire: C042 G 930902 ZRH | All | Original | September 2, 1993. |
| Total pages: 108 | | | |

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770, fax (860) 565–4503. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(m) This amendment becomes effective on September 24, 1999.

Issued in Burlington, Massachusetts, on August 12, 1999.

**Kirk E. Gustafson,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 99–21450 Filed 8–19–99; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 99–SW–30–AD; Amendment 39–11265; AD 99–17–19]**

**RIN 2120–AA64**

## Airworthiness Directives; Bell Helicopter Textron, A Division of Textron Canada, Model 206L, L–1, L–3, and L–4 Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to Bell Helicopter Textron, A Division of Textron Canada (BHTC), Model 206L, L–1, L–3, and L–4 helicopters, that currently requires the creation of a component history card or equivalent record using the Retirement Index Number (RIN) system for certain mast and trunnions and a system for tracking increases to the accumulated RIN. That AD also establishes retirement lives for the mast and trunnion. This amendment requires the same actions required by the existing AD but increases the RIN multiplier for the mast and corrects a helicopter model number. This amendment is prompted by further tests and analyses that indicate the RIN multiplier for the Model 206L–4 helicopters needs to be increased and the discovery of an error in a model designation in the existing AD. The actions specified by this AD are intended to prevent fatigue failure of the mast or trunnion, which could result in loss of the main rotor system and subsequent loss of control of the helicopter.

**DATES:** Effective September 24, 1999.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of May 9, 1997 (62 FR 16073, April 4, 1997).

**ADDRESSES:** The service information referenced in this AD may be obtained from Bell Helicopter Textron, a Division of Textron Canada, 12,800 Rue de L-Avenir, Mirabel, Quebec, Canada J7J1R4, ATTN: Product Support Engineering Light Helicopters. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Jurgen Priester, Aerospace Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5159, fax (817) 222–5959.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 97–07–07, Amendment 39–9981 (62 FR 16073), applicable to BHTC Model 206L, L–1, L–3, and L–4 helicopters, was published in the **Federal Register** on May 26, 1999 (64 FR 28418). That action proposed requiring creation of a component history card or equivalent record using a RIN system, establishing a system for tracking increases to the accumulated RIN and establishing a maximum accumulated RIN for certain masts and trunnions. That action also proposed correcting an error in the increase in the RIN count for the Model 206L–4 in paragraph (c)(2), correcting a model number in paragraph (c)(1)(i), and

making other nonsubstantive changes to the text.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 711 helicopters of U.S. registry will be affected by this AD, that it will take approximately (1) 8 work hours per helicopter to replace the mast and 10 work hours per helicopter to replace the trunnion due to the new method of determining the retirement life required by this AD; (2) 2 work hours per helicopter to create the component history card of equivalent record (record); (3) 10 work hours per helicopter to maintain the record each year, and that the average labor rate is $60 per work hour. Required parts will cost approximately $9,538 per mast and $2,083 per trunnion. Based on these figures, the cost impact of the AD on U.S. operators for the first year is estimated to be $2,016,989, and each subsequent year to be $1,945,889. These costs assume replacement of the mast and trunnion in one-sixth of the fleet each year, creation and maintenance of the records for all the fleet the first year, and creation of one-sixth of the fleet's records and maintenance of the records for all the fleet each subsequent year. The estimated cost impact amounts are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing Amendment 39–9981 (62 FR 16073, April 4, 1997), and by adding a new airworthiness directive (AD), Amendment 39–11265, to read as follows:

**AD 99–17–19 Bell Helicopter Textron, A Division of Textron Canada:** Amendment 39–11265. Docket No. 99–SW–30–AD. Supersedes AD 97–07–07, Amendment 39–9981, Docket No. 95–SW–36–AD.

*Applicability:* Model 206L, 206L–1, 206L–3, and 206L–4 helicopters, with main rotor mast (mast), part number (P/N) 206–040–535–001, –005, –101, or –105, installed, or main rotor trunnion (trunnion), P/N 206–011–120–103, installed, certificated in any category.

**Note 1:** This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required within 100 hours time-in-service, unless accomplished previously.

To prevent fatigue failure of the mast or trunnion, which could result in loss of the main rotor system and subsequent loss of control of the helicopter, accomplish the following:

(a) Create a component history card or an equivalent record for the affected mast and trunnion.

(b) Determine the accumulated Retirement Index Number (RIN) to date based on the number of takeoffs and external load lifts (torque events) for parts in service in accordance with paragraphs 1 and 2 of the Accomplishment Instructions of Bell Helicopter Textron, Inc. Alert Service Bulletin No. 206L–94–99, Revision A, dated May 1, 1995 (ASB). Record this accumulated RIN on the component history card or equivalent record.

(c) After complying with paragraphs (a) and (b) of this AD, during each operation thereafter, maintain a count of the number of external load lifts and the number of takeoffs performed and at the end of each day's operations, increase the accumulated RIN on the component history card or equivalent record as follows:

(1) For the trunnion,

(i) Increase the RIN for the Model 206L, 206L–1, and 206L–3 helicopters by 1 for each torque event.

(ii) Increase the RIN for the Model 206L–4 helicopters by 2 for each torque event.

(2) For the mast,

(i) Increase the RIN for the Model 206L, 206L–1, 206L–3 helicopters by 1 for each torque event.

(ii) Increase the RIN for the Model 206L–4 helicopters by 2 for each torque event.

**Note 2:** Previous Model 206L–4 mast RIN calculations may have increased the RIN by only 1 for each torque event. This AD increases the Model 206L–4 mast RIN by 2 for each torque event.

(d) Remove the trunnion from service on or before attaining the maximum accumulated RIN (24,000) in accordance with Table 1 of the Accomplishment Instructions of the ASB. This AD revises the Limitations section of the maintenance manual by establishing a retirement life of 24,000 RIN for the trunnion.

(e) Remove the mast from service on or before attaining the maximum accumulated RIN (44,000) or the flight hour service life limit, whichever occurs first, in accordance with Table 2 of the Accomplishment Instructions of the ASB. This AD revises the Limitations section of the maintenance manual by establishing a retirement life of 44,000 RIN for the mast.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Rotorcraft Certification Office.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(g) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(h) The determination of the RIN count on the trunnion and mast shall be made in accordance with Bell Helicopter Textron, Inc. Alert Service Bulletin No. 206L–94–99, Revision A, dated May 1, 1995. The incorporation by reference of that document was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of May 9, 1997 (62 FR 16073, April 4, 1997). Copies may be obtained from Bell Helicopter Textron, a Division of Textron Canada, 12,800 Rue de L-Avenir, Mirabel, Quebec, Canada J7J1R4, ATTN: Product Support Engineering Light Helicopters. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on September 24, 1999.

Issued in Fort Worth, Texas, on August 12, 1999.

**Eric Bries,**

*Acting Managaer, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 99–21573 Filed 8–19–99; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 98–SW–16–AD; Amendment 39–11264; AD 99–17–18]**

**RIN 2120–AA64**

## Airworthiness Directives; MD Helicopters, Inc. Model 600N Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to MD Helicopters, Inc. (MDHI) Model 600N helicopters, that requires applying serial numbers to several life-limited components related to pitch control and removing and replacing the components according to new life-limits. This amendment is prompted by fatigue tests that indicate a need for shorter service lives for these components. The actions specified by this AD are intended to prevent failure of the collective pitch control tubes, collective stick housings, and collective pitch tube assemblies, which can cause loss of collective pitch control, and subsequent loss of control of the helicopter.

**DATES:** Effective September 24, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 24, 1999.

**ADDRESSES:** The service information referenced in this AD may be obtained from MD Helicopters Inc., Attn: Customer Support Division, 5000 E. McDowell Rd., Mail Stop M615–GO48, Mesa, Arizona 85215–9797, telephone 1–800–388–3378 or 480–891–6342, datafax 480–891–6782. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Frederick A. Guerin, Aerospace Engineer, Airframe Branch, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5232, fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to MDHI Model 600N helicopters was published in the **Federal Register** on March 23, 1999 (64 FR 13936). That action proposed to require applying serial numbers to several life-limited components related to pitch control and removing and replacing the components according to new life-limits.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the following exceptions. Since the publication of the Notice of Proposed Rulemaking (NPRM), the name of the type certificate holder has changed from ''McDonnell Douglas Helicopter Systems'' to ''MD Helicopters, Inc.'' Also, the NPRM contained an error in the part number for the ''Housing, collective stick.'' The part number should have been ''369A7347'' but was incorrectly listed as ''1369A7347.'' A part number ''1369A7347'' does not exist for the affected model helicopter. Both the name and the part number have been changed in this final rule AD; the FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 16 helicopters of U.S. registry will be affected by this AD, that it will take approximately 0.5 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $480.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

**AD 99–17–18 MD Helicopters Inc.:** Amendment 39–11264. Docket No. 98–SW–16–AD.

*Applicability:* Model 600N helicopters, certificated in any category.

**Note 1:** This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified,

altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of the collective pitch control tubes, collective stick housings, and collective pitch tube assemblies, loss of collective pitch control, and subsequent loss of control of the helicopter, accomplish the following:

(a) On or before reaching 400 hours time-in-service (TIS), apply the serial number (S/N) listed in McDonnell Douglas Helicopter Systems Mandatory Service Bulletin No. 600N–009, dated February 24, 1998 (SB), to the two collective stick housings, P/N's 369A7347 and 369A7820; the pilot collective pitch control tube, P/N 369A7348; and the co-pilot collective pitch control tube, P/N 369A7809, in the most visible spot for the specified aircraft S/N.

(b) Remove and replace the following flight control components according to the stated life-limits:

| P/N | Component | Life-Limit (Hours TIS) |
|---|---|---|
| 369A7347 | Housing, collective stick | 450 |
| 369A7348 | Tube, collective pitch control (pilot) | 400 |
| 369H7354–3 | Tube assembly, collective pitch (pilot) | 600 |
| 369A7809 | Tube, collective pitch control (co-pilot) | 1,800 |
| 369A7820 | Housing, collective stick | 450 |
| 369H7837 | Housing, collective stick | 450 |
| 369H7838–3 | Tube assembly, collective pitch (co-pilot) | 1,000 |

(c) Create a component history card or equivalent record in the helicopter log and record the helicopter TIS at installation for each of the components listed in paragraph (b) of this AD.

(d) This AD revises the Airworthiness Limitations Section of the maintenance manual by reducing the life-limits of the pilot collective pitch control tube, the collective stick housings, and the collective pitch tube assemblies, and adding the co-pilot collective pitch control tube to the Airworthiness Limitations section, Component Mandatory Replacement Schedule.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(g) The application of serial numbers shall be done in accordance with the Accomplishment Instructions of McDonnell Douglas Helicopter Systems Mandatory Service Bulletin No. 600N–009, dated February 24, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from MD Helicopters Inc., Attn: Customer Support Division, 5000 E. McDowell Rd., Mail Stop M615–GO48, Mesa, Arizona 85215–9797, telephone 1–800–388–3378 or 480–891–6342, datafax 480–891–6782. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on September 24, 1999.

Issued in Fort Worth, Texas, on August 12, 1999.

**Eric Bries,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 99–21572 Filed 8–19–99; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 99–NM–06–AD; Amendment 39–11266; AD 99–17–20]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 757–200 and –300 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757–200 and –300 series airplanes, that requires modification of the off-wing emergency evacuation slide system. This amendment is prompted by reports that a certain type of off-wing escape slide aboard several airplanes separated from the airplane during flight. The actions specified by this AD are intended to prevent separation of the emergency evacuation slide from the airplane, which could result in damage to the fuselage and unavailability of an escape slide during an emergency evacuation.

**DATES:** Effective September 24, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 24, 1999.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Keith Ladderud, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2780; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 757–200 and –300 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on June 11, 1999 (64 FR 31523). That action proposed to require modification of the off-wing emergency evacuation slide system.

### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due

consideration has been given to the comments received.

### Support for the Proposal

Three commenters support the proposed rule, and one commenter states that the rule does not affect it.

### Request To Delay Effective Date

One commenter supports the proposed rule, but requests that the effective date of the AD be set after July 31, 1999, to allow the scheduled modification to be accomplished during the operator's scheduled ''4C'' check. The FAA notes that the effective date of the AD will be after July 31, 1999. No change to the final rule is necessary.

### Request To Require New Repetitive Inspections

One commenter to the NPRM that preceded the supplemental NPRM favors adding a requirement for a functional test to the proposed AD. The commenter requests that the FAA consider rulemaking to require repetitive tests of the emergency evacuation slides on each airplane to ensure that they work properly.

The FAA does not concur with the commenter's request. Adding a requirement to this final rule would require the issuance of a new supplemental notice of proposed rulemaking to reopen the public comment period. To delay this final rule in this way would be inappropriate, because the FAA has determined that an unsafe condition exists and the required actions must be accomplished to ensure continued safety. The FAA notes, however, that operators are required, per their maintenance procedures, to periodically deploy one escape slide on one airplane in its fleet to ensure proper function. No change to the final rule is necessary.

### Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

### Cost Impact

There are approximately 503 Model 757–200 and –300 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 441 airplanes of U.S. registry will be affected by this AD.

For airplanes identified in Boeing Service Bulletin 757–25–0182, Revision 1 (301 U.S.-registered airplanes), it will take approximately 40 work hours per airplane to accomplish the required modification of the door latch system, at an average labor rate of $60 per work hour. Required parts will cost approximately $1,450 per airplane. Based on these figures, the cost impact of the required modification on U.S. operators is estimated to be $1,158,850, or $3,850 per airplane.

For airplanes identified in Boeing Service Bulletin 757–25–0200 (441 U.S.-registered airplanes), it will take approximately 4 work hours to accomplish the required installation of the bumper assembly and placards, at an average labor rate of $60 per work hour. Required parts will cost approximately $457 per airplane. Based on these figures, the cost impact of the required installation on U.S. operators is estimated to be $307,377, or $697 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

### Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**99–17–20 Boeing:** Amendment 39–11266. Docket 99–NM–06–AD.

*Applicability:* Model 757–200 and –300 series airplanes equipped with off-wing emergency evacuation slides, as listed in Boeing Service Bulletin 757–25–0182, Revision 1, dated June 12, 1997, or Boeing Service Bulletin 757–25–0200, dated January 21, 1999; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent separation of the emergency evacuation slide from the airplane, which could result in damage to the fuselage and unavailability of an escape slide during an emergency evacuation, accomplish the following:

**Modification**

(a) Within 18 months after the effective date of this AD: Modify the left and right off-wing emergency evacuation slide systems by accomplishment of paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For airplanes listed in Boeing Service Bulletin 757–25–0182, Revision 1, dated June 12, 1997: Modify the door latch system of the left and right off-wing emergency evacuation slide systems in accordance with the service bulletin.

**Note 2:** Modification of the door latch system of the off-wing emergency evacuation slide system, prior to the effective date of this AD, in accordance with Boeing Service Bulletin 757–25–0182, dated October 10, 1996, is considered acceptable for compliance with paragraph (a)(1) of this AD.

(2) For airplanes listed in Boeing Service Bulletin 757–25–0200, dated January 21, 1999: Install a bumper assembly on the bottom of the left and right off-wing escape slide carriers, and install new placards in the area of the maintenance access door, in accordance with the service bulletin.

**Alternative Methods of Compliance**

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

**Special Flight Permits**

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Incorporation by Reference**

(d) The actions shall be done in accordance with Boeing Service Bulletin 757–25–0182, Revision 1, dated June 12, 1997, or Boeing Service Bulletin 757–25–0200, dated January 21, 1999; as applicable. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on September 24, 1999.

Issued in Renton, Washington, on August 13, 1999.

**D.L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 99–21571 Filed 8–19–99; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF THE TREASURY

## Financial Crimes Enforcement Network

## 31 CFR Part 103

**RIN 1506–AA09**

## Amendment to the Bank Secrecy Act Regulations—Definitions Relating to, and Registration of, Money Services Businesses

**AGENCY:** Financial Crimes Enforcement Network (''FinCEN''), Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document contains amendments to the regulations implementing the statute generally referred to as the Bank Secrecy Act. The amendments revise the definitions of certain non-bank financial institutions for purposes of the Bank Secrecy Act and group the revised definitions together in a separate category called ''money services businesses.'' The amendments also require certain money services businesses to register with the Department of the Treasury and to maintain a current list of their agents for examination, on request, by any appropriate law enforcement agency. The amendments regarding registration and maintenance of agent lists by money services businesses reflect changes to the law made by the Money Laundering Suppression Act of 1994.

**DATES:** *Effective Date:* September 20, 1999.

*Applicability Date:* Registration of money services businesses will not be required prior to December 31, 2001, and maintenance of the agent list will not be required prior to January 1, 2002. See § 103.41(f) of the final rule contained in this document.

**FOR FURTHER INFORMATION CONTACT:** Peter Djinis, Associate Director, FinCEN, (703) 905–3930; Charles Klingman, Financial Institutions Policy Specialist, FinCEN, (703) 905–3602; Stephen R. Kroll, Chief Counsel, Cynthia L. Clark, Deputy Chief Counsel, and Albert R. Zarate and Christine L. Schuetz, Attorney-Advisors, Office of Chief Counsel, FinCEN, (703) 905–3590.

**SUPPLEMENTARY INFORMATION:**

### I. Statutory Provisions—General

The Bank Secrecy Act, Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330, authorizes the Secretary of the Treasury, *inter alia*, to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, and to implement counter-money laundering programs and compliance procedures. Regulations implementing Title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311–5330) appear at 31 CFR Part 103. The authority of the Secretary to administer Title II of the Bank Secrecy Act has been delegated to the Director of FinCEN.

*31 U.S.C. 5312.* The Bank Secrecy Act generally applies to financial institutions, a term broadly defined in 31 U.S.C. 5312(a)(2)(A–Z). The statutory definition includes, *inter alia:*

* * * * *

(J) a currency exchange;

(K) an issuer, redeemer, or cashier of travelers' checks, checks, money orders, or similar instruments;

* * * * *

(R) a licensed sender of money;

* * * * *

(Y) any business or agency which engages in any activity which the Secretary of the Treasury determines, by regulation, to be an activity which is similar to, related to, or a substitute for any activity in which any business described in this paragraph is authorized to engage; or

(Z) any other business designated by the Secretary whose cash transactions have a high degree of usefulness in criminal, tax, or regulatory matters.

*31 U.S.C. 5330.* 31 U.S.C. 5330 was added to the Bank Secrecy Act by section 408 of the Money Laundering Suppression Act of 1994 (the ''Money Laundering Suppression Act''), Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325 (September 23, 1994). Under that section, any person who owns or controls a money services business (which the statute refers to as a ''money transmitting business'' [1]), whether or not the business is licensed as a money services business in any State, must register the business with the Secretary of the Treasury. 31 U.S.C. 5330(a). (A money services business required to be registered under 31 U.S.C. 5330 remains subject to any State law requirements relating to the operation of the business in the State. 31 U.S.C. 5330(a)(3).) The form and manner of registration must be prescribed by regulations.

The purpose of the registration requirement is to assist supervisory and law enforcement agencies in the enforcement of criminal, tax, and regulatory laws and to prevent money services businesses from engaging in illegal activities. See, section 408(a), of the Money Laundering Suppression Act. 31 U.S.C. 5311 (Note). In requiring the registration of money services businesses, Congress found that such businesses are largely unregulated and are frequently used in sophisticated schemes to transfer large amounts of money that are the proceeds of unlawful enterprises and to evade the

[1] The statute uses the term ''money transmitting business'' to name those businesses subject to registration. *See* 31 U.S.C. 5330(a)(1) and (d)(1). However, FinCEN believes that the statute's use of this term to refer to all the types of businesses subject to registration and its later use of the nearly identical term ''money transmitting service'' to refer to a particular type of business subject to registration, *compare* 31 U.S.C. 5330(d)(1)(A) *with* 31 U.S.C. 5330(d)(2), may lead to confusion. Therefore, FinCEN has adopted the term ''money services business'' in place of the term ''money transmitting business'' throughout this document and under the final rule.

requirements of Title II of the Bank Secrecy Act, the Internal Revenue Code of 1986, and other laws of the United States. Congress also found that information on the identity of each money services business and the names of the persons who own or control, or are officers or employees of, a money services business would have a high degree of usefulness in criminal, tax, or regulatory investigations and proceedings. *Id.*

The statute defines a ''money transmitting business''[2] as any business, other than the United States Postal Service, that is required to file reports under 31 U.S.C. 5313 and that provides check cashing, currency exchange, or money transmitting or remittance services,[3], or issues or redeems money orders, traveler's checks or other similar instruments. 31 U.S.C. 5330(d)(1). Depository institutions (as defined in 31 U.S.C. 5313(g)), however, are not within the classes of institutions required to register under the statute. 31 U.S.C. 5330(d)(1)(C).

Section 5330 specifies the information that must be included as part of the registration. 31 U.S.C. 5330(b). The required information is—

(1) The name and location of the business;

(2) The name and address of each person who owns or controls the business, is a director or officer of the business, or otherwise participates in the conduct of the affairs of the business;

(3) The name and address of any depository institution at which the business maintains a transaction account (as defined in section 19(b)(1)(C) of the Federal Reserve Act);

(4) An estimate of the volume of business in the coming year, which shall be reported annually to the Secretary; and

(5) Such other information as the Secretary of the Treasury may require.

Section 5330 contains two provisions directed explicitly at agents of money services businesses. First, a money services business must maintain a list containing the names and addresses of its agents and such other information about the agents as the Secretary may require, and the list must be made available on request to any appropriate law enforcement agency. See 31 U.S.C. 5330(c)(1). Second, the Secretary is to establish by regulation, on the basis of such criteria as the Secretary deems appropriate, a threshold point for treating an agent of a money services business as itself a money services business for purposes of section 5330.

Section 5330 prescribes a civil penalty for any person who fails to comply with any requirement of 31 U.S.C. 5330 or the regulations thereunder. The penalty is $5,000 for each violation; each day a violation of 31 U.S.C. 5330 or the regulations thereunder continues constitutes a separate violation. 31 U.S.C. 5330(e). A failure to comply with 31 U.S.C. 5330 or the regulations under section 5330 may also result in a criminal penalty under 18 U.S.C. 1960.

Under section 5330, a money services business must be registered not later than the end of the 180-day period beginning on the later of the date of enactment of the Money Laundering Suppression Act of 1994 (September 23, 1994), and the date on which the business is established. 31 U.S.C. 5330(a). On May 18, 1995, FinCEN issued a notice explaining that regulations prescribing the form and manner of registration would not require initial registration of money services businesses before the 90th day following the effective date of the implementing regulations. FinCEN Notice 95–1. The notice further explained that no penalty or other compliance sanction would be imposed under the provisions of the Bank Secrecy Act on account of the failure of any money services business to register before the last date for initial registration specified by the implementing regulation.

## II. Money Services Businesses—General

The rulemaking of which this final rule is a part deals with a number of aspects of the application of the Bank Secrecy Act to money services businesses. In conducting the rulemaking, FinCEN and the Department of the Treasury are not only following the mandate of Congress in the Money Laundering Suppression Act and the Annunzio-Wylie Anti-Money Laundering Act, Title XV of the Housing and Community Development Act of 1992, Public Law 102–550, but are more generally responding to the need to update and more carefully tailor the application of the Bank Secrecy Act to a major, if little understood, part of the financial sector in the United States.[4]

The term ''money services business'' refers to five distinctive types of financial services providers: currency dealers or exchangers; check cashers; issuers of traveler's checks, money orders, or stored value; sellers or redeemers of traveler's checks, money orders, or stored value; and money transmitters. (The five types of financial services are complementary and are often provided together at a common location.) These businesses are quite numerous; based on a study performed for FinCEN by Coopers & Lybrand LLP (now a part of PriceWaterhouse Coopers LLP), they comprise approximately 158,000[5] outlets or selling locations, and provide financial services involving approximately $200 billion annually. To some significant extent, the customer base for such businesses lies in that part of the population that does not use traditional financial institutions, primarily banks.

Money services businesses, like banks, can be large or small. It is estimated that approximately eight business enterprises account for the bulk of money services business financial products (that is, money transmissions, money orders, traveler's checks, and check cashing and currency exchange availability) sold within the United States, and also account, through systems of agents, for the bulk of locations at which these financial products are sold. Members of this first group include large firms, with significant capitalization, that are publicly traded on major securities exchanges.

A far larger group of (on average) far smaller enterprises competes with the eight largest firms in a highly bifurcated market for money services. In some cases, these small enterprises are based in one location with two to four employees. Moreover, the members of this second group may provide both financial services and unrelated products or services to the same sets of customers.[6] Far less is known about this

[2] Although the statutory term is ''money transmitting business,'' FinCEN has decided to use the term ''money services business'' in this rule. *See* footnote 1, *supra*.

[3] The term ''money transmitting service'' includes accepting currency or funds denominated in the currency of any country and transmitting the currency or funds, or the value of the currency or funds, by any means through a financial agency or institution, a Federal Reserve Bank or other facility of the Board of Governors of the Federal Reserve System, or an electronic funds transfer network. 31 U.S.C. 5330(d)(2).

[4] The Congress has long-recognized the need generally to address problems of abuse by money launderers of ''non-bank'' financial institutions. *See, e.g.,* Permanent Subcommittee on Investigations, Senate Comm. on Governmental Affairs, Current Trends in Money Laundering, S. Rep. No. 123, 102d Cong., 2d Sess. (1992).

[5] The number does not include Post Offices (which sell money orders and other money services business financial products), participants in stored value product trials, or sellers of various stored value or smart cards in use in, *e.g.,* public transportation systems.

[6] Members of the second group may include, for example, a travel agency, courier service, convenience store, grocery or liquor store.

second tier of firms than about the major providers of money service products.[7]

Because money services businesses primarily serve individuals, they have grown to provide a set of financial products, albeit in large part for non-depository customers, that others look to banks to provide. For example, a money services business customer who receives a paycheck can take his or her check to a check casher to have it converted to cash. He or she can then purchase money orders to pay his or her bills. Finally, he or she may choose to send funds to relatives abroad, using the services of a money transmitter.

## III. Notice of Proposed Rulemaking

On May 21, 1997, FinCEN published a notice of proposed rulemaking, 62 FR 27890—27900 (the ''Notice''), that described several proposed changes to the Bank Secrecy Act rules of the Department of the Treasury. First, the Notice proposed amendment of 31 CFR 103.11 to revise definitions of certain non-bank financial services businesses that had been treated as financial institutions for purposes of the Bank Secrecy Act (or in the case of stored value, to add a definition of a product whose issuers, sellers, and redeemers would be so treated) and to group the revised and new definitions together under the heading money services business; the businesses involved generally provide check cashing, currency exchange, or money transmitting services, or issue, sell, or redeem money orders, traveler's checks, or other similar instruments. Second, the Notice proposed the addition to 31 CFR part 103 of a set of new rules to require certain money services businesses to register with the Department of the Treasury and, as part of the registration requirement, to maintain a current list of their agents in a central location for examination by appropriate law enforcement agencies.[8] The rules proposed in this portion of the Notice were designed to implement the terms of 31 U.S.C. 5330.

The Notice was one of three notices of proposed rulemaking dealing with money services businesses issued on May 21, 1997. The second notice, 62 FR 27900—27909, proposed to amend the Bank Secrecy Act rules to require money transmitters, and issuers, sellers, and redeemers of money orders and traveler's checks, to report suspicious transactions to the Department of the Treasury. The third notice, 62 FR 27909–27917, proposed to add a special currency transaction reporting requirement—and related customer verification requirements—for money transmitters involved in the transmission or other transfer of funds to persons outside of the United States.

The proposed rules were designed as part of a coordinated approach to dealing with abuse of money services businesses by criminals and to strengthening the application of general Bank Secrecy Act concepts to this part of the nation's payment system. The decision to deal with each rule separately, rather than finalizing the rules as a group, reflects a number of practical and policy considerations, most importantly the desire to allow time for the construction of the necessary administrative and compliance structures by both the Department of the Treasury and the money services businesses subject to the rules. As indicated in greater detail below, following the Section-by-Section Analysis, the Department of the Treasury is planning next to issue the rule relating to the reporting of suspicious transactions, and will be working with interested parties, independently of the rulemaking itself, to advance the preparation of guidance about particular patterns of suspicious activity of which money services businesses must be aware.

FinCEN held five public meetings during the summer of 1997, in order to provide interested parties with the opportunity to present their views about the potential effects of the three proposed regulations, as well as to provide FinCEN with additional information useful in preparing the final rule.[9] Transcripts of these meetings were then made available by FinCEN to requesting parties.

The first of the five meetings, which was held in Vienna, Virginia, dealt particularly with issues raised by the Notice, and the San Jose, California, meeting dealt with the Notice's treatment of stored value. The final meeting, also held in Vienna, Virginia, dealt with the details of the various prototype compliance forms designed in connection with the issuance of both the Notice and the two related notices of proposed rulemaking and produced further discussion of the money services business registration requirements.

The comment period for the three notices of proposed rulemaking originally ended on August 19, 1997, but it was extended to September 30, 1997, by a notice published on July 30, 1997 (62 FR 40779). FinCEN received a total of 82 comment letters on the three notices of proposed rulemaking; 60 comment letters dealt in whole or in part with issues raised by the Notice. Of these, 17 were submitted by money services businesses and their affiliates, 11 by banks or bank holding companies, 17 by financial institution trade associations, 5 by law firms, 5 by agencies of the United States government, 2 by credit unions, and 3 by private individuals.

## IV. Summary of Comments and Revisions

### *A. Introduction*

The format of the final rule is generally consistent with the Notice. The terms of the final rule, however, differ from the terms of the Notice in the following significant respects:

Definitions

- The definition of money services business has been revised to exclude from treatment as money services businesses for any purpose banks and persons registered with, and regulated or examined by, the Securities and Exchange Commission or the Commodity Futures Trading Commission.
- The definition of money transmitter has been revised to make plain that the activity that makes one a money transmitter must be carried on as a business and to provide a general limitation to the definition.
- The dollar thresholds for treatment of persons as money services businesses on account of activities related to check cashing, currency exchange, and money order, traveler's checks, and stored value transactions has been raised from $500 to $1,000.

[7] For example, according to the Coopers & Lybrand study, at the time of that study, two money transmitters and two traveler's check issuers made up approximately 97 per cent of their respective known markets for non-bank money services. Three enterprises made up approximately 88 per cent of the $100 billion in money orders sold annually (through approximately 146,000 locations). The retail foreign currency exchange sector was found by Coopers & Lybrand to be somewhat less concentrated, with the top two non-bank market participants accounting for 40 per cent of a known market that accounts for $10 billion. Check cashing is the least concentrated of the business sectors; the two largest non-bank check cashing businesses make up approximately 20 per cent of the market, with a large number of competitors.

[8] The Notice proposed to place section 103.41 in a new subpart D, Special Rules for Money Services Businesses, of Part 103, and to redesignate existing subparts D through F as subparts E through G of Part 103. The sections in redesignated subparts E through G were to be redesignated to reflect the addition of new subpart D, and corresponding changes were to be made to the references to such redesignated sections in other portions of part 103.

[9] These public meetings were held in Vienna, Virginia, on July 22, 1997; New York, New York, on July 28, 1997; San Jose, California, on August 1, 1997; Chicago, Illinois, on August 15, 1997; and Vienna, Virginia, on September 3, 1997.

Registration

- Registration will not be required prior to December 31, 2001.
- Persons are excluded from the registration requirements to the extent that they are issuers, sellers, or redeemers of stored value products.[10]
- The requirement that agents whose gross transaction amount exceeds $50,000 for any month must register has been eliminated; registration by a person that is a money services business solely because that person serves as an agent of another money services business is indefinitely deferred.
- The agent list maintained by each money services business that offers its products or services through agents must include an indication of each month in the preceding 12 months in which the gross transaction amount of an agent exceeded $100,000.
- A money services business is not required to keep records required by section 103.41 in a centralized location so long as the records are maintained in the United States and are readily available at the request of FinCEN or any appropriate law enforcement agency; the agent list, however, must be maintained in a central location in the United States.
- Certain publicly traded businesses are not required to re-register before the end of their renewal period when there is a 10-per cent or more change in the ownership of such businesses.
- Agent lists must be updated annually, as of January 1 of each year, rather than quarterly.
- For any agent that is an agent of the money services business maintaining the list before the first day of the month beginning after February 16, 2000, the agent list need not include information about the year in which the agent first became an agent and the agent's branches or subagents, but such information must be readily available at the request of FinCEN or any appropriate law enforcement agency.
- The effective date of the registration rule is September 20, 1999; the initial registration must be filed, by December 31, 2001, and the initial agent list must be prepared by January 1, 2002.

*B. Comments on the Notice—Overview and General Issues*

Definitions

Comments on the proposed changes to the Bank Secrecy Act definitions relating to money services businesses concentrated on five matters: (i) The relationship between the general Bank Secrecy Act definitions and the language of 31 U.S.C. 5330(d)(1) and (2), defining the businesses required to register as money services businesses; (ii) whether the Notice properly invoked the authority required for a change in the general Bank Secrecy Act definitions; (iii) the proposed inclusion of businesses issuing, selling, or redeeming stored value within the definition of ''financial institution'' for Bank Secrecy Act purposes; (iv) the treatment under the Notice of financial businesses subject to other federal regulatory systems; and (v) the application of the money services business definition to various kinds of businesses whose activities include the transmission of funds.[11]

1. *Relationship between 31 U.S.C. 5312 and 31 U.S.C. 5330.* Several commenters argued that the Department of the Treasury mistakenly relied upon the terms of 31 U.S.C. 5330, in seeking to revise the definition of financial institution, as part of proposed 31 CFR 103.11(uu). These commenters asserted that the Notice reflected a misunderstanding of the relationship of the general Bank Secrecy Act definitional provision, 31 U.S.C. 5312, and the registration provisions. In their view, the definition of the sorts of businesses required to be registered under 31 U.S.C. 5330 bore no relationship to the definition of the ''financial institutions'' covered by the remainder of the Bank Secrecy Act, and the designation of registrable businesses in 31 U.S.C. 5330 provides no independent authority for making such businesses otherwise subject to the Bank Secrecy Act. In support of this argument, the commenters cited the language at the beginning of 31 U.S.C. 5330(d) that the definitions of a money transmitting business and money transmitting service apply ''[f]or purposes of this section.'' In addition, they cited the requirement that the definition be limited only to a business that ''is required to file reports under [31 U.S.C.] section 5313.'' Thus, according to the commenters, the broad definitional language in section 5330 cannot be used to define a financial institution for a Bank Secrecy Act purpose other than registration. This language further suggests, according to the commenters, that the class of registrable money services businesses is necessarily larger than the class of money services businesses that were both registrable and otherwise subject to the Bank Secrecy Act's reporting and recordkeeping rules.

FinCEN believes that this argument misperceives both the relationship of the registration provisions to the remainder of the Bank Secrecy Act and the basis for the redefinition of money services business proposed in the Notice. In enacting 31 U.S.C. 5330, Congress made a direct finding that:

> Money transmitting businesses are subject to the recordkeeping and reporting requirements of subchapter II of chapter 53 of title 31. * * * Section 408(a)(1)(A) of the Money Laundering Suppression Act, 31 U.S.C. 5330 (Note).

Thus, Congress assumed that the sorts of businesses for which it was requiring registration were precisely the sorts that would be (and indeed that were already) subject to the Bank Secrecy Act's rules. FinCEN therefore believes that Congress intended the definition of money transmitting business to describe that class of enterprises that were both financial institutions and required to register as money transmitting services (or money services businesses) and that the harmonized definitions could not be read to include any businesses that were not otherwise eligible for treatment as financial institutions under 31 U.S.C. 5311. The purpose of the changes to the definitions of financial institution was, in accordance with this understanding of Congress' intent and as stated in the Notice (62 FR 27890 and 27891), to harmonize the two sets of rules by modernizing the definitions of money transmitter and the other terms included as components in the new money services business subcategory of the general definition of ''financial institution.''

While the final definition of money transmitter tracks to some extent the language used in 31 U.S.C. 5330, this in no way indicates a reliance upon that section for authority, but instead indicates the Department of the Treasury's desire to follow Congress' lead in construing the term ''money transmitter'' in a way that reflects technological advances, and the need to adapt the application of the Bank Secrecy Act to the continually evolving nature of the industry that comprehends ''financial institutions.''

31 U.S.C. 5312 does provide such authority, there is every reason for the definitions to be the same, and the language of the preamble to the Notice, although not perhaps ideal, was sufficient to put the public on notice

[10] Although the final rule expressly excludes redeemers of stored value products, it should be noted that as with redeemers of traveler's checks and money orders, FinCEN did not intend that the Notice would apply to redeemers of stored value products to the extent the products are taken in exchange for goods or general services.

[11] A related issue, whether and the extent to which it was necessary to define the term ''agent'' as used both in the definition of money services business and the registration provisions, is discussed below.

that both matters were at issue in the rulemaking.

2. *Authority for Revisions to the Definition of Financial Institution.* Commenters argued that the Notice gave insufficient indication that a general exercise of Treasury's authority to define financial institution for purposes of the Bank Secrecy Act in proposing 31 CFR 103.11(uu) was a subject of the rulemaking. They also argued that no findings had been made, or suggested by the Notice, that the changes were required to fight money laundering, and that there was no basis in the record in any event for such findings.

Combining the new registration requirements with the rewriting of provisions of the financial institution definition in a single document may have led to a misunderstanding of the reasons or basis for the definitional changes. However, as indicated above, FinCEN believes that the Notice made it clear that the revision of existing Bank Secrecy Act definitions involved in the components of money services business was proposed under the authority of 31 U.S.C. 5312 and for all purposes of the Bank Secrecy Act. See 62 FR 27890, 27893, and 27897.

In addition, the changes made to the definitions, with the exception of the addition of ''stored value,'' discussed separately below, merely clarified the scope of the coverage already inherent in the existing language of the Bank Secrecy Act definitions. For example, the definition of money transmitter contained in 31 CFR 103.11(n)(5) (revised as of July 1, 1999), which section 103.11(uu)(5) of the final rule will replace, stated that the term financial institution included:

(5) A licensed transmitter of funds, or other person engaged in the business of transmitting funds.

In adopting the revised definition, FinCEN is clarifying the meaning of the term ''person engaged in the business of transmitting funds'' within the scope of the interpretive range of the existing language of the rule; in that context, adoption of the language provided by the Congress in the registration provisions is appropriate—if not mandated—in light of the Congress' view that it was itself simply explicating the scope of the existing regulatory language in requiring registration of certain types of financial institutions. Treasury, indeed, explicitly sought (and received) comments on whether ''it is necessary or appropriate specifically to exclude certain activities from the scope of registration of money services businesses (and perhaps as well from the definition of money transmitter for purposes of the Bank Secrecy Act regulations generally).'' 62 FR 27893.

Other commenters argued that the definitional changes could not be made in any event without specific findings showing that the changes were required to fight money laundering. The purposes of the Bank Secrecy Act are not so narrowly set. The statute is aimed at assuring the maintenance of records constituting a financial trail, and the reporting of certain transactions, in each case because the records and reports ''have a high degree of usefulness in criminal, tax, or regulatory investigations and proceedings.'' The Congressional findings underlying the money services business registration rules adopt the same objective.[12]

3. *Stored Value.* The final rule continues to treat ''stored value'' as a financial instrument whose issuers and sellers are financial institutions for purposes of the Bank Secrecy Act. However, the final rule revises the Notice to exempt stored value issuers and sellers from any money services business registration obligation. Under the circumstances, the only immediate consequence of the rule will be to make clear that currency transactions in excess of $10,000 by stored value issuers and sellers require reporting under the Bank Secrecy Act (rather than under section 6050I of the Internal Revenue Code) and that businesses that participate as financial intermediaries in transactions in which stored value is transferred electronically may, if otherwise covered, be subject to the rules requiring the maintenance of records for funds transfers of $3,000 or more.

This limited treatment of stored value—which frees the industry from registration requirements to which issuers and sellers of money orders and traveler's checks will be subject—eliminates the ''chilling effect'' on the technology industry to which commenters objected. The limited step that is being taken should create certainty as to the outlines of the Bank Secrecy Act's application to electronic funds equivalents, while allowing further development prior to any rulemaking that deals with more specific issues such as, for example, exemptions for ''closed system'' or small denomination stored value devices or the terms for possible tailored application of the registration or other Bank Secrecy Act requirements to aspects of these emerging payment products.

4. *Other Regulated Financial Businesses.* A number of commenters argued that the final rule should eliminate any possible application to other classes of financial institutions, of rules aimed at money services businesses; the argument was made by banks, securities businesses subject to the jurisdiction of the Securities and Exchange Commission, and futures commission merchants and other businesses regulated by the Commodity Futures Trading Commission. (Banks and brokers and dealers in securities are, of course, already subject to the Bank Secrecy Act.)

Congress characterized money services businesses as ''largely unregulated,'' and FinCEN believes that Congress generally did not find a need for the money services business regime under the Bank Secrecy Act to extend to other federally regulated financial services providers. Accordingly, under the final rule, depository institutions, or securities brokers and dealer, futures commission merchants, or other persons registered with and regulated or examined by, the Securities and Exchange Commission or the Commodity Futures Trading Commission are explicitly excluded from the money services business definition. (For further discussion, see ''Section-by-Section Analysis,'' below.)

5. *Application of Money Transmitter Definition to Other Businesses Whose Activities Include Transmission of Funds.* A number of commenters sought clarification of the definition of money transmitter and objected to any interpretation of the definition that would cause to be classed as money transmitters particular businesses that simply transmit funds as part of their other business activities. Commenters raising such issues included, for example, operators of hedge funds and public and private investment companies, representatives of financial professionals, persons involved in real estate closing activities, bank credit card systems, clearing corporations and associations, insurance companies, and bank holding companies and subsidiaries. All of these commenters sought assurance that their businesses could not fall within the definition of money transmitter in the Notice.

FinCEN agrees that the breadth of the definition of money transmitter proposed in the Notice requires limitation to avoid both unnecessary

[12] Information about the identity and ownership of money services businesses ''would have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings''; the registration requirement will assist federal and other law enforcement and supervisory authorities ''to effectively enforce the criminal tax, [sic] and regulatory laws and prevent such money services businesses from engaging in illegal activities.'' *See* section 408(a)(1)(C) and (a)(2) of the Money Laundering Suppression Act, 31 U.S.C. 5330 (Note).

burden and the extension of the Bank Secrecy Act to businesses whose money transmission activities either do not involve significant intermediation or are ancillary to the completion of other transactions. But the varieties of methods by which funds are transmitted and remitted by persons performing the function of financial intermediary for that purpose, as well as the pace of financial change, make any rigid definition both impossible and inadvisable. Ultimately, the question of whether a particular person is in the ''business'' of transmitting funds is a question of facts and circumstances. The final rule attempts to respond to the comments, as described in more detail below, by providing a limitation on the scope of the definition to make clear that the acceptance and transmission of funds as an integral part of the execution and settlement of a transaction other than the funds transmission or transfer, for example, a bona fide sale of securities or other property, will not cause a person to be a money transmitter for purposes of the Bank Secrecy Act.

Registration

Comments on the proposed registration requirements concentrated on four matters: (i) exclusions from those requirements, (ii) agent registration, (iii) registration procedures, and (iv) the content and terms of the agent list.

1. *Exclusions from the Registration Requirements.* The Notice excluded the following persons from the registration requirements: the United States Postal Service, depository institutions (as defined in 31 U.S.C. 5313(g)), the United States, a State or political subdivision of a State, or a person registered with, and regulated or examined by, the Securities and Exchange Commission or the Commodity Futures Trading Commission. In response to a specific request for comment in the preamble to the Notice, FinCEN received comments suggesting that other persons should be excluded from the registration requirements.

A number of commenters asked that issuers, sellers, or redeemers of stored value products be so excluded. Those commenters were concerned that the application of the registration requirements to issuers of stored value products would cause the issuers to defer the development of such products, or limit their design in commercially undesirable ways simply in order to avoid the registration requirements. They were also concerned that businesses that might otherwise wish to sell or redeem stored value products would not do so if they might be required to comply with the registration requirements, and that the manner in which the new products would be marketed was not sufficiently settled to permit the design of a reasonable registration system.

Some commenters, however, agreed with the inclusion of businesses engaged in issuing or selling stored value products within the scope of the registration requirements. In general, these commenters believed it was appropriate to subject non-bank providers of electronic payment systems to Bank Secrecy Act requirements in order to treat purveyors of competing financial services in the same manner.

The final rule excludes issuers, sellers, or redeemers of stored value products from the registration requirements. Although the final rule expressly excludes redeemers of stored value products, it should be noted that as with redeemers of traveler's checks and money orders, FinCEN did not intend that the Notice would apply to redeemers of stored value products to the extent the products are taken in exchange for goods or general services.

One commenter recommended that a money services business should not be required to register if it would qualify as an exempt person under the currency transaction reporting rules (31 CFR 103.22(d)). The final rule does not adopt this suggestion. The suggestion would exclude from registration, and consequently the agent list requirement, publicly traded money services businesses that could qualify as exempt persons under 31 CFR 103.22(d). Because these publicly traded money services businesses operate through extensive networks of agents, which may not be exempt from currency transaction reporting, the suggestion would seriously limit information about agents of money services businesses.

Several commenters were concerned that because some credit unions provide money transmitting services to their customers, and some banks might be acting as agents of a money services business, these depository institutions could be subject to the registration rules in § 103.41. The commenters asked for clarification that banks and credit unions are not required to be registered. Paragraph (a)(1) of § 103.41 of the Notice provided that the section did not apply to depository institutions. The final rule goes further and expressly excepts banks from the definition of money services business so that the sentence in proposed paragraph (a)(1) relating to depository institutions is no longer necessary. Under the final rule, all of section 103.41 is inapplicable to depository institutions such as banks and credit unions.

Several commenters asked that non-bank affiliates and subsidiaries of banks be excluded from the registration requirements.[13] One commenter argued that because these companies are subject to regulation by the Federal Reserve Board under the Bank Holding Company Act, they should be excluded. Another commenter recommended excluding a bank's non-bank affiliates and subsidiaries if they can demonstrate that they have some type of Bank Secrecy Act compliance program in place.

The Bank Secrecy Act rules, in general, do not adopt a consolidated group approach to determining whether a company is or is not subject to particular Bank Secrecy Act provisions. That is, the Bank Secrecy Act rules do not look to the status of a parent company in a bank holding company group for the purpose of determining what rules a company owned by the parent must apply. For example, the Bank Secrecy Act regulations do not generally treat non-bank subsidiaries as falling within the definition of bank for purposes of the Bank Secrecy Act regulations. Thus, the final rule continues to require non-bank affiliates and subsidiaries to register and maintain a list of their agents.

One commenter suggested that issuers of monetary instruments that are sold only through banks should be excluded from the registration requirements. In light of 31 CFR 103.29, which requires banks to keep records of certain transactions, the commenter believed there would be little informational value gained by requiring such issuers to register. The final rule does not adopt this suggestion. The registration requirements are designed to create a comprehensive picture of money services businesses, which will provide law enforcement agencies with information either currently not available or not available in an accessible format. Excluding an issuer whose products are sold exclusively through banks would eliminate information about a segment of this industry.

One commenter questioned the sufficiency of the rulemaking record

[13] The preamble to the Notice clarified that if a bank has a non-bank subsidiary or affiliate (e.g. a brother-sister subsidiary owned by the bank's holding company) that itself engages in a money services business (or a broker-dealer has a non-broker-dealer affiliate that engages in a money services business), the affiliate must register even though the bank (or broker-dealer) is not required to register.

with respect to the registration of check cashers. According to the commenter, nothing in the record, including the New York enforcement operations and geographic targeting orders discussed in the May 21, 1997 notices of proposed rulemaking, supports the proposition that the check cashing function has been or is being abused by the illicit drug industry and criminal money laundering. The comment fails to take into account the fact that Congress specifically included check cashers among those businesses that are required to register with the Department of the Treasury when it enacted 31 U.S.C. 5330.

A commenter also recommended that check cashers should not be required to register if they engage in other money services business activities, for example, money transmitting, as an agent for others. The commenter indicated that approximately 90 per cent of check cashers are also agents for money transmitters and would be included on the agent lists of the transmitters. The final rule does not adopt this recommendation. Section 5330 does not contemplate that businesses that conduct money services activities on their own behalf will be excluded from registration simply because they also act as agents for other money services businesses.

One commenter suggested that, in the future, ''wire transmitters'' should be exempt from state registration requirements if the transmitters comply with federal registration requirements. FinCEN is interested in sharing information, and otherwise coordinating with, state regulators to reduce administrative burden, but 31 U.S.C. 5330(a)(3) states that the federal registration requirements ''shall not be construed as superseding any requirement of State law relating to money [services] businesses operating in such State.''

2. *Agent Registration*. Commenters raised a number of issues about agent registration. Most of the comments sought a clarification of the meaning of the term ''agent,'' sought an increase in the dollar amount of the registration threshold, and questioned the need for agent registration.

The Notice did not contain a specific definition of the term ''agent'' for purposes of the money services business registration rules, including the requirement that a list of agents be maintained by each money services business as part of its registration requirement. Instead the Notice spoke simply of ''agents.'' Commenters recommended that the term ''agent'' be defined or that the term be replaced with a more neutral term such as selling outlet. A number of commenters argued that they did not believe that the terms of the contracts under which they authorize persons to sell their money services products should be read to treat those persons as agents.

FinCEN believes that the relationship between issuers or service providers and persons at the point of sale for particular products is governed by the law of agency, and that in most (if not all) cases the businesses at which these products or services are sold to the public are non-servant agents of the issuers or service providers [14]; thus, such businesses must be included on the agent lists required to be maintained with respect to ''agents'' by 31 U.S.C. 5330(c)(1)(A). As indicated elsewhere in this preamble, Congress's use of the term ''agent'' in 31 U.S.C. 5330 indicates a similar understanding. Thus, it is expected that a money services business will include on the agent list any businesses it authorizes to sell its money services or money products.

The bulk of the comments on the registration requirement concerned the registration of businesses whose status as money services businesses derived solely from the fact that they sold products or services issued or performed by others. The Notice had required independent registration of such agent businesses if the volume of money services products or services sold or performed through such businesses was $50,000 in any month.

Commenters questioned the level of the proposed registration threshold. Most of these commenters believed that the threshold was too low and recommended increasing the threshold to at least $100,000 a month or preferably $500,000 a month (or $500,000 a month, annualized). One commenter, however, recommended lowering the threshold to $25,000 a month or even zero. Another commenter suggested that a threshold based on an annual rather than a monthly amount would be less likely to cause agents to meet the threshold because of seasonal or holiday sales. As explained below, the final rule defers agent registration and thus eliminates the registration threshold.

Commenters argued that because a money services business includes information about its agents on its agent list, no agent should be required to register independently with Treasury. Instead, several of these commenters argued, a money services business should register its agents with Treasury, or as one commenter suggested, should simply submit its agent lists to the Treasury Department.

This registration requirement for agents reflected the terms of 31 U.S.C. 5330(c)(2). That paragraph states that:

> The Secretary of the Treasury shall prescribe regulations establishing, on the basis of such criteria as the Secretary determines to be appropriate, a threshold point for treating an agent of a money transmitting business as a money transmitting business for purposes of [section 5330].

The mandate to require registration of ''large agents'' was tempered both by the grant to the Secretary of discretion to fix the criteria defining registrable agents, and by a Congressional statement, in the Conference Report accompanying the bill, that:

> The intent of the Conferees is to eliminate the need for all agents of money transmitting businesses to register with the Secretary. Such massive registration of thousands of agents would only create another needless and costly administrative burden. This legislation is designed to reduce unnecessary paperwork, not create additional administrative burdens for law enforcement.

The statute's agent registration requirement permits the identification of significant points for the movement of funds into the financial system, especially points at which one or more money services business products or services are grouped together (as, for example, in so-called ''giro houses''). But selecting criteria that will further that objective in a cost efficient manner is difficult at best. Money services business volume levels are unlikely to be uniform throughout the nation, and even within particular areas variations can reflect the size of an agent's other business rather than any absolute variation from a theoretical norm.

Rather than attempting to set criteria on the basis of imperfect knowledge, the Department of the Treasury has decided to defer any implementation of the agent registration provisions. Instead, money services businesses are asked simply to note on the agent lists they are required to maintain the months in the preceding twelve month period in which every agent generated a volume of money services business products of more than $100,000.

Thus, under the final rule, a firm that is a money services business solely

[14] Of course, in cases in which the products or services are offered at branches of the issuers or providers, the individuals involved are likely servants of the issuers or providers. (It has long been clear that an ''agent'' of a financial institution is itself a financial institution. *See*, 31 CFR 103.11(n).) FinCEN is aware of few, if any, claims prior to the issuance of the Notice, that the language in section 103.11(n) does not fully comprehend businesses at which money services products were sold to the public.

because it offers products or services on behalf of another money services business need not now register with the Department of the Treasury. It should be noted that a firm that both offers products or services on behalf of another money services business and in addition offers its own money services products or services (that is, exchanges currency, cashes checks, or transmits funds for customers through channels or mechanisms of its own) is required independently to register under this rule (and, to the extent that it is an agent, must be carried on the agent list of another money services business as well).

3. *Registration Procedures.* The Notice set forth the general requirement to register a money services business and to report on the registration form the information required by section 5330(b) and any other information required by the form. In the preamble to the Notice, FinCEN noted its understanding that information required to be included on the registration form (and on the agent list) might include privileged and confidential trade secrets, commercial, and financial information. FinCEN also explained that while Congress affirmed in the legislative history that confidential proprietary or trade secret information provided by registrants may be disclosed only subject to applicable law, Congress anticipated that certain information derived from the registration material would be made available to the public, but in a manner that balances the need to protect confidential business information and the need for the public to have access to information about businesses on which the public relies. H.R. Conf. Rep. No. 652, 103 Cong., 2d Sess. 192–93 (1994). FinCEN specifically invited comment on how to make certain information provided by registrants available to the public without revealing confidential business information.

Several commenters expressed concerns about the need, for competitive reasons, to avoid disclosure to the public of confidential information on the registration form or agent list, particularly information about business volume and the dollar size of transactions. FinCEN will not release confidential information on the registration form or agent list except as required or permitted by law. Moreover, before FinCEN releases any other information that may be included on the registration form or agent list, FinCEN will work with money services businesses to establish specific procedures for release of such information to the public. FinCEN anticipates that such procedures would exclude the release of information (other than perhaps limited statistical information) about agents of money services businesses.

4. *Agent List.* Most of the commenters addressing the agent list requirement recommended that a money services business be permitted to provide less information than the Notice required. The commenters argued that information not now on agent lists prepared for state licensing purposes—especially information about the year in which an agent first became an agent and about the agent's transaction accounts—would be difficult to provide. The commenters indicated they would either have to compile the rest of the information from other records (which might not be in electronic format, or in a format, electronic or otherwise, that was easily retrievable) or request the necessary information from their agents. Some commenters suggested that money services businesses be permitted to provide all the requested information prospectively rather than trying to gather the information for existing agents. Alternatively, commenters suggested that the information required to be included on the agent list should be limited to the same information that a money services business must provide about its agents for state licensing purposes. Generally this information includes only the name of the agent, the agent's locations, and the services the agent provides.[15]

The final rule continues generally to require that the information requested by the Notice must be included on the agent list. In response to the comments, however, the final rule provides that with respect to any agent that is an agent of the money services business maintaining the list before the first day of the month beginning after February 16, 2000, the list need not include information about the year in which the agent first became an agent and the agent's branches or subagents. Such information must be made available, however, upon the request of FinCEN or any other appropriate law enforcement agency (including, without limitation, the examination function of the Internal Revenue Service in its capacity as delegee of Bank Secrecy Act examination authority). With respect to any agent that becomes an agent on or after the first day of the month beginning after February 16, 2000, the list must include all of the requested information, including the date the agent first becomes an agent and the agent's branches or subagents.

As indicated above, one additional element is added to the information required to be included in the agent list. That element is the notation of each month in the 12-month period immediately preceding January 1, 2002, and each January 1 thereafter, in which the gross transaction amount of the agent's sale of products or services offered by the money services business maintaining the list exceeded $100,000. Setting the requirement at $100,000 generally limits it to agents doing more than $1 million of money services business transactions annually, is an amount suggested in the comments as a threshold for agent registration, and gives knowledge about agent volume which can be evaluated to determine whether the implementation of agent registration should continue to be deferred. That requirement is prospective, does not take effect for at least 18 months, and involves a single recordkeeping threshold. Moreover, the requirement involves only information that must flow to each money services business in the performance of its normal business functions, and the addition of this element to the agent list derives from the elimination from the rule of the most heavily criticized element of the original proposal, the agent registration requirement.

## V. Section-by-Section Analysis

### *A. 103.11—Meaning of Terms*

1. 31 CFR 103.11(c)(7)—Definition of ''Bank''

One component of the definition of ''bank'' in 31 CFR 103.11(c) speaks of ''[a]ny other organization chartered under the banking laws of any State and subject to the supervision of the bank supervisory authorities of a State.'' In many states, various money services businesses are licensed or examined by state banking departments. In order to avoid any confusion about the interaction of the ''bank'' and ''money services business'' definitions, the phrase ''(except a money services business)'' has been added to 31 CFR 103.11(c)(7).

2. 31 CFR 103.11(n)(3)—Definition of Financial Institution to Include ''Money Services Business''

The final rule retains the addition of a new category called ''money services

[15] More than one commenter argued that requiring the information requested on the agent list exceeds FinCEN's authority under 31 U.S.C. 5330. According to the commenters, FinCEN may ask for the agent's name and address only. Although section 5330 specifically requires the agent's name and address, the section does not constrain FinCEN's authority in the manner suggested by the commenters. Section 5330 authorizes FinCEN to request, in addition to the name and address, ''such other information about such agents as the Secretary may require.'' 31 U.S.C. 5330(c)(1)(A).

business'' to the definition of financial institution. The new category includes the financial institutions previously defined at 31 CFR 103.11(n)(3), (4), (5), and (10), and will permit these institutions to be referred to, when necessary, by one convenient term. FinCEN believes this restructuring of the definition of financial institution will clarify, and facilitate flexibility in the administration of, the Bank Secrecy Act regulations. (As a result of this restructuring, 31 CFR 103.11(n)(4), (5), and (10) will be deleted, and 31 CFR 103.11(n)(6), (7), (8) and (9) will be redesignated as 31 CFR 103.11(n)(4), (5), (6) and (7)).

3. 31 CFR 103.11(uu)—Definition of Money Services Business

This section defines money services business. The term includes each agent, agency, branch, or office within the United States of any person doing business, whether or not on a regular basis or as an organized business concern, in one or more of the capacities listed in (1)–(6) below. (It should be noted that only one registration form per money services business is required.)

*Regulated Businesses.* The definition of ''money services business'' excludes persons registered with, and regulated or examined by, the Securities and Exchange Commission or the Commodity Futures Trading Commission. This provision excludes from the new regulatory structure for money services businesses the financial services businesses regulated by those agencies. The exclusion from the definition does not apply to issuers whose securities offerings are registered with the SEC under the Securities Act of 1933 or companies whose securities are registered with the Commission under the Securities Exchange Act of 1934. The companies themselves are not registered with the SEC, and these entities are not intended to be excluded from the rule's definition of money services businesses because the Commission neither regulates nor examines the business activities of those companies. Instead, it establishes, by regulation, disclosure, accounting, and other related standards for them. Accordingly, businesses that engage in the activities described in 31 CFR 103.11(uu) are not excluded from the definition merely because their shares are publicly held and registered with the SEC.

Several commenters asked that any exemption for depository institutions or other regulated businesses be extended to holding companies or subsidiaries of those businesses—for example to bank holding companies or bank operating subsidiaries. As explained in greater detail at ''Exclusion from the Registration Requirement'' above, the Bank Secrecy Act rules at present operate on an individual entity rather than a consolidated group basis; so long as that is so, each corporation in a controlled group must be analyzed separately to determine its characterization under the Bank Secrecy Act and its rules.

*Thresholds.* The Notice contained a threshold of $500 for any person any day at or below which a business otherwise included within the definition of a currency dealer or exchanger, a check casher, or an issuer, seller, or redeemer of money orders, traveler's checks or stored value would not be a money services business. In the final rule that threshold has been raised in each case to $1,000 for any person any day in one or more transactions.

The addition of explicit floors in the definitions relating to currency exchange and check cashing businesses is an attempt to eliminate from Bank Secrecy Act treatment those businesses, such as grocery stores and hotels, that cash checks or exchange currency as an accommodation to customers who are otherwise purchasing goods, services, or lodging from the businesses involved. (Of course, currency exchange and check cashing businesses that exceed the threshold become subject to the general Bank Secrecy Act reporting and recordkeeping requirements if the amounts involved are sufficiently high to implicate particular reporting or recordkeeping thresholds, for example, the $10,000 threshold for currency transaction reporting.)

In determining whether the $1,000 definitional floor is met in the case of a particular definition, different money services provided by the same business are not aggregated. Thus, for example, a hotel that in fact limits its check cashing services to $650 for a customer on any day and in fact limits its currency exchange services to $600 for a customer on any day does not meet the $1,000 definitional floor for check cashers or for currency exchangers.

(1) *Currency dealer or exchanger.* The definition of currency dealer or exchanger is unchanged, other than for the increase of the $500 threshold to $1,000. The Notice invited comment on whether the old definition of currency dealer or exchanger appearing at 31 CFR 103.11(i) was still necessary in light of the carve out of banks from the recordkeeping requirements of 31 CFR 103.37. In response to comments, that definition is removed from 31 CFR 103.11(i), but the language of the recordkeeping rules of 31 CFR 103.37 is being amended specifically to exclude banks that offer services in dealing or exchanging currency to their customers as an adjunct to their regular services.

(2) *Check casher.* The definition of check casher is also unchanged, other than for the increase of the $500 threshold to $1,000. Several commenters suggested that the threshold should be lowered rather than raised; however, the registration of businesses that only cash checks, especially those that do so as an accommodation for customers and then in an amount of $1,000 or less per day, is not necessary at this time to accomplish the Congressional intent behind section 5330.

(3) *Issuer of traveler's checks, money orders, or stored value.* The definition of issuer of traveler's checks or money orders or stored value is also unchanged other than for the increase of the $500 threshold to $1,000.[16]

(4) *Seller or redeemer of traveler's checks, money orders, or stored value.* The definition of seller or redeemer of traveler's checks or money orders or stored value is also unchanged other than for the increase of the $500 threshold to $1,000.

The $1,000 floor in 31 CFR 103.11(uu)(4) replaces the definitional floor (of $150,000 sold in instruments per 30-day period) for selling agents in 31 CFR 103.11(n)(4). The $150,000 limitation produces a great deal of unnecessary complexity (dealing with the movement of particular businesses into or out of the scope of the Bank Secrecy Act) and does not, in FinCEN's view, any longer provide a meaningful threshold for distinguishing between businesses that ought to, or that need not, incorporate appropriate Bank Secrecy Act rules into their operations (or the operations they undertake on behalf of their principals). Moreover, the operation of the $150,000 limitation would exclude from Bank Secrecy Act treatment particular transactions (for example purchases of money orders of more than $3,000 under the customer verification and recordkeeping rules of 31 CFR 103.29, or transactions in excess of $10,000 under the currency transaction reporting rules of 31 CFR 103.22) that ought not be so excluded, regardless of the overall volume of sales of a particular business.

The definition in 31 CFR 103.11(uu)(4) extends to ''redeemers'' of money orders and traveler's checks only insofar as the instruments involved are

[16] The definition eliminates the phrase ''similar instruments'' in response to comments that said the phrase was too vague. The phrase has also been eliminated from the definition of seller or redeemers.

redeemed for monetary value—that is, for currency or monetary or other negotiable or other instruments. The taking of the instruments in exchange for goods or general services is not a redemption for purposes of these rules. (See, however, 26 CFR 1.6050I–1(c)(1)(ii)(B) for situations in which certain traveler's checks or money orders (among other instruments) may be treated as currency, if taken in exchange for certain goods or services, for purposes of the requirement that businesses not subject to the rules in 31 CFR part 103 report transactions in currency in excess of $10,000.)

(5) *Money transmitter.* The definition of money transmitter continues to reflect the determination that the definitions of that term for purposes of the general Bank Secrecy Act rules and the registration rules should be the same. As noted above, a limitation on the definition has been added to clarify insofar as possible the reach of the definition, when it is combined with the general limitation on the scope of money services business.[17] Particular classes or subclasses of money transmitters can be excluded from the operation of the definition for particular substantive rules (as for example the proposed rule relating to the reporting of suspicious activities by money transmitters excluded from its coverage sellers or transmitters of stored value or other advanced electronic payment system products).

(6) *United States Postal Service.* The definition of United States Postal Service has not been changed. Thus, unlike the prior regulation, which treated the United States Postal Service as a financial institution only with respect to the sale of money orders, the final rule treats the Postal Service as a financial institution with respect to its provision of any money services products. The Postal Service, in its comments, requested clarification of the status of an ''international postal money order'' under the rules. FinCEN believes that that topic is not appropriate for treatment in a general rule.[18]

4. 31 CFR 103.11(vv)—Definition of Stored Value

The definition of stored value is unchanged. Given the determination to exclude stored value from the registration requirements, FinCEN does not believe that it is necessary now to exclude particular ''closed systems'' from the limited application of the Bank Secrecy Act to such instruments, or to issue a threshold exclusion based upon the maximum value capable of storage on particular media. It agrees that consideration of both such steps would be appropriate if the treatment of stored value under the Bank Secrecy Act were to be expanded at a future date.

*B. 103.41—Registration of Money Services Businesses*

1. 31 CFR 103.41(a)(1)—Registration Requirement; In General

The final rule continues to provide that a money services business (whether or not licensed as a money services business by any State) must register with the Department of the Treasury and, as part of that registration, must maintain a list of its agents. The final rule expressly excludes from the registration and list requirements the following persons: the United States Postal Service, an agency of the United States, of any State, or of any political subdivision of a State, and any person to the extent that the person is an issuer, seller, or redeemer of stored value. Unlike the Notice, the final rule does not expressly exclude from the registration and list requirements a depository institution (as defined in 31 U.S.C. 5313(g)) or a person registered with, and regulated or examined by, the Securities and Exchange Commission (SEC) or the Commodity Futures Trading Commission (CFTC). Such an express exclusion in paragraph (a)(1) of section 103.41 is unnecessary because the final rule revises the definition of money services businesses to exclude those persons.

2. 103.41(a)(2)—Agent Registration

As noted above, the final rule defers indefinitely implementation of a requirement that a money services business that offers products or services as an agent on behalf of another money services business register with the Department of the Treasury if the former firm exceeds a ''threshold point'' set by the Secretary. If, however, a firm in addition to offering products or services on behalf of another money services business, offers its own money services products or services (that is, exchanges currency, cashes checks, or transmits funds for customers through channels or mechanisms of its own), the firm must register independently.

3. 31 CFR 103.41(a)(3)—Agent Status.

The final rule provides that the determination of whether a person is an agent depends on all the facts and circumstances.

4. 31 CFR 103.41(b)(1)—Registration Procedures; In General

The Notice set forth the general requirement to register a money services business and to report on the registration form the information required by 31 U.S.C. 5330 and any other information required by the form. A draft of the registration form was discussed at a public meeting in September 1997. Although this section of the preamble discusses comments on the draft form, money services businesses should bear in mind that FinCEN expects to continue to work with the money services business industry to develop the registration form. As part of that process, FinCEN will publish in the **Federal Register** a separate notice regarding the form.

A commenter pointed out that for certain items, for example, the name and address of directors, the instructions to the draft form discussed at the September 1997 public meeting request a more limited set of information than could be required under section 5330(b). The commenter asked that the information requested by the final rule be limited in the same manner as in the instructions to the form. Accordingly, the final rule continues to set forth the general requirement to register and report the information required by 31 U.S.C. 5330, but the words ''to the extent required by the form'' have been added after the words ''the information required by 31 U.S.C. 5330.'' A similar change has been made regarding the identity of the person who is responsible for filing the registration form.

Section 5330(b) provides that the registration shall include an ''estimate of the volume of business in the coming year (which shall be reported annually to the Secretary).'' The instructions to the draft form thus require an estimate of business volume. Several comments objected to the business volume requirement, and one commenter asked for clarification of how an annual estimate would be made when the form is filed only every other year.

Because section 5330 specifically requires, as part of the registration information, that a money services

[17] The term ''money transmitter'' in 31 CFR 103.11(uu)(5) is not necessarily synonymous with the term ''transmittor's financial institution'' in existing 31 CFR 103.11(mm). The term ''transmittor's financial institution'' in existing 31 CFR 103.11(mm) was designed with a narrower purpose in mind—''to preserve as much uniformity as possible'' between the special rules for recordkeeping for wire transfers and the language of Article 4A of the Uniform Commercial Code. *See* 60 FR 220 (January 3, 1995).

[18] This comment, like a number of other comments, concerns the application of these rules in specific situations, for example, armored car companies. FinCEN does not believe it is appropriate to resolve those fact specific situations in the context of a general rulemaking, but is willing to consider them in the context of specific, fact based inquiries.

business make an estimate of its business volume, FinCEN anticipates that the form will continue to require the estimate. Although a money services business is required to make an annual estimate of its business volume, FinCEN anticipates that the registration form will not require the estimate to be reported on the form itself but will permit the business to retain the estimate in its records and make it available upon request. Thus, the annual estimate requirement may be satisfied even though the registration form is required to be filed only every other year.

One commenter urged that money services businesses be permitted to file the registration form electronically. FinCEN will consider this recommendation as it works to finalize the form and the filing procedures for the form.

The Notice required a money services business to retain, at a central location in the United States, a copy of any registration form the business files and to report that location on the form. One commenter recommended that as an alternative to the requirement to keep information in a centralized file, a money services business be required only to have access to information within a reasonable period of time. One commenter requested that money services businesses be permitted to keep records concerning registration outside the United States, provided that the information was readily available at the request of FinCEN or any appropriate law enforcement agency.

The final rule continues to require records concerning registration to be maintained in the United States. The final rule does not require a money services business to keep records in a central location so long as information is readily available at the request of FinCEN or any appropriate law enforcement agency; however, the agent list must be maintained in a central location in the United States.

5. 31 CFR 103.41(b)(2)—Registration Period

Paragraph (b)(2) of the final rule continues to provide that after an initial registration period of two calendar years, the registration must be renewed every two years. One commenter asked that the registration and renewal periods be increased to five years. Given the frequency of change in this segment of the financial industry and law enforcement's need for relatively current information about these businesses, FinCEN does not believe the registration and renewal periods should be increased from two years to five years.

6. 31 CFR 103.41(b)(3)—Due Date

Paragraph (b)(3) of the final rule sets forth the due date for filing the registration form for the initial registration period and each renewal period. The Notice would have required the registration form for the initial registration period to be filed by the end of the 180-day period beginning on the later of (i) the date on which the final rules are published in the **Federal Register**, and (ii) the date the business is established. Commenters asked for more time to file the initial registration form. The final rule does not require the initial registration form to be filed until December 31, 2001.

7. 31 CFR 103.41(b)(4)—Events Requiring Reregistration

Paragraph (b)(4) of the final rule continues to provide that a money services business must be re-registered before the end of a renewal period upon the occurrence of certain events. That paragraph requires re-registration if the money services business experiences a change in ownership or control that requires re-registration under a State law registration program for money services businesses, more than 10 per cent of its voting power or equity interests is transferred (except in the case of certain publicly-traded businesses, as explained below), or the number of its agents increases by more than 50 per cent during any registration period.

One commenter argued that publicly-traded companies should not be required to re-register when required by state law or when there is a more than 50 per cent increase in the their agents. The final rule continues to require publicly-traded companies to register in these situations.

Several commenters suggested that re-registration was unnecessary in the case of a 10 per cent change in ownership of publicly-traded companies. One of the commenters suggested that because a 10 per cent change in ownership of a publicly-traded company would require a filing with the Securities and Exchange Commission, law enforcement agencies could get information about the ownership change from the filing. The final rule provides that a money services business is not required to re-register before the end of its regular registration or renewal period on account of a 10 per cent ownership change if that change must be reported to the Securities and Exchange Commission.

One commenter suggested that for smaller businesses, a 50 per cent change in ownership (rather than 10 per cent) would be a more appropriate standard for requiring re-registration. The final rule does not adopt this suggestion because it would permit significant changes in the ownership of smaller money services businesses, which are generally subject to little federal oversight, to take place between renewal periods without Treasury's knowledge.

One commenter recommended that ''wire transmitters'' be exempted from the re-registration requirements if the transmitters are required to re-register by state law. The final rule does not adopt this recommendation. FinCEN believes that it is important to establish uniform, national registration requirements for money services businesses.

8. 31 CFR 103.41(c)—Persons Required to File Registration Form

The Notice provided that, as required by 31 U.S.C. 5330(a), any person who owns or controls a money services business shares the responsibility for seeing that the business is registered. (Only one registration form, however, is required to be filed for each registration period.) Commenters pointed out that the instructions to the draft form take a more limited approach, requiring only certain owners or controlling persons to register. Paragraph (c) of the final rule addresses this difference by adding the language ''to the extent provided by the form'' after the language ''any person who owns or controls.''

9. 31 CFR 103.41(d)(1)—List of Agents; In General

Paragraph (d)(1) of the final rule provides that a money services business must prepare and maintain a list of its agents, and must revise the agent list to contain current information. The Notice required the agent list to be revised each quarter. Several commenters objected to the requirement to make quarterly updates of the agent list, arguing that annual updates are more reasonable. One commenter, however, stated that quarterly updates of internal records of seller information could be required without any additional burden. The final rule requires annual updates of the agent list.

The Notice provided that the list of agents is not filed with the registration form but is maintained at the location in the United States reported on the registration form. Several commenters asked that the final rule clarify that an agent list need not be kept in the United States so long as the list is readily available. As indicated above, the agent list must be maintained in the United States.

Upon request, a money services business must make its list of agents available to FinCEN and any other appropriate law enforcement agency (including, without limitation, the examination function of the Internal Revenue Service in its capacity as delegee of Bank Secrecy Act examination authority). One commenter stated that the requirement to make the agent list available to law enforcement is vague and potentially burdensome. This commenter suggested that it would be preferable to route all law enforcement requests for the lists through FinCEN, which would then evaluate both the appropriateness of the requests and the bona fides of the law enforcement agency.

The maintenance and ready availability of ''agent lists and other information'' is a crucial part of the scheme of 31 U.S.C. 5330. But it is equally true that a system in which money services businesses are overrun by duplicative or otherwise burdensome requests is in no one's interest. In response to the comment, and in light of the fact that 31 U.S.C. 5330(c)(1)(B) authorizes the Secretary of the Treasury to issue rules defining the terms of law enforcement access to agent list information, the final rule states that requests for agent list information shall be coordinated through FinCEN in the manner and to the extent determined by FinCEN. Such coordination will (i) avoid the imposition of unnecessary burden on money services businesses, (ii) ensure the confidentiality of sensitive business information, and (iii) facilitate the orderly administration of the agent list requirement.

The same commenter also suggested that agent lists could voluntarily be filed by money services businesses with the Department of the Treasury, under a system in which law enforcement agencies obtain access through Treasury, rather than by seeking information from the money services businesses that chose to file such lists. FinCEN believes that such a system has merit, and it intends to work with the affected businesses to develop such a system, during the period provided for implementation of this rule prior to January 1, 2002.

The Notice provided that the original list of agents and any revised list must be retained for five years, as specified in 31 CFR 103.38(d). Commenters objected to the requirement to retain lists of agents for five years. As indicated above, the requirement to update agent lists has been relaxed from quarterly updates to annual updates. Further, the Bank Secrecy Act rules generally require Bank Secrecy Act information to be retained for five years. Thus, the final rule continues to require agent lists to be maintained for five years.

One commenter recommended that FinCEN allow past lists to be substituted, in the discretion of the money services business, with any ''readily accessible'' records of the information no longer on the current list. The final rule does not adopt this recommendation. The revisions the final rule makes regarding the information on the agent list and the decrease from quarterly to annual revisions to the agent list will reduce the amount of information that has to be retained.

10. 31 CFR 103.41(d)(2)—Information Included on the List of Agents

The final rule provides that the following information must be included on the agent list—

(i) The name of the agent, including any trade names or doing-business-as names,

(ii) The address of the agent, including street address, city, state, and ZIP code,

(iii) The telephone number of the agent,

(iv) The type of service or services (sale or redemption of money orders, traveler's checks, check sales, check cashing, currency exchange, and money transmitting) the agent provides,

(v) A listing of the months in the 12 months immediately preceding the date of the most recent agent list in which the gross transaction amount of the agent with respect to financial products or services issued by the money services business maintaining the agent list exceeded $100,000. For this purpose, the money services gross transaction amount is the agent's gross amount (excluding fees and commission) received from transaction of one or more businesses described in § 103.11(uu),

(vi) The name and address of any depository institution at which the agent maintains a transaction account (as defined in 12 U.S.C. 461(b)(1)(C)) for all or part of the funds received in or for its money services business whether in the name of the agent or of the money services business for which the agent acts or whose products it sells,

(vii) The year in which the agent first became an agent of the money services business, and

(viii) The number of branches or subagents the agent has.

As noted above, the final rule requires a money services business to include information about the months in the preceding 12-month period in which its agent's gross transaction amount exceeded $100,000. Again, the $100,000 need reflect only business done for the particular ''prinicipal''. Thus, money services business are not expected to obtain information about the gross transaction amount for business their agents may conduct for other principals or to disaggregate information about the gross transaction amount of any agent that conducts business for more than one principal and provides a principal with an aggregate figure reflecting business conducted for both principals. To allow time to intregrate information, the final rule provides that information about agent volume must be current within 45 days of the due date of the list.

For any agent that is an agent of the money services business maintaining the list before the first day of the month beginning after February 16, 2000, the final rule does not require the following information to be included on the list: the year in which the agent first became an agent and the agent's branches or subagents. Such information must be made available upon the request of FinCEN and any other appropriate law enforcement agency (including, without limitation, the examination function of the Internal Revenue Service in its capacity as delegee of Bank Secrecy Act examination authority).

Several commenters asked that the final rule clarify that a money services business is not required to include on its agent list any agent that is a depository institution. The final rule expressly excepts banks from the definition of money services business. Thus, a money services business is not required to include on its agent list any agent that is a depository institution.

Another commenter suggested that only agents in the United States should be included on the agent list. FinCEN agrees that only agents doing business in the United States should be included on the agent list.

Commenters indicated that because of the way they currently maintain information about their agents and the need to devote computer programming resources to the Year 2000 problem in general, they would need more time than allowed by the Notice to prepare the initial list of their agents. The final rule does not require the preparation of the initial agent list to be completed until January 1, 2002. This change should provide sufficient time for money services businesses to prepare their agent lists.

## VI. Other Pending Notices of Proposed Rulemaking Concerning Money Services Businesses

The second rule proposed on May 21, 1997 (the ''Proposed SAR Rule''), would require money transmitters, and issuers,

sellers, and redeemers of money orders and traveler's checks to report suspicious transactions to the Department of the Treasury. See 62 FR 27900–27909. Suspicious activity reporting by all classes of financial institutions covered by the Bank Secrecy Act is an essential part of the government's counter-money laundering efforts generally and its efforts to strengthen counter-money laundering controls at money services businesses in particular. The Department of the Treasury is committed to producing the most cost-effective reporting regime, for both law enforcement and the industries involved. To permit effective implementation, suspicious activity reporting by the relevant classes of money services businesses will not begin until the initial registration process is complete.

The Department also believes that it is critical to provide written guidance about what must be reported, at the time the final rule is issued. It intends to work with the money transmission, money order, and traveler's check industries to shape that guidance, independent of the rulemaking itself. That work should be assisted by the information gathered during initial stages of implementation of the registration rule.

The third rule proposed on May 21, 1997 (the ''Proposed Special CTR Rule''), would add a special currency transaction reporting requirement—and related customer verification requirements—for money transmitters involved in the transmission or other transfer of funds to persons outside the United States. See 62 FR 27909–27917. Action on the Proposed Special CTR Rule is being deferred, but it is not being withdrawn at this time.

## VII. Executive Order 12866

The Department of the Treasury has determined that this final rule is not a significant regulatory action under Executive Order 12866.

## VIII. Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), Public Law 104–4 (March 22, 1995), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that it is not required to prepare a written statement under section 202 and has concluded that on balance this final rule provides the most cost-effective and least burdensome alternative to achieve the objectives of the rule.

## IX. Regulatory Flexibility Act

FinCEN certifies that this rule will not have a significant economic impact on a substantial number of small entities. FinCEN anticipates that the provisions of the rule generally excluding agents of money services businesses from registration will limit the impact of the rule on small businesses. Further, most of the recordkeeping and reporting requirements that would be imposed by the rule concern information already found in routine business records. For example, as part of their business records, money services businesses (to the extent such businesses are small entities) will generally have information needed for the required agent list, such as the name and addresses of their agents and agent transaction account information, because such information is necessary to establish and maintain the relationship between the businesses and their agents. In addition to recordkeeping and reporting requirements, other requirements of the rule may also be satisfied with information that is currently available. For example, many businesses currently have policies in place regarding the maximum dollar amount of a money service transaction they will perform for a customer, such as the maximum amount for which a business will cash a check, which may help (assuming the policy is observed) them determine whether they have exceeded the $1,000 floor in several of the definitions in the rule.

## X. Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(d)) under control number 1506–0013. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The collection of information in this final rule is in 31 CFR 103.41(d). This information is required to be provided pursuant to 31 U.S.C. 5330. This information will be used to locate agents of money services businesses to ensure that they are complying with the provisions of the Bank Secrecy Act. The information will also be used by law enforcement agencies in the enforcement of criminal, tax, and regulatory laws and to prevent money services businesses from engaging in illegal activities. The collection of information is mandatory. The likely recordkeepers are businesses.

The estimated average burden associated with the collection of information in this final rule is 130 hours per recordkeeper.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Financial Crimes Enforcement Network, Department of the Treasury, 2070 Chain Bridge Road, Suite 200, Vienna, VA 22187, and to OMB, Attention: Desk Officer for the Department of Treasury, FinCEN, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

## List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Banks and banking, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Law enforcement, Penalties, Reporting and recordkeeping requirements, Securities, Taxes.

## Amendment

For the reasons set forth above in the preamble, 31 CFR part 103 is amended as follows:

## PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 continues to read as follows:

**Authority:** 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

2. Section 103.11 is amended by—

a. Revising paragraph (c)(7),

b. Removing and reserving paragraph (i),

c. Revising paragraph (n)(3),

d. Removing paragraphs (n)(4), (n)(5), and (n)(10),

e. Redesignating paragraphs (n)(6), (n)(7), (n)(8), and (n)(9) as paragraphs (n)(4), (n)(5), (n)(6), and (n)(7) respectively,

f. In newly redesignated paragraphs (n)(5) and (n)(6), removing the period at the end of the paragraph and adding a semicolon in its place,

g. In newly redesignated paragraph (n)(7), removing ''.'' and adding a period in its place, and

h. Adding new paragraphs (uu) and (vv).

The revised and added paragraphs read as follows:

**§ 103.11 Meaning of terms.**

* * * * *

(c) Bank. * * *

(7) Any other organization (except a money services business) chartered under the banking laws of any state and subject to the supervision of the bank supervisory authorities of a State;

* * * * *

(n) Financial institution. * * *

(3) A money services business as defined in paragraph (uu) of this section;

* * * * *

(uu) *Money services business.* Each agent, agency, branch, or office within the United States of any person doing business, whether or not on a regular basis or as an organized business concern, in one or more of the capacities listed in paragraphs (uu)(1) through (uu)(6) of this section. Notwithstanding the preceding sentence, the term ''money services business'' shall not include a bank, nor shall it include a person registered with, and regulated or examined by, the Securities and Exchange Commission or the Commodity Futures Trading Commission.

(1) *Currency dealer or exchanger.* A currency dealer or exchanger (other than a person who does not exchange currency in an amount greater than $1,000 in currency or monetary or other instruments for any person on any day in one or more transactions).

(2) *Check casher.* A person engaged in the business of a check casher (other than a person who does not cash checks in an amount greater than $1,000 in currency or monetary or other instruments for any person on any day in one or more transactions).

(3) *Issuer of traveler's checks, money orders, or stored value.* An issuer of traveler's checks, money orders, or, stored value (other than a person who does not issue such checks or money orders or stored value in an amount greater than $1,000 in currency or monetary or other instruments to any person on any day in one or more transactions).

(4) *Seller or redeemer of traveler's checks, money orders, or stored value.* A seller or redeemer of traveler's checks, money orders, or stored value (other than a person who does not sell such checks or money orders or stored value in an amount greater than $1,000 in currency or monetary or other instruments to or redeem such instruments for an amount greater than $1,000 in currency or monetary or other instruments from, any person on any day in one or more transactions).

(5) *Money transmitter*—(i) *In general.* Money transmitter:

(A) Any person, whether or not licensed or required to be licensed, who engages as a business in accepting currency, or funds denominated in currency, and transmits the currency or funds, or the value of the currency or funds, by any means through a financial agency or institution, a Federal Reserve Bank or other facility of one or more Federal Reserve Banks, the Board of Governors of the Federal Reserve System, or both, or an electronic funds transfer network; or

(B) Any other person engaged as a business in the transfer of funds.

(ii) *Facts and circumstances; Limitation.* Whether a person ''engages as a business'' in the activities described in paragraph (uu)(5)(i) of this section is a matter of facts and circumstances. Generally, the acceptance and transmission of funds as an integral part of the execution and settlement of a transaction other than the funds transmission itself (for example, in connection with a bona fide sale of securities or other property), will not cause a person to be a money transmitter within the meaning of paragraph (uu)(5)(i) of this section.

(6) *United States Postal Service.* The United States Postal Service, except with respect to the sale of postage or philatelic products.

(vv) *Stored value.* Funds or monetary value represented in digital electronics format (whether or not specially encrypted) and stored or capable of storage on electronic media in such a way as to be retrievable and transferable electronically.

3. Part 103 is further amended by redesignating the following subparts and sections as follows:

| Old subparts and sections subpart D | New subparts and sections subpart E |
|---|---|
| 103.41 | 103.51 |
| 103.42 | 103.52 |
| 103.43 | 103.53 |
| 103.44 | 103.54 |
| 103.45 | 103.55 |
| 103.46 | 103.56 |
| 103.47 | 103.57 |
| 103.48 | 103.58 |
| 103.49 | 103.59 |
| 103.50 | 103.60 |
| 103.51 | 103.61 |
| 103.52 | 103.62 |
| 103.53 | 103.63 |
| 103.54 | 103.64 |
| Subpart E | Subpart F |
| 103.61 | 103.71 |
| 103.62 | 103.72 |
| 103.63 | 103.73 |
| 103.64 | 103.74 |
| 103.65 | 103.75 |
| 103.66 | 103.76 |
| 103.67 | 103.77 |
| Subpart F | Subpart G |
| 103.70 | 103.80 |
| 103.71 | 103.81 |
| 103.72 | 103.82 |
| 103.73 | 103.83 |
| 103.74 | 103.84 |
| 103.75 | 103.85 |
| 103.76 | 103.86 |
| 103.77 | 103.87 |

4. Add a new subpart D to part 103 to read as follows:

**Subpart D—Special Rules for Money Services Businesses**

Sec.
103.41 Registration of money services businesses.

## Subpart D—Special Rules for Money Services Businesses

**§ 103.41 Registration of money services businesses.**

(a) *Registration requirement*—(1) *In general.* Except as provided in paragraph (a)(2) of this section, relating to agents, each money services business (whether or not licensed as a money services business by any State) must register with the Department of the Treasury and, as part of that registration, maintain a list of its agents as required by 31 U.S.C. 5330 and this section. This section does not apply to the United States Postal Service, to agencies of the United States, of any State, or of any political subdivision of a State, or to a person to the extent that the person is an issuer, seller, or redeemer of stored value.

(2) *Agents.* A person that is a money services business solely because that person serves as an agent of another money services business, see § 103.11(uu), is not required to register under this section, but a money services business that engages in activities described in § 103.11(uu) both on its own behalf and as an agent for others must register under this section. For example, a supermarket corporation that acts as an agent for an issuer of money orders and performs no other services of a nature and value that would cause the corporation to be a money services business, is not required to register; the answer would be the same if the supermarket corporation served as an agent both of a money order issuer and of a money transmitter. However, registration would be required if the

supermarket corporation, in addition to acting as an agent of an issuer of money orders, cashed checks or exchanged currencies (other than as an agent for another business) in an amount greater than $1,000 in currency or monetary or other instruments for any person on any day, in one or more transactions.

(3) *Agency status.* The determination whether a person is an agent depends on all the facts and circumstances.

(b) *Registration procedures*—(1) *In general.* (i) A money services business must be registered by filing such form as FinCEN may specify with the Detroit Computing Center of the Internal Revenue Service (or such other location as the form may specify). The information required by 31 U.S.C. 5330(b) and any other information required by the form must be reported in the manner and to the extent required by the form.

(ii) A branch office of a money services business is not required to file its own registration form. A money services business must, however, report information about its branch locations or offices as provided by the instructions to the registration form.

(iii) A money services business must retain a copy of any registration form filed under this section and any registration number that may be assigned to the business at a location in the United States and for the period specified in § 103.38(d).

(2) *Registration period.* A money services business must be registered for the initial registration period and each renewal period. The initial registration period is the two-calendar-year period beginning with the calendar year in which the money services business is first required to be registered. However, the initial registration period for a money services business required to register by December 31, 2001 (see paragraph (b)(3) of this section) is the two-calendar year period beginning 2002. Each two-calendar-year period following the initial registration period is a renewal period.

(3) *Due date.* The registration form for the initial registration period must be filed on or before the later of December 31, 2001, and the end of the 180-day period beginning on the day following the date the business is established. The registration form for a renewal period must be filed on or before the last day of the calendar year preceding the renewal period.

(4) *Events requiring re-registration.* If a money services business registered as such under the laws of any State experiences a change in ownership or control that requires the business to be re-registered under State law, the money services business must also be re-registered under this section. In addition, if there is a transfer of more than 10 percent of the voting power or equity interests of a money services business (other than a money services business that must report such transfer to the Securities and Exchange Commission), the money services business must be re-registered under this section. Finally, if a money services business experiences a more than 50-per cent increase in the number of its agents during any registration period, the money services business must be re-registered under this section. The registration form must be filed not later than 180 days after such change in ownership, transfer of voting power or equity interests, or increase in agents. The calendar year in which the change, transfer, or increase occurs is treated as the first year of a new two-year registration period.

(c) *Persons required to file the registration form.* Under 31 U.S.C. 5330(a), any person who owns or controls a money services business is responsible for registering the business; however, only one registration form is required to be filed for each registration period. A person is treated as owning or controlling a money services business for purposes of filing the registration form only to the extent provided by the form. If more than one person owns or controls a money services business, the owning or controlling persons may enter into an agreement designating one of them to register the business. The failure of the designated person to register the money services business does not, however, relieve any of the other persons who own or control the business of liability for the failure to register the business. See paragraph (e) of this section, relating to consequences of the failure to comply with 31 U.S.C. 5330 or this section.

(d) *List of agents*—(1) *In general.* A money services business must prepare and maintain a list of its agents. The initial list of agents must be prepared by January 1, 2002, and must be revised each January 1, for the immediately preceding 12 month period; for money services businesses established after December 31, 2001, the initial agent list must be prepared by the due date of the initial registration form and must be revised each January 1 for the immediately preceding 12-month period. The list is not filed with the registration form but must be maintained at the location in the United States reported on the registration form under paragraph (b)(1) of this section. Upon request, a money services business must make its list of agents available to FinCEN and any other appropriate law enforcement agency (including, without limitation, the examination function of the Internal Revenue Service in its capacity as delegee of Bank Secrecy Act examination authority). Requests for information made pursuant to the preceding sentence shall be coordinated through FinCEN in the manner and to the extent determined by FinCEN. The original list of agents and any revised list must be retained for the period specified in § 103.38(d).

(2) *Information included on the list of agents*—(i) *In general.* Except as provided in paragraph (d)(2)(ii) of this section, a money services business must include the following information with respect to each agent on the list (including any revised list) of its agents—

(A) The name of the agent, including any trade names or doing-business-as names;

(B) The address of the agent, including street address, city, state, and ZIP code;

(C) The telephone number of the agent;

(D) The type of service or services (money orders, traveler's checks, check sales, check cashing, currency exchange, and money transmitting) the agent provides;

(E) A listing of the months in the 12 months immediately preceding the date of the most recent agent list in which the gross transaction amount of the agent with respect to financial products or services issued by the money services business maintaining the agent list exceeded $100,000. For this purpose, the money services gross transaction amount is the agent's gross amount (excluding fees and commissions) received from transactions of one or more businesses described in § 103.11(uu);

(F) The name and address of any depository institution at which the agent maintains a transaction account (as defined in 12 U.S.C. 461(b)(1)(C)) for all or part of the funds received in or for the financial products or services issued by the money services business maintaining the list, whether in the agent's or the business principal's name;

(G) The year in which the agent first became an agent of the money services business; and

(H) The number of branches or subagents the agent has.

(ii) *Special rules.* Information about agent volume must be current within 45 days of the due date of the agent list. The information described by paragraphs (d)(2)(i)(G) and (d)(2)(i)(H) of this section is not required to be included in an agent list with respect to

any person that is an agent of the money services business maintaining the list before the first day of the month beginning after February 16, 2000 so long as the information described by paragraphs (d)(2)(i)(G) and (d)(2)(i)(H) of this section is made available upon the request of FinCEN and any other appropriate law enforcement agency (including, without limitation, the examination function of the Internal Revenue Service in its capacity as delegee of Bank Secrecy Act examination authority).

(e) *Consequences of failing to comply with 31 U.S.C. 5330 or the regulations thereunder.* It is unlawful to do business without complying with 31 U.S.C. 5330 and this section. A failure to comply with the requirements of 31 U.S.C 5330 or this section includes the filing of false or materially incomplete information in connection with the registration of a money services business. Any person who fails to comply with any requirement of 31 U.S.C. 5330 or this section shall be liable for a civil penalty of $5,000 for each violation. Each day a violation of 31 U.S.C. 5330 or this section continues constitutes a separate violation. In addition, under 31 U.S.C. 5320, the Secretary of the Treasury may bring a civil action to enjoin the violation. See 18 U.S.C. 1960 for a criminal penalty for failure to comply with the registration requirements of 31 U.S.C. 5330 or this section.

(f) *Effective date.* This section is effective September 20, 1999. Registration of money services businesses under this section will not be required prior to December 31, 2001.

**§ 103.36 [Amended]**

5. Paragraph (b)(10) of § 103.36 is amended by removing the language ''§ 103.54(a)'' and adding the language ''§ 103.64(a)'' in its place.

6. Section 103.37 is amended by adding a new paragraph (c) to read as follows:

**§ 103.37 Additional records to be made and retained by currency dealers or exchangers.**

* * * * *

(c) This section does not apply to banks that offer services in dealing or changing currency to their customers as an adjunct to their regular service.

**§ 103.56 [Amended]**

7. Paragraph (b)(7) of newly redesignated § 103.56 is amended by removing the language ''§ 103.48'' and adding the language ''§ 103.58'' in its place.

**§ 103.57 [Amended]**

8. Newly redesignated § 103.57 is amended by:

a. In paragraph (d) removing the language ''§ 103.48'' and adding the language ''§ 103.58'' in its place.

b. In the first sentence of paragraph (e) removing the language ''§ 103.53'' and adding the language ''§ 103.63'' in its place.

**§ 103.72 [Amended]**

9. Newly redesignated § 103.72 is amended by removing the language ''§ 103.61'' from the introductory text and adding the language ''§ 103.71'' in its place.

**§ 103.73 [Amended]**

10. Newly redesignated § 103.73 is amended by:

a. In paragraph (a) introductory text removing the language ''§ 103.61'' and adding the language ''§ 103.71'' in its place.

b. In paragraph (a)(1) removing the language ''§ 103.62'' and adding the language ''§ 103.72'' in its place.

c. In paragraph (b) introductory text removing the language ''§ 103.61'' and adding the language ''§ 103.71'' in its place.

d. In paragraph (b)(1) removing the language ''§ 103.62'' and adding the language ''§ 103.72'' in its place.

**§ 103.74 [Amended]**

11. Newly redesignated § 103.74 is amended by removing the language ''§ 103.62'' from paragraph (a) and adding the language ''§ 103.72'' in its place.

**§ 103.75 [Amended]**

12. Newly redesignated § 103.75 is amended by:

a. In the first sentence of paragraph (a) removing the language ''§ 103.62'' and adding the language ''§ 103.72'' in its place.

b. In paragraph (c) introductory text removing the language ''103.62(a)'' and adding the language ''103.72(a)'' in its place and removing the language ''§ 103.62 (b) or (c)'' and adding the language ''§ 103.72 (b) or (c)'' in its place.

**§ 103.76 [Amended]**

13. Newly redesignated § 103.76 is amended by:

a. In the first sentence removing the language ''§ 103.62'' and adding the language ''§ 103.72'' in its place.

b. In the second sentence removing the language ''§ 103.62(a)'' and adding the language ''§ 103.72(a)'' in its place.

**§ 103.82 [Amended]**

14. Newly redesignated § 103.82 is amended by removing the language ''§ 103.71'' from the first sentence and adding the language ''§ 103.81'' in its place.

**§ 103.83 [Amended]**

15. Paragraph (b) of newly redesignated § 103.83 is amended by:

a. In the first sentence removing the language ''§ 103.71'' and adding the language ''§ 103.81'' in its place.

b. In the last sentence removing the language ''§ 103.71'' and adding the language ''§ 103.81'' in its place.

**§ 103.85 [Amended]**

16. Newly redesignated § 103.85 is amended by removing the language ''§ 103.71'' from the first sentence and adding the language ''§ 103.81'' in its place.

**§ 103.86 [Amended]**

17. Newly redesignated § 103.86 is amended by:

a. In paragraph (a) introductory text removing the language ''§ 103.75'' and adding the language ''§ 103.85'' in its place.

b. In the second sentence of paragraph (b) removing the language ''§ 103.71'' and adding the language ''§ 103.81'' in its place.

Dated: August 17, 1999.

**James F. Sloan,**

*Director, Financial Crimes Enforcement Network.*

[FR Doc. 99–21667 Filed 8–18–99; 8:45 am]

BILLING CODE 4820–03–P

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## DEPARTMENT OF DEFENSE

## Office of the Secretary

## 32 CFR Part 199

**[DoD 6010.8–R]**

**RIN–0720–AA49**

## Civilian Health and Medical Program of the Uniformed Service (CHAMPUS); Prosthetic Devices

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Interim final rule.

**SUMMARY:** This interim final rule implements section 702 of the National Defense Authorization Act for fiscal Year 1998 (Pub. L. 105–85), which authorizes purchase of prosthetic devices, as determined by the Secretary of Defense, to be necessary because of significant conditions resulting from trauma, congenital anomalies, or disease. The act changes the existing limited provisions for prosthetic devices, expands coverage to include cost sharing of other prostheses, e.g.,

noses, ears and fingers. This is being issued as an interim final rule in order to comply with the statutory mandate. Public comments, however, are invited and will be considered in connection with possible revisions to this rule.

**DATES:** This rule is effective May 20, 1999. Written comments will be accepted until October 19, 1999.

**ADDRESSES:** Forward comments to the Office of TRICARE Management Activity, 16401 East Centretech Parkway, Aurora, CO, 80011–9043.

**FOR FURTHER INFORMATION CONTACT:** Margaret Brown, Office of Medical Benefits and Reimbursement Systems, telephone (303) 676–3581.

**SUPPLEMENTARY INFORMATION:** This interim final rule implements section 702 of the national Defense authorization Act for fiscal Year 1998 (Pub. L. 105–85) to provide purchase of prosthetic devices, as determined by the Secretary of Defense, to be necessary because of significant conditions resulting from trauma, congenital anomalies, or disease. The current policy is restrictive as it limits purchase of prosthetic devices to artificial limbs, eyes, and voice prostheses. This interim final rule expands provisions for prosthetic devices to include ears, noses and fingers.

## Regulatory Procedure

Executive order 12866 requires certain regulatory assessments for any significant regulatory action, defined as one which would result in an annual effect on the economy of $100 million or more, or have other substantial impacts. The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This Interim Final Rule is not a significant regulatory action under E.O. 12886, nor would it have a significant impact on small entities. The changes set forth in the interim final rule are minor revisions to the existing regulation.

The interim final rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511). This rule is being issued as an interim final rule, with comment period, as an exception to our standard practice of soliciting public comments prior to issuance. The Assistant Secretary of Defense (Health Affairs) has determined that following the standard practice in this case would be impracticable, unnecessary, and contrary to the public interest. This determination is based on several factors. First, this change directly implements a statutory amendment enacted by Congress expressively for this purpose. (See House Conference Report 105–340, p. 300). Second, this rule implements the statutory policy without embellishment. All public comments are invited.

## List of Subjects in 32 CFR Part 199

Claims, Health insurance, Individuals with disabilities, Military personnel.

## PART 199—[AMENDED]

Accordingly, 32 CFR 199 is amended as follows:

1. The authority citation for Part 199 continues to read as follows:

**Authority:** 5 U.S.C. 301; and 10 U.S.C. Chapter 55.

2. Section 199.4 is amended by revising paragraph (d)(3)(vii) and (g)(48) and removing paragraph (d)(3)(vii) NOTE.

### § 199.4 Basic program benefits

* * * * * * *

(d) * * *

(3) * * *

(vii) *Prosthetic devices.* The purchase of prosthetic devices is limited to those determined by the Director, OCHAMPUS to be necessary because of significant conditions resulting from trauma, congenital anomalies, or disease.

* * * * *

(g) * * *

(48) *Prosthetic devices.* Prostheses other than those determined by the Director, OCHAMPUS to be necessary because of significant conditions resulting from trauma, congenital anomalies, or disease. All dental prostheses are excluded, except for those specifically required in connection with otherwise covered orthodontia directly related to the surgical correction of a cleft palate anomaly.

* * * * *

Dated: August 12, 1999.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 99–21348 Filed 8–19–99; 8:45 am]

BILLING CODE 5001–10–M

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[LA–49–1–7411; FRL–6422–3]**

## Approval and Promulgation of Air Quality State Implementation Plans (SIP); Interim Final Determination That Louisiana Continues To Correct the Deficiencies of Its Enhanced Inspection and Maintenance (I/M) SIP Revision

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Interim final rule.

**SUMMARY:** Previously EPA published a proposed rulemaking (December 30, 1998, 63 FR 71807) to conditionally approve the State of Louisiana's State Implementation Plan (SIP) revision concerning a low-enhanced motor vehicle inspection and maintenance (I/M) program under section 110 of the Clean Air Act (the Act) as amended in 1990. Based on the proposed approval, EPA is making an interim final determination by this action, that the State has more likely than not cured the deficiencies prompting the original disapproval (November 19, 1997, 62 FR 61633) of the Louisiana enhanced I/M SIP revision. This action will defer the future application of the offset sanction and the highway sanction. Although this action is effective upon signature, EPA will take comment on this interim final determination. The EPA will publish a final action taking into consideration any comments received on this interim final action.

**EFFECTIVE DATE:** August 10, 1999.

*Comments:* Comments must be received on or before September 20, 1999.

**ADDRESSES:** Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Louisiana Department of Environmental Quality, Air Quality Compliance Division, 7290 Bluebonnet, 2nd Floor, Baton Rouge, Louisiana.

Louisiana Department of Environmental Quality Capital Regional

Office, 11720 Airline Highway, Baton Rouge, Louisiana.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sandra G. Rennie, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7367.

**SUPPLEMENTARY INFORMATION:**

## I. Background

*Louisiana's May 1996 I/M SIP Revision Approval Status*

In a December 2, 1997, letter to the Governor, EPA notified Louisiana that the conditional approval of the State's enhanced I/M SIP revision, conditionally approved on June 9, 1997, (62 FR 31388) had converted to a disapproval because Louisiana failed to meet the conditions specified for approval. A later correction notice dated February 13, 1998, changed the effective date of the disapproval to the February 13, 1998, date of publication (63 FR 7289). A letter dated March 4, 1998, informed the State of this change. The disapproval triggered the 18-month time clock for the mandatory application of sanctions under section 179(a) of the Act. The 18-month clock expires on August 13, 1999.

On August 20, 1998, the Governor of the State requested parallel processing of its I/M program SIP revision. We acknowledged the State's request in a September 3, 1998, letter. On October 20, 1998, the State made available a proposed I/M SIP revision for public comment and parallel processing by EPA. We proposed conditional approval on December 30, 1998, in 63 FR 71807. The State submitted the adopted I/M SIP on February 12, 1999, under the Governor's signature. Because the State has now submitted a SIP that EPA believes is approvable for its enhanced I/M program, we believe this interim final determination is justified. We conclude that Louisiana has more likely than not corrected the deficiency that initiated the sanctions clock, and therefore do not believe that sanctions are warranted simply because a State approved I/M SIP revision has not been finally approved by EPA.

We are making this interim final determination now because a final conditional approval requires amendments to the Federal I/M regulation that will allow the State to operate the I/M program as described in the SIP. The Administrator signed a notice of proposed rulemaking on August 6, 1999, proposing amendments to the Federal I/M regulation that will accommodate Louisiana's I/M program. Because we believe these amendments are justified, we are making this interim final determination to defer sanctions.

*EPA's Current Rulemaking Actions*

We believe that the submission of the I/M SIP revision that we proposed to approve more likely than not cures the SIP deficiency that triggered the sanctions clock. Therefore, with this finding the imposition of sanctions for that deficiency is stayed for the duration of EPA's rulemaking process on this I/M SIP revision. This interim determination will not halt or reset the sanctions deadline, but will defer implementation of sanctions until either: the proposed conditional approval converts to a disapproval, or the State's enhanced I/M SIP is fully approved or disapproved.

Today EPA is also providing the public with an opportunity to comment on this interim final determination. If, based on any relevant comments we receive on this interim final determination action or the proposed conditional approval, we determine that the SIP revision is not finally approvable, we will take further action to disapprove the State's I/M SIP revision. If EPA does disapprove the I/M revision, or if EPA's conditional approval of the Louisiana I/M SIP revision is not finalized, then sanctions would be applied as required under 179(a) of the Act and 40 CFR 52.31.

## II. EPA Action

*What Action Is EPA Taking?*

Based on the proposed conditional approval previously published in the **Federal Register**, we believe that the State has more likely than not corrected the deficiency that prompted the original disapproval of the Louisiana enhanced I/M SIP. Therefore, we conclude that sanctions should be stayed for the duration of Louisiana's proposed conditional SIP approval.

*What Is the Effective Date for This Rule?*

The effective date for this rule is August 10, 1999, the date this action was signed.

Because we have preliminarily determined that the February 12, 1999, I/M SIP revision is conditionally approvable, we believe that relief from future sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect.[1] *See* 5 U.S.C. 553(b)(B). We believe that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. We have reviewed the State's October 1998, proposed SIP revision and the February 1999, adopted SIP revision. Through this interim final determination action, the Agency finds the State has more likely than not corrected the deficiency for which the sanctions clock was started (i.e., failure of the State to provide legislative authority to implement and continuously operate an I/M program under sections 182 and 184 of the Act).

Therefore, it is not in the public interest to initially apply sanctions when the State has most likely corrected the deficiency that triggered the sanctions clock. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiency prior to the rulemaking fully approving the State's I/M SIP revision. Therefore, we believe that it is necessary to use the interim final rulemaking process to defer sanctions while we complete our rulemaking process on the approvability of the State's I/M SIP revision. In addition, we are invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction. *See* 5 U.S.C. 553(d)(1).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

## III. Administrative Requirements

*A. Executive Order (E.O.) 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled ''Regulatory Planning and Review.''

*B. Executive Order 12875*

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local,

[1] As previously noted, however, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date and EPA will consider any comments received in determining whether to reverse such action.

and tribal governments, the nature of their concern, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal government ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's interim final determination does not create a mandate on State, local, or tribal governments. The determination does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

*C. Executive Order 13045*

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The interim final determination is not subject to E.O. 13045 because it is not economically significant under E.O. 12866, and it does not involve decisions intended to mitigate environmental health or safety risks.

*D. Executive Order 13084*

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's interim final determination does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

*E. Regulatory Flexibility Act*

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule will not have a significant impact on a substantial number of small entities because conditional approval of SIP submittals under section 110 and subchapter I, part D of the Act does not create any new requirements but simply approves requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co.,* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

*F. Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the interim final determination does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

*G. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the U.S. Comptroller General prior to publication of the rule in the **Federal Register**. This determination is not a ''major rule'' as defined by 5 U.S.C. 804(2).

*H. Petitions for Judicial Review*

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 19, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401–7671q.

Dated: August 10, 1999.

**Myron O. Knudson,**

*Acting Regional Administrator, Region VI.*

[FR Doc. 99–21660 Filed 8–19–99; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

### 49 CFR Part 171

### General Information, Regulations, and Definitions

*CFR Correction*

In Title 49 of the Code of Federal Regulations, parts 100 to 185, revised as of Oct. 1, 1998, on pages 88, 89, and 91, § § 171.11 (d)(9)(iii), 171.12 (b)(8)(iii), and 171.12a (b)(5)(iii) are corrected by removing the word ''POISON'' the first time it appears and adding in its place the words ''POISON INHALATION HAZARD''.

[FR Doc. 99–55524 Filed 8–19–99; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 622

**[Docket No. 990506120–9220–02; I.D. 032499E]**

**RIN 0648–AL80**

### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Catch Specifications

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** In accordance with the framework procedure for adjusting management measures of the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP), NMFS implements several management changes. For Atlantic group king mackerel, total allowable catch (TAC) is increased. For Atlantic group Spanish mackerel, TAC is decreased; the allocation of TAC between the commercial and recreational sectors is revised; and an incidental catch allowance for vessels using gillnets with a mesh size less than 3.5 inches (8.9 cm) is established. For Gulf group king mackerel, a commercial trip limit is established in the western zone, and a 0–fish bag limit is established for captain and crew on for-hire vessels. For both Gulf and Atlantic group king mackerel, the minimum size limit is increased. The intended effects of this rule are to protect king and Spanish mackerel from overfishing and maintain healthy stocks while still allowing catches by commercial and recreational fisheries.

**DATES:** This rule is effective September 20, 1999.

**FOR FURTHER INFORMATION CONTACT:** Steve Branstetter, 727–570–5305.

**SUPPLEMENTARY INFORMATION:** The fisheries for coastal migratory pelagic resources are regulated under the FMP. The FMP was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented by regulations at 50 CFR part 622.

In accordance with the framework procedures of the FMP, the Councils recommended, and NMFS published, a proposed rule (64 FR 29622, June 2, 1999) to implement the following measures: (1) For Atlantic group king mackerel, increase the commercial quota and the recreational allocation and revise the commercial trip limits off North Carolina and the Mid-Atlantic states; (2) for Atlantic group Spanish mackerel, decrease the commercial quota and recreational allocation; change the commercial/recreational allocation from 50/50 to 55/45; and establish an incidental catch allowance for vessels using gillnets with a mesh size less than 3.5 inches (8.9 cm); (3) for Gulf group king mackerel, establish a commercial trip limit in the western zone and establish a 0–fish bag limit for captain and crew on for-hire vessels; and (4) for both Gulf and Atlantic group king mackerel, increase the minimum size limit. That proposed rule described the need and rationale for these revisions. Those descriptions are not repeated here.

### Comments and Responses

NMFS received five comments.

*Comment 1*: After reviewing the 1999 Mackerel Stock Assessment Report (MSAP), the South Atlantic Council requested that NMFS not implement the proposed trip limit decrease from 3,500 to 2,000 lb (1588 to 907 kg) for Atlantic group king mackerel for commercial vessels operating north of the North Carolina/South Carolina border and south of the New York/Connecticut border, nor the proposed trip limit increase from 50 to 75 fish for Gulf group king mackerel in the Florida east coast subzone. The 1999 MSAP indicated that the TAC for Atlantic group king mackerel could be increased. Thus the trip limit reduction for the king mackerel fishery north of the North Carolina/South Carolina border was unnecessary. The Council anticipates that the fishery should be able to continue year-round without a closure with the existing 3,500 lb (1,588 kg) trip limit, thereby increasing the economic benefits of the fishery. The fishery for Gulf group king mackerel in the Florida east coast subzone closed on March 13, 1999, under a 50–fish trip limit. Thus the Council believed that increasing the bag limit would shorten the season further, and lessen the social and economic benefits to the fishery.

*Response*: NMFS considers the Council's comment as a request to withdraw the proposed reduction in the commercial trip limit for Atlantic group king mackerel north of the North Carolina/South Carolina border and the proposed increase in the commercial trip limit for Gulf group king mackerel in the Florida east coast subzone as was described in the proposed rule. NMFS agrees with the Council's rationale for not implementing the subject proposed trip limit changes and has withdrawn them from the final rule. The Atlantic group king mackerel stock is not overfished, and the 1999 MSAP indicates that an increase in TAC for this stock is appropriate; a reduced trip limit for fisheries on Atlantic group king mackerel is no longer necessary to slow the rate of harvest in regard to the annual commercial quota. Furthermore, given that the fishery for the Gulf group king mackerel in the Florida east coast subzone closed during the 1998/1999 fishing year under a 50-fish trip limit, NMFS agrees that increasing the trip limit to 75 fish would result in an even earlier closure thus reducing the social and economic benefits of the fishery. Not implementing these proposed trip limit changes also should avoid confusion in the fishery by maintaining long-standing trip limits, to which the fishermen are accustomed and should not have any adverse biological consequences regarding the conservation of the affected stocks.

*Comment 2*: The South Atlantic Council requested that NMFS promulgate the catch specifications for Atlantic group king and Spanish mackerel that the Council recommended at its June 1999 meeting rather than the specifications that were previously recommended and that were included in the proposed rule. These

recommendations included: Increasing TAC to 10.0 million lb (4.5 million kg) for Atlantic group king mackerel; increasing the commercial trip limit for southeast Florida from 50 to 75 fish per day; increasing TAC for Atlantic group Spanish mackerel to 7.1 million lb (3.2 million kg); and increasing the recreational bag limit for Atlantic group Spanish mackerel from 10 to 15 fish per day.

*Response*: NMFS is not promulgating the specifications recommended by the Council at its June 1999 meeting because the public has not had an adequate opportunity to review and comment on them. Additionally, the impacts of those specifications need to be evaluated by preparing a regulatory impact review/environmental assessment, and the affected states have not had an opportunity to evaluate the new recommended specifications in relation to their states' coastal zone management plans.

*Comment 3*: The Gulf Council and the fishing association requested that NMFS disapprove the proposal to reduce the bag limit of Gulf group king mackerel to zero for captain and crew on for-hire vessels. Based on the report of the 1999 MSAP, the Council decided that the 0–fish bag limit is neither needed nor justified, and that a mid-season implementation would cause unnecessary disruption and confusion within the for-hire fishery. The fishing association questioned the accuracy of the Marine Recreational Fishery Statistical Survey (MRFSS) database which indicated the need for this proposed measure to reduce recreational harvest.

*Response*: NMFS disagrees that the 0–fish bag limit for the captain and crew of for-hire vessels fishing for Gulf group king mackerel is unnecessary. NMFS has approved this measure and is implementing it by this rule. The per-angler overages calculated by the MRFSS were substantiated by data collected through the NMFS Panama City, FL charterboat survey and the ongoing pilot charterboat survey co-managed by NMFS and the Gulf States Marine Fisheries Commission. These latter two data sources consist of reports of entire trip/boat activity as provided by the captains themselves, and include harvest by all anglers/passengers (excepting captain and crew) onboard the vessel, as opposed to the MRFSS approach of individual angler interviews. Nevertheless, considering the differences in methodologies used by these independent sampling programs, the compatibility and consistency of the results among the three surveys strengthen the conclusions regarding the effect of allowing a bag limit for captain and crew. MRFSS data indicate that the for-hire sector accounts for 50 to 65 percent of the recreational harvest, and per-angler and per-trip average catches are in excess of the allowable bag limits unless captain and crew are included. The catch attributable to the captain and crew contributes to the persistent overruns in the recreational allocation. Additionally, enforcement of a daily bag limit for captain and crew of for-hire vessels is difficult where those vessels and crews make multiple trips within a day. NMFS also believes that a 0–fish bag limit for Gulf group king mackerel for captain and crew on for-hire vessels will reduce in-season recreational sales, which are then counted against the commercial quota. This leads to situations where the fish are counted twice: once as a recreational catch, and once as a commercial sale. This double counting of fish can contribute to an ''artificial'' overrun of the commercial quotas. Elimination of this double counting should foster a more accurate depiction of fishing mortality, thus providing more accurate stock assessments. Therefore, NMFS believes that a 0–fish bag limit for the captain and crew of for- hire vessels is necessary for the adequate conservation and management of this overfished resource.

*Comment 4*: One commenter opposed the increase in the minimum size limit from 20 to 24 inches (51 to 61 cm) fork length (FL) proposed for king mackerel. The commenter believes that this measure is unnecessary in light of the lower and more stable recreational landings information provided in the 1999 reports of the MSAP and the Social and Economic Panel (SEP), and the recommendations developed by the Gulf Council at its May 1999 meeting.

*Response*: NMFS disagrees and has approved the size limit increase and is implementing it by this rule. The SEP report, which indicated stable recreational landings, considered catches in the Gulf of Mexico, but this does not include all fishing mortality on the Gulf group king mackerel stock. During a part of the year, a percentage of the mortality on the Gulf group king mackerel stock occurs from catches on the Atlantic coast of Florida. The MSAP report does take this additional catch and mortality into consideration. That report illustrated that, with the exception of the 1998/1999 season, the recreational harvest of Gulf group king mackerel exceeded the recreational allocation by 15 to 50 percent each year since 1986. In addition to reducing the overall harvest by the recreational sector, the proposed 24–inch (61–cm) size limit is intended to reduce the harvest of immature fish. Approximately 50 per cent of the females are mature at sizes of 22 to 24 inches (56 to 61 cm) FL.

*Comment 5*: One commenter stated that NMFS was negligent in its late publication and announcement of proposals, and did not adequately advise the public that the Councils had developed the proposals last year for the 1998/99 fishing year.

*Response*: Catch specifications are associated with the most recent stock assessment, not a fishing year. The Councils consider the most recent assessment and make any proposed catch specification changes. Additionally, the regulations are not annual; they remain in effect until changes are proposed by the Councils. NMFS recognizes that the implementation of these particular catch specifications has been delayed. In part, these delays stemmed from combining the proposed catch specifications as proposed by the Gulf of Mexico and South Atlantic Councils. To ensure more timely implementation of catch specifications, NMFS has restructured its process for the review of mackerel proposals submitted by the Councils under the FMP framework provisions. For the 1999/2000 proposed catch specifications, the proposals by each Council will be processed separately.

*Comment 6*: Two commenters supported the implementation of the 3,000–lb (1361–kg) trip limit for Gulf group king mackerel in the western zone. One commented that it would help to eliminate derby fishing and extend the season.

*Response*: NMFS agrees that the implementation of the 3,000– lb (1361–kg) trip limit in the western zone will benefit the fisheries of that region and has approved it and implemented it through this rule.

**Changes From the Proposed Rule**

As requested by the South Atlantic Council (see Comments and Responses), NMFS has withdrawn the proposed reduction in the commercial trip limit for Atlantic group king mackerel north of the North Carolina/South Carolina state boundary and the proposed increase in the commercial trip limit for Gulf group king mackerel in the Florida east coast subzone. Accordingly, the respective changes in the proposed rule to § 622.44(a)(1)(i) and § 622.44(a)(2)(i) are not included in this final rule. As a result, the proposed redesignations within § 622.44(a)(1) are no longer necessary and have been removed from the final rule.

**Classification**

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

**List of Subjects in 50 CFR Part 622**

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: August 16, 1999.

**Andrew A. Rosenberg,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

## PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 622.37, paragraph (c)(2) is revised to read as follows:

**§ 622.37 Minimum sizes.**

* * * * *

(c) * * *

(2) King mackerel in the Gulf, South Atlantic, or Mid-Atlantic—24 inches (61.0 cm), fork length, except that a vessel fishing under a quota for king mackerel specified in § 622.42(c)(1) may possess undersized king mackerel in quantities not exceeding 5 percent, by weight, of the king mackerel on board.

* * * * *

3. In § 622.39, paragraph (c)(1)(ii) is revised to read as follows:

**§ 622.39 Bag and possession limits.**

* * * * *

(c) * * *

(1) * * *

(ii) Gulf migratory group king mackerel—2, except that for an operator or crew member of a charter vessel or headboat, the bag limit is 0.

* * * * *

4. In § 622.41, paragraph (c)(3)(ii)(A) is revised to read as follows:

**§ 622.41 Species specific limitations.**

* * * * *

(c) * * *

(3) * * *

(ii) * * * (A) The minimum allowable mesh size for a gillnet used to fish for Spanish mackerel in the Gulf, Mid-Atlantic, or South Atlantic EEZ is 3.5 inches (8.9 cm), stretched mesh.

(*1*) A vessel in the Gulf EEZ, or having fished on a trip in the Gulf EEZ, with a gillnet on board that has a mesh size less than 3.5 inches (8.9 cm), stretched mesh, may not possess on that trip any Spanish mackerel.

(*2*) A vessel in the South Atlantic or Mid-Atlantic EEZ, or having fished on a trip in such EEZ, with a gillnet on board that has a mesh size less than 3.5 inches (8.9 cm), stretched mesh, may possess or land on the day of that trip no more than 500 lb (227 kg) of incidentally caught Spanish mackerel.

* * * * *

5. In § 622.42, paragraphs (c)(1)(ii) and (c)(2)(ii) are revised to read as follows:

**§ 622.42 Quotas.**

* * * * *

(c) * * *

(1) * * *

(ii) *Atlantic migratory group*. The quota for the Atlantic migratory group of king mackerel is 3.12 million lb (1.42 million kg). No more than 0.40 million lb (0.18 million kg) may be harvested by purse seines.

* * * * *

(2) * * *

(ii) *Atlantic migratory group*. The quota for the Atlantic migratory group of Spanish mackerel is 3.63 million lb (1.65 million kg).

* * * * *

6. In § 622.44, paragraph (a)(2)(iv) is added, and paragraph (a)(2) introductory text, the headings of paragraphs (a)(2)(i) and (a)(2)(ii), and the first sentence of paragraph (b)(2) are revised to read as follows:

**§ 622.44 Commercial trip limits.**

* * * * *

(a) * * *

(2) *Gulf group*. Commercial trip limits are established in the eastern and western zones as follows. (See § 622.42(c)(1)(i) for specification of the eastern and western zones and § 622.42(c)(1)(i)(A)(*3*) for specifications of the subzones in the eastern zone.)

(i) *Eastern zone—Florida east coast subzone*. * * *

(ii) *Eastern zone—Florida west coast subzone*—* * *

* * * * *

(iv) *Western zone*. In the western zone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel for which a commercial permit for king mackerel has been issued, as required under § 622.4(a)(2)(ii), from July 1, each fishing year, until a closure of the western zone's fishery has been effected under § 622.43(a)—in amounts not exceeding 3,000 lb (1,361 kg) per day.

(b) * * *

(2) For the purpose of paragraph (b)(1)(ii) of this section, the adjusted quota is 3.38 million lb (1.53 million kg). * * *

* * * * *

[FR Doc. 99–21696 Filed 8–19–99; 8:45 am]

BILLING CODE 3510–22–F

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 990304062–9062–01; I.D. 081399B]**

### Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the West Yakutat District of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific ocean perch in the West Yakutat District of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 1999 total allowable catch (TAC) of Pacific ocean perch in this area.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), August 16, 1999, through 2400 hrs, A.l.t., December 31, 1999.

**FOR FURTHER INFORMATION CONTACT:** Mary Furuness, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 1999 TAC of Pacific ocean perch in the West Yakutat District of the GOA was established by the Final 1999 Harvest Specifications of Groundfish for the GOA (64 FR 12094, March 11, 1999) as 820 metric tons (mt), determined in accordance with § 679.20(c)(3)(ii). The

directed fishery for Pacific ocean perch in the West Yakutat District was closed under § 679.20(d)(1)(iii) on July 19, 1999 (64 FR 39090, July 21, 1999), and reopened on August 15, 1999 (notification of reopening filed with the Office of the Federal Register August 13, 1999).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1999 TAC for Pacific ocean perch will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 670 mt, and is setting aside the remaining 150 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the West Yakutat District.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

## Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 1999 TAC of Pacific ocean perch for the West Yakutat District of the GOA. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.20 and is exempt from review under E.O. 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: August 16, 1999.

**Gary C. Matlock,**

*Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 99–21578 Filed 8–16–99; 4:19 pm]

BILLING CODE 3510–22–F

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 990304062–9060–01; I.D. 081699B]**

## Fisheries of the Exclusive Economic Zone Off Alaska; Deep-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the third seasonal apportionment of the 1999 Pacific halibut bycatch allowance specified to the deep-water species fishery in the GOA has been caught.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), August 17, 1999, until 1200 hrs, A.l.t., October 1, 1999.

**FOR FURTHER INFORMATION CONTACT:** Mary Furuness, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Pacific halibut bycatch allowance for the GOA trawl deep-water species fishery, which is defined at § 679.21(d)(3)(iii)(B), was established by the Final 1999 Harvest Specifications of Groundfish for the GOA (64 FR 12094, March 11, 1999) for the third season, the period July 4, 1999, through September 30, 1999, as 400 metric tons. The GOA trawl deep-water species fishery was closed under § 679.20(d)(iii) on July 21, 1999 (64 FR 40293, July 26, 1999), and reopened on August 6, 1999 (64 FR 43296, August 10, 1999).

In accordance with § 679.21(d)(97)(i), the Administrator, Alaska Region, NMFS, has determined that the third seasonal apportionment of the 1999 Pacific halibut bycatch allowance specified for the trawl deep-water species fishery in the GOA has been caught. Consequently, NMFS is prohibiting directed fishing for the deep-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the deep-water species fishery are: rockfish as defined at § 679.2, deep water flatfish (Dover sole, Greenland turbot, and deepsea sole), rex sole, arrowtooth flounder, and sablefish.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

## Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent overharvesting the third seasonal apportionment of the 1999 Pacific halibut bycatch allowance specified for the trawl-deepwater species fishery in the GOA. A delay in the effective date is impracticable and contrary to the public interest. The third seasonal apportionment of the Pacific halibut bycatch allowance has been caught. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.21 and is exempt from review under E.O. 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: August 17, 1999.

**Gary C. Matlock,**

*Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 99–21668 Filed 8–17–99; 4:09 pm]

BILLING CODE 3510–22–F

# Proposed Rules

Federal Register
Vol. 64, No. 161
Friday, August 20, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Parts 915 and 944

**[Docket No. FV99–915–2 PR]**

### Avocados Grown in South Florida and Imported Avocados; Revision of the Maturity Requirements for Fresh Avocados

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This rule invites comments on revisions to the maturity requirements currently prescribed under the marketing order for avocados grown in south Florida, and those specified in the avocado import maturity regulation. The marketing order regulates the handling of avocados grown in south Florida, and is administered locally by the Avocado Administrative Committee (Committee). This rule would change maturity requirements by adding additional shipping dates, weights and/or diameters to the shipping schedule for several avocado varieties, and would add three new varieties of avocados to the shipping schedule. This rule would facilitate the shipment of avocados as they mature, and would ensure that only mature fruit is shipped to the fresh market. This would help improve grower returns and promote orderly marketing. Application of the maturity requirements to imported avocados is required under section 8e of the Agricultural Marketing Agreement Act of 1937.

**DATES:** Comments must be received by September 20, 1999.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Doris Jamieson, Southeast Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883; telephone: (941) 299–4770, Fax: (941) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

**SUPPLEMENTARY INFORMATION:** This proposed rule is issued under Marketing Agreement No. 121 and Marketing Order No. 915, both as amended (7 CFR part 915), regulating the handling of avocados grown in South Florida, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

This proposed rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including avocados, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

Under the terms of the marketing order, fresh market shipments of Florida avocados are required to be inspected and are subject to grade, size, maturity, and pack and container requirements. The maturity requirements for Florida avocados are intended to prevent the shipment of immature avocados. This helps to improve buyer confidence in the marketplace, and foster increased consumption. Current maturity requirements for the varieties of avocados grown in Florida are expressed in terms of minimum weights and diameters for specific dates during the shipping period (hereinafter referred to as the avocado maturity shipping schedule, maturity schedule, or shipping schedule), and color specifications for those varieties of avocados that turn red or purple when mature. The maturity requirements for the various varieties of avocados are different, because each variety has

different growing and maturation characteristics. The maturity requirements for each variety are based on test results. A minimum grade requirement of U.S. No. 2 is also in effect for Florida avocados.

This rule invites comments on changes to the avocado maturity shipping schedule for various varieties currently prescribed in paragraph (a)(2) of § 915.332 under the order. The shipping schedule for each variety is divided into A, B, C, and D dates which reflect different ripening times associated with the individual variety. The dates for a particular variety are established to regulate the shipment of smaller-sized avocados, which tend to take longer to mature. Consequently, A dates are associated with larger diameter, heavier fruit, and are established for early season shipments. D dates are established for the end of a variety's marketing season and allow the remaining smaller-sized mature fruit to be shipped. For a majority of the avocado varieties, the maturity schedule includes B and C dates that fall somewhere between the A and D dates for the particular variety. This proposal would add B or C shipping dates, with specific minimum weight, and/or minimum diameter measurements to the shipping schedule for the Arue, Beta, Donnie, Leona, Loretta, and Tower II varieties. It would also add three new varieties of avocados, the Semil 34, Semil 43, and the Melendez, to the maturity schedule, including specific shipping requirements for each. This rule would facilitate the shipment of these varieties of avocados as they mature, and would ensure that only mature fruit is shipped to the fresh market. This is expected to help improve grower returns and promote orderly marketing. The Committee met and unanimously recommended these changes late last year.

Section 915.51 of the order provides the authority to issue regulations establishing specific maturity requirements for avocados. The maturity requirements for avocados grown in Florida, based on minimum weights, diameters, and skin color in § 915.332 (7 CFR 915.332) of the order, are in effect on a continuous basis. The maturity requirements specify minimum weights and diameters for specific shipping periods for approximately 60 varieties of avocados, and color specifications for those varieties which turn red or purple when mature. The maturity requirements and dates for the various varieties of avocados are different because each variety has different characteristics and maturity times.

This rule makes several changes to the maturity provisions under the order. The first change would add B or C shipping dates, with specific minimum weight, and/or minimum diameter measurements to the shipping schedule for the Arue, Beta, Donnie, Leona, Loretta, and Tower II varieties. Section 915.332 of the order rules and regulations outline the maturity requirements for avocados using a maturity schedule. Over the years, the maturity schedule has been determined to be the best indicator of maturity for the different varieties of avocados grown in Florida, and growers and handlers rely on the schedule in making harvesting, packing, and shipping decisions. The maturity requirements are designed to make sure that all shipments of Florida avocados are mature, so as to provide consumer satisfaction essential for the successful marketing of the crop, and to provide the trade and consumers with an adequate supply of mature avocados in the interest of producers and consumers.

The maturity requirements for specified periods are based on the growing, harvesting, and maturity periods for the various varieties of Florida avocados. Such requirements prescribe minimum weights and/or diameters for specified periods as the maturity requirements for different varieties of avocados. These requirements are used as indicators during harvest to determine which avocados are sufficiently mature to complete the ripening process.

The maturity requirements pertain to certain dates. These dates are established based on years of testing. Each covered variety has its own set of dates on the maturity schedule. The maturity requirements and dates for the various varieties of avocados are different because individual varieties have different characteristics and growing seasons. As previously mentioned, the schedule is broken up into A, B, C, and D dates, though not all varieties have dates and requirements for each.

The different dates are used to reflect the ripening time associated with the individual varieties. Larger fruit within a variety matures earlier, while smaller-sized fruit takes longer to mature. Consequently, A dates are associated with larger sizes and weights, and are established for shipments early in a variety's season. D dates are established for the end of a variety's season when all fruit should be mature, and releases all remaining sizes and weights.

For a majority of varieties, the schedule also includes B and C shipping dates that fall somewhere in between the A and D dates for the particular variety. These dates provide for a gradual shift in the maturity standards from the beginning of the season to its end, allowing for the shipment of smaller sizes and weights as a variety matures. However, not all varieties have established dates and requirements for B and C dates. Because of the nature and volume of the varieties when they were added to the schedule, the Committee, in the past, did not believe that establishing B and C dates for some varieties was necessary.

This rule would permit varieties of avocados of certain minimum weights and diameters to be shipped by handlers earlier than currently required. This rule would add a C date for Arue variety avocados so those with a minimum weight of 12 ounces could be shipped by June 20, or the nearest Monday to that date each year. Currently, Arue variety avocados of this weight cannot be shipped until July 4. This rule would add a C date for Beta variety avocados so those with a minimum weight of 14 ounces or a minimum diameter of $3\frac{3}{16}$ inches could be shipped by August 29, or the nearest Monday to that date each year. Currently, Betas of this weight or size cannot be shipped until September 5. This rule would also add a C date for Donnie avocados so that those with a minimum weight of 12 ounces could be shipped by June 20, or the nearest Monday to that date each year. Currently, Donnies of this weight cannot be shipped until July 4. This rule would also add a B date for Leona avocados so that those with a minimum weight of 16 ounces could be shipped by October 3, or the nearest Monday to that date each year. Currently, Leonas of this weight cannot be shipped until October 10. This rule would add a C date for Loretta avocados so that those with a minimum weight of 22 ounces or a minimum diameter of $3\frac{12}{16}$ inches could be shipped by September 19, or the nearest Monday to that date each year. Currently, Lorettas of this weight or size cannot be shipped until September 26. This rule would also add a C date for Tower II avocados so that those with a minimum weight of 10 ounces or a minimum diameter of $3\frac{2}{16}$ inches could be shipped by August 29, or the nearest Monday to that date each year. Currently, Tower II variety avocados of this weight or size cannot be shipped until September 5. This action was recommended by the Committee because it believes that for the varieties listed above, the absence of B or C dates left too much of a gap between the A and D dates.

Because smaller sizes were maturing before the next available shipping date, quantities of small mature fruit could be lost to fruit drop during the time gap before it could be harvested and shipped. With tree crops, incidents of fruit dropping from the limbs occurs due to weather, disease, or other reasons depending on the particular crop. Fruit drop can increase as the fruit begins to mature. It is usually best to harvest the crop as close to maturity as possible to minimize fruit drop. In the case of avocados, when fruit drops from the tree it can experience bruising, insect damage, or reach a stage of ripeness where it cannot successfully be packed without being bruised. This results in an economic loss for growers and handlers. The Committee agreed that this has become more of a problem during the past few years as the production of avocados has increased following the devastation caused by Hurricane Andrew in 1992.

As an example of the problem, consider the Arue variety. This variety currently has scheduled A, B, and D dates. However, the absence of a C date leaves a five-week gap between the B and D dates. This means that the minimum weight for the Arue variety remains at 14 ounces for this five-week period until the D date is reached releasing all weights. By filling the gap with a C date falling between the B and D dates, and a minimum weight of 12 ounces based on the Committee's maturity testing procedures explained below, smaller sizes of this variety could be shipped as they mature. Similar situations exist for the Beta, Donnie, Leona, Loretta, and Tower II varieties, and the relaxed maturity requirements would permit handlers to ship the fruit as it reaches satisfactory maturity, and avoid losses caused by fruit drop.

The above avocado varieties were tested by the Committee to better identify the maturity of avocados grown in South Florida. The Committee based its recommendations on the testing data.

This rule would also add three new varieties of avocados to the avocado maturity shipping schedule. A few years ago, budwood for the Semil 34, Semil 43, and Melendez varieties was obtained and evenly distributed among those growers interested in the new varieties. Growers who planted these varieties have been pleased with the production and quality of the fruit. The new varieties have also been well received in the market place. These varieties currently make up less than 1 percent of domestic shipments.

Committee members believe that the production of the Semil 43, Semil 34, and Melendez varieties will continue to increase. Therefore, maturity dates and requirements are needed to ensure that only mature fruit is shipped to the fresh market. Growers have indicated they would be replacing other varieties with these varieties or planting more acres of these new varieties. In the past, the Committee has used the 100 bushel mark in its considerations of whether to add or delete varieties from the shipping schedule. In the case of these three varieties, production has exceeded the 100 bushel mark and the Committee projects that production will continue to increase because they show so much promise.

As with all varieties currently listed on the maturity schedule, the fruit was tested using the Committee's established procedures for testing maturity of avocados grown in south Florida to determine dates when different sizes and/or weights become mature. This information is then used to recommend the dates and requirements for addition to the schedule. The Committee has tested the new varieties for the past few seasons. Adding them as regulated varieties would place them under the maturity requirements as are other covered avocado varieties. This would prevent shipments of immature avocados to the fresh market, especially during the early part of the harvest season for each of these varieties. Providing fresh markets with mature fruit is an important aspect of creating consumer satisfaction and is in the interest of both producers and consumers.

Florida avocado handlers may ship, exempt from the minimum grade and maturity requirements effective under the order, up to 55 pounds of avocados during any one day under a minimum quantity provision, and up to 20 pounds of avocados as gift packs in individually addressed containers. Also, avocados grown in Florida utilized in commercial processing are not subject to the grade and maturity requirements under the order.

Section 8e of the Act provides that when certain domestically produced commodities, including avocados, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this rule would revise the maturity requirements under the domestic handling regulations, a corresponding change to the avocado import maturity regulations must also be made.

Maturity requirements for avocados imported into the United States are currently in effect under § 944.31 (7 CFR 944.31). The Hass, Fuerte, Zutano, and Edranol varieties of avocados currently are exempt from the maturity schedule, and would continue to be exempt under this proposed rule. However, these varieties are not exempt from the grade import regulation, which is not proposed to be changed.

This rule would add B or C shipping dates, with specific minimum weight, and/or minimum diameter measurements to the avocado maturity shipping schedule for the Arue, Beta, Donnie, Leona, Loretta, and Tower II varieties offered for importation into the United States. It would also add three new varieties of avocados, the Semil 34, Semil 43, and the Melendez, to the maturity schedule, including specific shipping requirements for each. The domestic maturity requirements for specified periods are based on the growing, maturation, and harvesting characteristics of the various varieties of South Florida avocados.

Import data for calendar years 1995 through April 1999 reveals that the major exporters of avocados to the United States are Chile, Mexico, Dominican Republic, and the Bahamas. Imports from these countries totaled 18,577 metric tons in 1995, 25,405 in 1996, 26,562 in 1997, 60,611 metric tons in 1998, and 9,261 through April of 1999. Other exporting countries include New Zealand, Belize, Israel, and Ecuador. Imports from the latter group of countries are small and sporadic.

Chile is the predominant exporting country. Imports from Chile are growing and reached 44,757 metric tons in calendar year 1998. Chile exports avocados into the United States predominately during the months of August through December. However, exports have occurred during the period from January through May, and in 1999, Chile exported some avocados during the period January through April. The major varieties imported from Chile are Hass, Fuerte, Zutano, and Edranol, all of which are exempt from the avocado maturity shipping schedule, and would continue to be exempt under this proposal for domestic and imported avocados. These varieties, however, are subject to grade requirements.

During calendar year 1998, Mexico was the second largest exporter of avocados into the United States. In 1998, exports from Mexico totaled 9,295 metric tons. Mexican shipments of fresh avocados to the United States are limited to November through February. The only variety of avocado imported from Mexico is the Hass, and the Hass variety is exempt from the maturity regulation as mentioned earlier.

The third major importing country is the Dominican Republic. During 1998, a total of 6,029 metric tons were imported during all 12 months of the year. Imports from the Bahamas during this period were small and appear to be declining.

Non-exempt varieties of avocados from the foreign countries in close proximity to Florida (Mexico, the Dominican Republic, and Bahamas) have similar growing, harvesting, and maturity periods, and have met the minimum weight and diameter maturity requirements without any apparent problems, and this is expected to continue. The import maturity requirements based on skin color apply to avocados which turn red or purple when mature.

A survey of Fresh Products Branch inspection offices checking imported avocados in 1998 revealed that most of the imported avocados were of the Hass variety.

This rule would facilitate shipments of avocados as they mature, and would ensure that only mature fruit is shipped to the fresh market. Thus, importers would benefit from the proposed changes in maturity requirements, just like Florida growers and handlers.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are approximately 141 avocado producers in the production area and approximately 49 handlers subject to regulation under the marketing order. There are approximately 35 importers of avocados. Small agricultural producers have been defined by the Small Business Administration (SBA) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000 (13 CFR 121.601).

The average price for fresh avocados during the 1997–98 season was $14.60 per 55 pound bushel box equivalent for all domestic shipments and the total shipments were 937,568 bushels. Approximately 10 percent of all handlers handled 90 percent of Florida avocado shipments. Many avocado handlers ship other tropical fruit and vegetable products which are not included in the Committees' data but would contribute further to handler receipts.

Using these prices, about 90 percent of avocado handlers could be considered small businesses under the SBA definition and about 10 percent of the handlers could be considered large businesses. Although specific data is unavailable, the Department believes that the majority of avocado producers and importers may be classified as small entities.

Section 915.51 of the order provides the authority to issue regulations establishing specific maturity requirements for avocados. Maturity requirements for avocados grown in Florida, based on minimum weights, diameters, and skin color, are specified in § 915.332 [7 CFR 915.332] of the order, and are in effect on a continuous basis. These maturity requirements specify minimum weights and diameters for specific shipping periods for approximately 60 varieties of avocados, and color specifications for those varieties which turn red or purple when mature. The maturity requirements and dates for the various varieties of avocados are different because each variety has different varietal characteristics and maturity times.

This rule would make several changes to the order's maturity rules and regulations. This rule would revise maturity requirements by adding shipping dates, weights, and/or diameters to the shipping schedule for several avocado varieties where no dates currently exist. Specifically, this rule would add B or C shipping dates, with specific minimum weight, and/or minimum diameter measurements to the shipping schedule for the Arue, Beta, Donnie, Leona, Loretta, and Tower II varieties. It would also add three new varieties of avocados, the Semil 34, Semil 43, and the Melendez, to the shipping schedule, including specific shipping requirements for each. This rule would facilitate the shipment of these varieties of avocados as they mature, and would ensure that only mature fruit is shipped to the fresh market. This would help improve grower returns and promote orderly marketing.

This rule will have a positive impact on affected entities. The changes were recommended to provide additional flexibility in packing avocados and to ensure that only mature fruit is shipped to the fresh market.

The impact of the change in these maturity regulations would not be adverse to growers, handlers, and importers. The application of maturity requirements to both Florida and imported avocados over the past several years has helped to assure that only mature avocados were shipped to fresh markets. The Committee continues to believe that the maturity requirements for Florida avocados are needed to improve grower returns. Preventing the shipment of immature avocados improves buyer confidence in the marketplace, and fosters increased consumption. Florida avocado producers and handlers have found such maturity requirements beneficial in the successful marketing of their avocado crop.

The change that would add B or C dates to six varieties under the order would not create any additional costs. This change would relax requirements and facilitate the shipment of smaller-sized fruit as it matures. Growers have noticed that smaller-sized fruit of these varieties have been maturing prior to the currently specified shipping dates. This has caused an increased incidence of fruit drop, resulting in an economic loss to both growers and handlers. The additional minimum weights and/or diameters for the six varieties would allow growers to pick the fruit as it matures, and reduce fruit loss while still supplying the market with mature fruit.

The change that would add three additional varieties to the schedule would also be beneficial in that regard. During the 1997–98 season, the three additional varieties comprised less than 1 percent of total shipments from south Florida. While this rule may result in some additional costs by requiring fruit to meet minimum weight and/or diameter maturity standards, the benefits are expected to outweigh costs. Inspection costs for Florida avocados are 14 cents for a 40 pound package, or equivalent thereof. Import inspection costs could range from 2.2 cents per package for a dockside inspection up to $86 for an individual trailer load. Adding these varieties to the domestic and import maturity schedules would help keep immature fruit from reaching the market. Preventing the shipment of immature avocados improves buyer confidence in the marketplace, and fosters increased consumption, thus, improving grower returns.

These changes are intended to provide some additional flexibility for all handlers covered under the order,

while helping to ensure that only mature fruit reaches the market. The opportunities and benefits of this rule are expected to be equally available to all avocado handlers and growers regardless of their size of operation. In addition, importers are expected to benefit similarly.

The change in the avocado maturity shipping schedule is expected to benefit the marketers of both Florida and imported avocados by assuring that the avocados marketed are of satisfactory maturity. Experience has shown that when immature avocados are found in market channels they tend to weaken the market for the mature fruit. Fresh Products Branch inspection officials indicated that the fruit offered for importation has generally met maturity requirements. Thus, the Department believes that the proposed changes would not limit the quantity of imported avocados or place an undue burden on exporters, or importers of avocados. The changes are expected to continue to foster customer satisfaction and benefit all affected entities regardless of size.

This rule would not impose any additional reporting or record keeping requirements on either small or large avocado handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the avocado industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the December 8, 1999, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this proposed rule.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because this rule needs to be in place as soon as possible. Handlers are already shipping avocados from the 1999–2000 crop, and growers and handlers rely heavily on the avocado maturity shipping schedule in making harvesting and marketing decisions. Further, growers and handlers of avocados do not need to make any operational changes to comply with the maturity schedule changes, and the impact of the changes on importers of foreign grown avocados is expected to be minimal. All written comments timely received will be considered before a final determination is made on this matter.

**List of Subjects**

*7 CFR Part 915*

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

*7 CFR Part 944*

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth above, 7 CFR parts 915 and 944 are proposed to be amended as follows:

## PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR parts 915 and 944 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. In § 915.332, Table I, the entry for ''Tower'' is removed and an entry for ''Tower II'' is inserted in its place, the entries for ''Beta, Donnie, Loretta, Arue,'' and ''Leona'' are revised, and a new term ''Melendez'' is added immediately following the term ''Leona'' and new terms ''Semil 34'' and ''Semil 43'' are added immediately following the ''Booth 3'' to read as follows:

**§ 915.332 Florida avocado maturity regulation.**

(a) * * *

(2) * * *

TABLE I

| Variety | A date | Min. wt. | Min. diam. | B date | Min. wt. | Min. diam. | C date | Min. wt. | Min. diam. | D date |
|---|---|---|---|---|---|---|---|---|---|---|
| * * | | * | | * | | * | | * | | * |
| Tower II | 8–01 | 14 | 3 6/16 | 8–15 | 12 | 3 4/16 | 8–29 | 10 | 3 2/16 | 9–05 |
| Beta | 8–08 | 18 | 3 8/16 | 8–15 | 16 | 3 5/16 | 8–29 | 14 | 3 3/16 | 9–05 |
| * * | | * | | * | | * | | * | | * |
| Loretta | 8–22 | 30 | 4 3/16 | 9–05 | 26 | 3 15/16 | 9–19 | 22 | 3 12/16 | 9–26 |
| * * | | * | | * | | * | | * | | * |
| Arue | 5–16 | 16 | ..... | 5–30 | 14 | 3 3/16 | 6–20 | 12 | ..... | 7–04 |
| Donnie | 5–23 | 16 | 3 5/16 | 6–06 | 14 | 3 4/16 | 6–20 | 12 | ..... | 7–04 |
| * * | | * | | * | | * | | * | | * |
| Leona | 9–26 | 18 | 3 10/16 | 10–03 | 16 | ..... | ..... | ..... | ..... | 10–10 |
| Melendez | 9–26 | 26 | 3 14/16 | 10–10 | 22 | 3 11/16 | 10–24 | 18 | 3 7/16 | 11–07 |
| * * | | * | | * | | * | | * | | * |
| Semil 34 | 10–17 | 18 | 3 10/16 | 10–31 | 16 | 3 8/16 | 11–14 | 14 | 3 5/16 | 11–28 |
| Semil 43 | 10–24 | 18 | 3 10/16 | 11–7 | 16 | 3 8/16 | 11–21 | 14 | 3 5/16 | 12–05 |
| * * | | * | | * | | * | | * | | * |

* * * * *

3. In § 944.31, Table 1, the entry for ''Tower'' is removed and an entry for ''Tower II'' is inserted in its place, the entries for ''Beta, Loretta, Arue, Donnie,'' and ''Leona'' are revised and a new term ''Melendez'' is added immediately following the term ''Leona'' and new terms ''Semil 34'' and ''Semil 43'' are added immediately following the term ''Booth 3'' to read as follows:

**§ 944.31 Avocado import maturity regulation.**

(a) * * *

(2) * * *

TABLE I

| Variety | A date | Min. wt. | Min. diam. | B date | Min. wt. | Min. diam. | C date | Min. wt. | Min. diam. | D date |
|---|---|---|---|---|---|---|---|---|---|---|
| * * | | * | | * | | * | | * | | * |
| Tower II | 8–01 | 14 | 3 6/16 | 8–15 | 12 | 3 4/16 | 8–29 | 10 | 3 2/16 | 9–05 |
| Beta | 8–08 | 18 | 3 8/16 | 8–15 | 16 | 3 5/16 | 8–29 | 14 | 3 3/16 | 9–05 |
| * * | | * | | * | | * | | * | | * |
| Loretta | 8–22 | 30 | 4 3/16 | 9–05 | 26 | 3 15/16 | 9–19 | 22 | 3 12/16 | 9–26 |
| * * | | * | | * | | * | | * | | * |
| Arue | 5–16 | 16 | ..... | 5–30 | 14 | 3 3/16 | 6–20 | 12 | ..... | 7–04 |
| Donnie | 5–23 | 16 | 3 5/16 | 6–06 | 14 | 3 4/16 | 6–20 | 12 | ..... | 7–04 |
| * * | | * | | * | | * | | * | | * |
| Leona | 9–26 | 18 | 3 10/16 | 10–03 | 16 | ..... | ..... | ..... | ..... | 10–10 |
| Melendez | 9–26 | 26 | 3 14/16 | 10–10 | 22 | 3 11/16 | 10–24 | 18 | 3 7/16 | 11–07 |
| * * | | * | | * | | * | | * | | * |
| Semil 34 | 10–17 | 18 | 3 10/16 | 10–31 | 16 | 3 8/16 | 11–14 | 14 | 3 5/16 | 11–28 |
| Semil 43 | 10–24 | 18 | 3 10/16 | 11–7 | 16 | 3 8/16 | 11–21 | 14 | 3 5/16 | 12–05 |
| * * | | * | | * | | * | | * | | * |

* * * * *

Dated: August 17, 1999.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 99–21665 Filed 8–18–99; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 98–NM–282–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 747 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive. (AD) that is applicable to certain Boeing Model 747 series airplanes. This proposal would require repetitive inspections to detect broken fasteners and cracking of the forward edge frame for main entry door number 3, and repair, if necessary. This proposal is prompted by reports of fatigue cracks at the inner chord and web of the body station 1265 edge frame between stringers 23 and 27. The actions specified by the proposed AD are intended to detect and correct such cracking, which could result in rapid depressurization of the airplane.

**DATES:** Comments must be received by October 4, 1999.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–282–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Robert Breneman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2776; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–282–AD.'' The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–282–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

The FAA has received reports indicating that fatigue cracking has been detected in the frame web and frame inner chord at stringer 26 at body station 1265. In addition, one report indicates that, on one airplane, the fuselage frame web and frame inner chord had severed above stringer 24 near the top of a frame inner chord reinforcement strap. This frame is the forward edge frame for main entry door number 3. Such fatigue cracking, if not detected and corrected in a timely manner, could result in rapid depressurization of the airplane.

**Explanation of Relevant Service Information**

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–53A2416, Revision 1, dated May 6, 1999, which describes procedures for repetitive inspections to detect broken fasteners and cracking of the forward edge frame for main entry door number 3, and repair, if necessary. The inspection of the frames at the floor intercostal includes a detailed visual inspection for broken fasteners, an open hole high frequency eddy current (HFEC) inspection of certain fasteners in the frame inner chord to detect cracking, and a surface HFEC inspection of the frame web to detect cracking. For certain airplanes, the service bulletin recommends a surface HFEC inspection and an open hole HFEC inspection of the frames at the top of the inner chord reinforcement strap to detect cracking. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the alert service bulletin described previously, except as discussed below.

**Differences Between Alert Service Bulletin and This AD**

Operators should note that, although the alert service bulletin specifies that the manufacturer may be contacted for repair data for cracking conditions, this AD requires the repair of those conditions to be accomplished in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

The alert service bulletin also indicates that a modification to the frame and lateral intercostal can be made that will increase the interval between frame inspections, and that the procedures for such a modification will be included in a subsequent revision to the alert service bulletin. Any modification incorporated to increase the interval between inspections or as terminating action for the inspections must be approved as an alternative method of compliance in accordance with paragraph (d) of this AD.

**Cost Impact**

There are approximately 1,182 airplanes of the affected design in the worldwide fleet. The FAA estimates that 251 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed inspection of the frames at the floor intercostal, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed inspection on U.S. operators is estimated to be $15,060, or $60 per airplane, per inspection cycle.

The FAA estimates that the proposed inspection of the frames at the top of the inner chord reinforcement strap would be required to be accomplished on 103 U.S.-registered airplanes. It would take approximately 1 work hour per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed inspection on U.S. operators is estimated to be $6,180, or $60 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

**Regulatory Impact**

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Boeing:** Docket 98–NM–282–AD.

*Applicability:* Model 747 series airplanes, as listed in Boeing Alert Service Bulletin 747–53A2416, Revision 1, dated May 6, 1999; certificated in any category.

**Note 1:** This AD applies to airplanes that have been converted from a passenger configuration to a special freighter configuration.

**Note 2:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been

modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To detect and correct cracking of the inner chord and web of the body station 1265 edge frame between stringers 23 and 27, which could result in rapid depressurization of the airplane, accomplish the following:

**Inspections**

(a) Accomplish the flight safety inspections of the frames at the floor intercostal to detect broken fasteners and cracking, in accordance with Figure 5 of Boeing Alert Service Bulletin 747–53A2416, Revision 1, dated May 6, 1999, at the applicable time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD. Repeat the inspection thereafter at intervals not to exceed 3,000 flight cycles.

**Note 3:** Figure 5 of the alert service bulletin includes a detailed visual inspection for broken fasteners, an open hole high frequency eddy current (HFEC) inspection of certain fasteners in the frame inner chord to detect cracking, and a surface HFEC inspection of the frame web to detect cracking.

**Note 4:** For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

**Note 5:** The alert service bulletin gives instructions to perform an open hole inspection, but does not give instructions to oversize the fastener hole after the inspection. This will keep sufficient material to oversize the hole at a later date when the modification work is accomplished.

(1) For airplanes that have accumulated fewer than 10,000 total flight cycles as of the effective date of this AD: Inspect prior to the accumulation of 10,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later.

(2) For airplanes that have accumulated between 10,000 and 20,000 total flight cycles as of the effective date of this AD: Inspect prior to the accumulation of 11,000 total flight cycles, or within 750 flight cycles after the effective date of this AD, whichever occurs later.

(3) For airplanes that have accumulated more than 20,000 total flight cycles as of the effective date of this AD: Inspect prior to the accumulation of 20,750 total flight cycles, or within 500 flight cycles after the effective date of this AD, whichever occurs later.

(b) For Group 1 airplanes, as identified in Boeing Alert Service Bulletin 747–53A2416, Revision 1, dated May 6, 1999, on which the extended chord reinforcement strap modification specified in Boeing Service Bulletin 747–53–2066, dated June 28, 1972, has not been accomplished or on which the extended chord reinforcement strap modification was accomplished after the accumulation of 10,000 total flight cycles: Accomplish the surface HFEC inspection and the open hole HFEC inspection, as applicable, of the frames at the top of the inner chord reinforcement strap to detect cracking, in accordance with Figure 6 of the alert service bulletin at the applicable time specified in either paragraph (b)(1) or (b)(2) of this AD. Repeat the inspection thereafter at intervals not to exceed 800 flight cycles.

(1) For airplanes that have accumulated 20,000 total flight cycles or fewer as of the effective date of this AD: Inspect prior to the accumulation of 16,000 total flight cycles, or within 500 flight cycles after the effective date of this AD, whichever occurs later.

(2) For airplanes that have accumulated more than 20,000 total flight cycles as of the effective date of this AD: Inspect prior to the accumulation of 20,500 total flight cycles, or within 250 flight cycles after the effective date of this AD, whichever occurs later.

**Repair**

(c) If any broken fastener or cracking is detected during the inspections required by paragraph (a) or (b) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

**Alternative Methods of Compliance**

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 6:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

**Special Flight Permits**

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 16, 1999.

**D. L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 99–21693 Filed 8–19–99; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 99–NM–01–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Dornier Model 328–100 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive.

(AD) that is applicable to all Dornier Model 328–100 series airplanes. This proposal would require repetitive inspections of the left and right roll spoiler actuators to check for signs of leakage and deformation of the housing, repetitive inspections of the gap between the left roll spoiler actuator housing cap and the actuator housing, repetitive torque checks of the left roll spoiler actuator housing cap attachment screws, and corrective action, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent oil leakage from the roll spoiler actuators, which could result in incorrect roll spoiler operation and reduced controllability of the airplane.

**DATES:** Comments must be received by September 20, 1999.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–01–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fairchild Dornier, Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information

may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule.

The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–01–AD.''

The postcard will be date stamped and returned to the commenter.

## Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–01–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

## Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on all Dornier Model 328–100 series airplanes. The LBA advises that a fluid leakage from the roll spoiler actuator housing was found. Investigation showed that the existing design allowed the piston of the double shuttle valve to temporarily remain in the middle position, allowing high pressure to reach the low pressure side of the actuator. This resulted in deformation of the actuator housing cap and subsequent oil loss. This condition, if not corrected, could result in incorrect roll spoiler operation and reduced controllability of the airplane.

## Explanation of Relevant Service Information

Dornier has issued Alert Service Bulletin ASB–328–27–025, dated October 16, 1998, which describes procedures for repetitive detailed inspections of the left and right roll spoiler actuators for signs of leakage and deformation of the housing, repetitive inspections to detect a gap between the left roll spoiler actuator housing cap and the actuator housing, and repetitive torque checks of the left roll spoiler actuator housing cap attachment screws. The alert service bulletin also describes procedures for the replacement of the actuators and the double shuttle valves, if a gap or oil leakage is detected, if the cap surface is not flat, or if the torque of the attachment screws is less than 1 newton meter (8.85 lb-in).

Both the left and right roll spoiler actuators are connected to the same double shuttle valve and experience the same hydraulic pressure. The left roll spoiler actuator is inspected more thoroughly, with the gap inspection and torque check, because it is more accessible than the right roll spoiler actuator. Removal of the right roll spoiler actuator from the airplane would be necessary to accomplish all inspection actions. In the event any discrepancy is noted on the left roll spoiler actuator requiring its replacement, the removal and complete inspection of the right roll spoiler actuator becomes necessary.

Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition. The LBA classified this alert service bulletin as mandatory and issued LBA airworthiness directive 1998–479, dated December 17, 1998, in order to assure the continued airworthiness of these airplanes in Germany.

## FAA's Conclusions

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

## Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the alert service bulletin described previously.

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

## Cost Impact

The FAA estimates that 50 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $9,000, or $180 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

## Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative,

on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Dornier Luftfahrt GMBH:** Docket 99–NM–01–AD.

*Applicability:* All Dornier Model 328–100 series airplanes, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent oil leakage from the roll spoiler actuators, which could result in incorrect roll spoiler operation and reduced controllability of the airplane, accomplish the following:

(a) Within 14 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD on the left and right roll spoiler actuators, in accordance with Dornier Alert Service Bulletin ASB–328–27–025, dated October 16, 1998. Thereafter, repeat the inspections required by paragraphs (a)(1) and (a)(2) of this AD at intervals not to exceed 330 flight hours.

(1) Perform a detailed inspection to detect leakage of the area around the actuator cap and housing of the roll spoiler actuators. If leakage is found, prior to further flight, replace the actuator and the double shuttle valve with new or serviceable parts.

(2) Perform a detailed inspection to detect flatness of the surface of the cap of the roll spoiler actuators. If the cap surface is not flat, prior to further flight, replace the actuator and the double shuttle valve with new or serviceable parts.

**Note 2:** For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required.''

(b) Within 14 days after the effective date of this AD, accomplish the requirements of paragraphs (b)(1) and (b)(2) of this AD on the left roll spoiler actuator, in accordance with Dornier Alert Service Bulletin ASB–328–27–025, dated October 16, 1998. Thereafter, repeat the inspections required by paragraphs (b)(1) and (b)(2) of this AD at intervals not to exceed 330 flight hours.

(1) Perform a detailed inspection to detect a gap between the cap of the roll spoiler actuator and the actuator housing. If any gap exists, prior to further flight, replace the actuator and the double shuttle valve with new or serviceable parts.

(2) Perform a torque check of the housing cap attachment screws. If the torque is within the limits specified by the service bulletin, prior to further flight, torque the screws to 17.7 lb-in, in accordance with the alert service bulletin. If the torque is outside the limits specified by the service bulletin, prior to further flight, replace the left roll spoiler actuator and double shuttle valve with new or serviceable parts, in accordance with the alert service bulletin.

(c) If any left roll spoiler actuator is replaced during any inspection required by paragraph (b)(1) or (b)(2) of this AD, prior to further flight, accomplish the requirements of (b)(1) and (b)(2) for the right roll spoiler actuator.

**Alternate Methods of Compliance**

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

**Special Flight Permits**

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Note 4:** The subject of this AD is addressed in LBA airworthiness directive 1998–479, dated December 17, 1998.

Issued in Renton, Washington, on August 16, 1999.

**D. L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 99–21692 Filed 8–19–99; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 99–NM–02–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 737 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737 series airplanes. This proposal would require a one-time detailed visual inspection of the upper decompression panel on the flight deck door to verify that a minimum overlap dimension exists, and corrective action, if necessary. This proposal is prompted by reports indicating that, during production, some upper decompression panels were installed incorrectly on the flight deck door. The actions specified by the proposed AD are intended to detect an incorrectly installed upper decompression panel, which could cause the emergency exit panel on the flight deck door to become inoperable, thereby preventing crewmembers from performing essential duties during an emergency evacuation.

**DATES:** Comments must be received by October 4, 1999.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–02–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:**

Mike Thompson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1157; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–02–AD.'' The postcard will be date stamped and returned to the commenter.

## Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–02–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

## Discussion

During a pre-delivery interior compliance inspection, the FAA discovered that the emergency exit panel installed on the flight deck door of a Boeing Model 737 series airplane did not open properly. The emergency exit panel contains an upper decompression panel that allows pressure to equalize in the event of a rapid decompression. This panel also serves as an alternate escape path from the crew cabin if the flight deck door is damaged during an emergency landing. Subsequent investigation revealed that if the upper decompression panel is installed incorrectly, an interference between this panel and a decorative channel could cause the emergency exit panel to bind. Such binding could cause the panel to become inoperable as an emergency exit; however, the panel would still function properly in the event of a rapid decompression. The FAA found this problem on two airplanes prior to delivery, and has determined that it could also exist on certain Model 737–300/–400/–500 series airplanes, as well as on certain Model 737–600/–700/–800 series airplanes, that have already been delivered. The actions specified by the proposed AD are intended to detect an incorrectly installed upper decompression panel, which could cause the emergency exit panel on the flight deck door to become inoperable, thereby preventing crewmembers from performing essential duties during an emergency evacuation.

## Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 737–52–1128, dated April 22, 1999, which describes procedures to inspect the upper decompression panel on the flight deck door of certain Model 737–300/–400/–500 series airplanes to verify that a minimum overlap dimension of 0.05 inch exists. If the minimum overlap does not exist, the service bulletin provides instructions to adjust the upper decompression panel and, if necessary, an adjacent decorative channel, to establish the correct overlap dimension.

The FAA has also reviewed and approved Boeing Service Bulletin 737–52–1137, dated May 13, 1999, which describes procedures to inspect the upper decompression panel on the flight deck door of certain Model 737–600/–700/–800 series airplanes to verify that a minimum overlap dimension of 0.05 inch exists. If the minimum overlap does not exist, the service bulletin provides instructions to adjust the upper decompression panel and, if necessary, an adjacent decorative channel, to establish the correct overlap dimension.

Accomplishment of the actions specified in the two service bulletins discussed above, as applicable, is intended to adequately address the identified unsafe condition.

## Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

## Differences Between Proposed Rule and the Service Bulletins

Operators should note that, although the service bulletins recommend that the inspection be performed at the next convenient maintenance opportunity, the FAA has determined that an unspecified maintenance interval would not address the unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspection (1 hour). In light of all of these factors, the FAA finds an 18-month compliance time for completing the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Operators also should note that, although the service bulletins specify accomplishment of an inspection of the upper decompression panel on the flight deck door to verify that a minimum overlap dimension of 0.05 inch exists, this proposed AD refers to that inspection as a detailed visual inspection. The FAA finds that ''detailed visual inspection'' is the appropriate terminology for the inspection described in the service bulletins. Additionally, a definition of a detailed visual inspection is included in **Note 2** of this proposed AD.

## Cost Impact

There are approximately 1299 airplanes of the affected design in the worldwide fleet. The FAA estimates that 901 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $54,060, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

### Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Boeing:** Docket 99–NM–02–AD.

*Applicability:* Model 737 series airplanes, as listed in Boeing Service Bulletin 737–52–1128, dated April 22, 1999, or in Boeing Service Bulletin 737–52–1137, dated May 13, 1999; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To detect an incorrectly installed upper decompression panel, which could cause the emergency exit panel on the flight deck door to become inoperable, thereby preventing crewmembers from performing essential duties during an emergency evacuation, accomplish the following:

**One-Time Inspection**

(a) Within 18 months after the effective date of this AD, perform a one-time detailed visual inspection of the upper decompression panel on the flight deck door to verify that a minimum overlap dimension of 0.05 inch exists, as specified in Boeing Service Bulletin 737–52–1128, dated April 22, 1999 (for Model 737–300/–400/–500 series airplanes); or Boeing Service Bulletin 737–52–1137, dated May 13, 1999 (for Model 737–600/–700/–800 series airplanes); as applicable.

**Note 2:** For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

**Corrective Action**

(b) If a minimum overlap dimension of 0.05 inch is not found during the inspection required by paragraph (a) of this AD, prior to further flight, adjust the decompression panel and, as applicable, the adjacent decorative channel, in accordance with Boeing Service Bulletin 737–52–1128, dated April 22, 1999 (for Model 737–300/–400/–500 series airplanes); or Boeing Service Bulletin 737–52–1137, dated May 13, 1999 (for Model 737–600/–700/–800 series airplanes); as applicable.

**Alternative Methods of Compliance**

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

**Special Flight Permits**

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 16, 1999.

**D. L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 99–21691 Filed 8–19–99; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 99–NM–03–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing 777–200 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to revise an existing airworthiness directive (AD), applicable to certain Boeing 777–200 series airplanes, that currently requires repetitive visual inspections to determine the presence and condition of the nut and cotter pin of the lock link mechanism on the side struts and drag struts on the main landing gear (MLG); and corrective action, if necessary. That AD was prompted by reports of missing or damaged components on the lock link mechanism. The actions specified by that AD are intended to prevent failure of the lock link mechanism to lock the MLG in the down position, and consequent collapse of the MLG during ground operation. This action would provide for an optional terminating action for the repetitive inspections.

**DATES:** Comments must be received by October 4, 1999.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–03–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00

p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Stan Wood, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2772; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–03–AD.'' The postcard will be date stamped and returned to the commenter.

## Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–03–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

## Discussion

On January 15, 1998, the FAA issued AD 98–02–06, amendment 39–10288 (63 FR 3458, January 23, 1998), applicable to certain Boeing 777–200 series airplanes, to require repetitive visual inspections to determine the presence and condition of the nut and cotter pin of the lock link mechanism on the side struts and drag struts on the main landing gear (MLG); and corrective action, if necessary. That action was prompted by reports of missing or damaged components on the lock link mechanism. The requirements of that AD are intended to prevent failure of the lock link mechanism to lock the MLG in the down position, and consequent collapse of the MLG during ground operation.

## Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has reviewed and approved Boeing Service Bulletin 777–32–0016, dated January 14, 1999. The service bulletin describes procedures for replacement of the existing retention bolt, end caps, washer, and nut of the lock link mechanism on the side struts and drag struts on the MLG with a new lock link assembly that incorporates a new bolt, washer, nut, and end-caps. Accomplishment of this action would eliminate the need for the repetitive inspections required by AD 98–02–06 and would positively address the unsafe condition addressed by that AD.

## Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would revise AD 98–02–06 to continue to require repetitive visual inspections to determine the presence and condition of the nut and cotter pin of the lock link mechanism on the side struts and drag struts on the MLG; and corrective action, if necessary. This proposed AD also would provide for an optional terminating action for the repetitive inspections. The optional terminating action, if accomplished, would be required to be accomplished in accordance with the service bulletin described previously.

The FAA is not proposing to mandate the replacement of the existing retention bolt of the lock link mechanism on the side struts and drag struts on the MLG for several reasons:

1. Accessing the lock link mechanism area on the MLG for inspection is easily accomplished.

2. The failed retention system of the bolt is easily detectable by means of a visual inspection.

3. The loss of a bolt may adversely affect the MLG during ground operations; however, the visual inspections will preclude the failure of the bolt retention system, which could result in collapse of the MLG during ground operations.

## Cost Impact

There are approximately 40 Model 777–200 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 17 airplanes of U.S. registry would be affected by this proposed AD.

The inspection that is currently required by AD 98–02–06, and retained in this AD, takes approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,040, or $120 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional terminating action rather than continue the repetitive inspections, it would take approximately 1 work hour per airplane to accomplish the replacement, at an average labor rate of $60 per work hour. Required parts would cost approximately $5,094 per airplane. Based on these figures, the cost impact of this optional terminating action is estimated to be $5,154 per airplane.

## Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the

location provided under the caption **ADDRESSES.**

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10288 (63 FR 3458, January 23, 1998), and by adding a new airworthiness directive (AD), to read as follows:

**Boeing:** Docket 99–NM–03–AD. Revises AD 98–02–06, amendment 39–10288.

*Applicability:* Model 777–200 series airplanes, line positions 1 through 40 inclusive, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of the lock link mechanism to lock the main landing gear (MLG) in the down position, and consequent collapse of the MLG during ground operation, accomplish the following:

**Restatement of the Requirements of AD 98–02–06**

**Repetitive Inspections and Corrective Actions**

(a) Within 30 days after February 9, 1998 (the effective date of AD 98–02–06, amendment 39–10288), perform a visual inspection to determine the presence and condition of the cotter pin and nut of the lock link mechanism on the side struts and drag struts on the left- and right-hand MLG, in accordance with Boeing Alert Service Bulletin 777–32A0015, dated September 4, 1997. If any discrepancy is found, prior to further flight, correct the discrepancy in accordance with the service bulletin. Repeat the inspection thereafter at intervals not to exceed 75 days or 400 flight cycles, whichever occurs first.

**New Actions Proposed by This AD**

**Optional Terminating Action**

(b) Replacement of the existing retention bolt, end caps, washer, and nut of the lock link mechanism on the side struts and drag struts on the MLG with a new lock link assembly that incorporates a new bolt, washer, nut, and end-caps, in accordance with Boeing Service Bulletin 777–32–0016, dated January 14, 1999, constitutes terminating action for the requirements of this AD.

**Alternative Methods of Compliance**

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

**Special Flight Permits**

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished. Issued in Renton, Washington, on August 16, 1999.

**D.L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 99–21690 Filed 8–19–99; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 99–NM–32–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 series airplanes. This proposed AD would require modification of the wiring of the emergency lighting system. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The action specified by the proposed AD is intended to prevent the pilots from having full authority over the cabin emergency lights, which could result in delayed egress of the passengers and crew from the cabin during emergency evacuation.

**DATES:** Comments must be received by September 20, 1999.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–32–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Airplane Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Airplane Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

**FOR FURTHER INFORMATION CONTACT:** Luciano L. Castracane, Aerospace Engineer, Systems and Flight Branch, ANE–172, Engine and Propeller Directorate, New York Airplane Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581, telephone (516) 256–7535; fax (516) 256–2716.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–32–AD.'' The postcard will be date stamped and returned to the commenter.

## Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–32–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

## Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 series airplanes. TCCA advises that installation of Bombardier Modification 8/2407 on these airplanes gave the pilots full authority over the emergency lights. If the cockpit switch for the emergency lights is in the OFF position, the flight attendant cannot turn the lights on from the cabin location because the pilot switch overrides the flight attendant's switch. This condition, if not corrected, could result in delayed egress of the passengers and crew members from the cabin during an emergency evacuation.

## Explanation of Relevant Service Information

Bombardier has issued Service Bulletin S.B. 8–33–40, Revision 'B,' dated October 21, 1998, which describes procedures for modification of the wiring of the emergency lighting system to allow selection of the emergency lights to ON from the flight attendant switch in the cabin, even when the emergency light switch in the cockpit is OFF. Accomplishment of the action specified in the service bulletin is intended to adequately address the identified unsafe condition. TCCA classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–98–33, dated September 8, 1998, in order to assure the continued airworthiness of these airplanes in Canada.

## FAA's Conclusions

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

## Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the action specified in the service bulletin described previously.

## Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the Canadian airworthiness directive affects Bombardier Model DHC–8–314 series airplanes, Bombardier Model DHC–8–314 series airplanes are not type certificated in the United States. Therefore, the proposed AD does not affect those airplanes.

## Cost Impact

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 20 work hours per airplane to accomplish the proposed modification, and that the average labor rate is $60 per work hour. Required parts would cost approximately $595 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $17,950, or $1,795 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

## Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

## List of Subjects in 14 CFR Part 39

Air transportation, Airplane, Aviation safety, Safety.

## The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Bombardier, Inc.** (Formerly de Havilland, Inc.): Docket 99–NM–32–AD.

*Applicability:* Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 series airplanes; serial numbers 459 through 501, excluding serial numbers 462, 464, 467, 469, 478, 479, 481, 482, 487, 489, 490, 491, 493, 495, 498, 499, and 500; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an

alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent the pilots from having full authority over the cabin emergency lights, which could result in delayed egress of the passengers and crew from the cabin during an emergency evacuation, accomplish the following:

**Modification**

(a) For airplanes on which Bombardier Modification 8/2407 has been installed during production: Within 12 months after the effective date of this AD, modify the wiring of the emergency lighting system in accordance with Bombardier Service Bulletin S.B. 8–33–40, Revision 'B,' dated October 21, 1998.

**Note 2:** Modification of the wiring of the emergency lighting system accomplished prior to the effective date of this AD in accordance with Bombardier Service Bulletin S.B. 8–33–40, dated May 8, 1998, or Revision 'A,' dated July 28, 1998, is considered acceptable for compliance with the modification required by paragraph (a) of this AD.

**Alternative Methods of Compliance**

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the International Branch, ANM–116.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

**Special Flight Permits**

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Note 4:** The subject of this AD is addressed in Canadian airworthiness directive CF–98–33, dated September 8, 1998.

Issued in Renton, Washington, on August 16, 1999.

**D.L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Airplane Certification Service.*

[FR Doc. 99–21689 Filed 8–19–99; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 99–NM–58–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 777 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 777 series airplanes. This proposal would require the replacement of fuse pins in the attachment fittings and support fittings of the main landing gear with new, improved fuse pins. This proposal is prompted by a report of corrosion of a fuse pin of a similar design on the main landing gear of a Boeing Model 767 series airplane. The actions specified by the proposed AD are intended to prevent corrosion and subsequent fracture of the fuse pins, which could result in collapse of the main landing gear and the loss of the inboard flap and outboard spoilers.

**DATES:** Comments must be received by October 4, 1999.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–58–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207.

This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Stan Wood, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2772; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–58–AD.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–58–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

The FAA has received a report of corrosion of a fuse pin on the main landing gear of a Boeing Model 767 series airplane. Such corrosion could lead to fracture of the fuse pins. Fracture of the fuse pins for the outboard end of the main landing gear beam and upper stabilizer braces for the main landing gear could result in the separation of the main landing gear beam. This condition, if not corrected, could result in collapse of the main landing gear and the loss of the inboard flap and outboard spoilers.

The design of the fuse pins on the Boeing Model 767 series airplane and those on the Model 777 series airplane is very similar. Therefore, the Model 777 series may be subject to the same unsafe condition revealed on the Model 767 series airplane.

### Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 777–57A0029, dated December 22, 1998, which describes procedures for the replacement of fuse pins in the attachment fittings and support fittings of the main landing gear with new, improved fuse pins made of a more corrosion resistant material. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition.

### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the alert service bulletin described previously.

### Cost Impact

There are approximately 163 airplanes of the affected design in the worldwide fleet. The FAA estimates that 34 airplanes of U.S. registry would be affected by this proposed AD, that it would take between 5 and 39 work hours per airplane to accomplish the proposed replacement, and that the average labor rate is $60 per work hour. Required parts would cost between $3,090 and $8,710 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be between $3,390 and $11,050 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

### Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Boeing:** Docket 99–NM–58–AD.

*Applicability:* Model 777 series airplanes, as listed in Boeing Alert Service Bulletin 777–57A0029, dated December 22, 1998; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent corrosion and subsequent fracture of the fuse pins in the main landing gear attachment and support fittings, which could result in collapse of the main landing gear and the loss of the inboard flap and outboard spoilers, accomplish the following:

**Replacement**

(a) Within 48 months since date of manufacture, or 18 months after the effective date of this AD, whichever occurs later, replace the main landing gear fuse pins with new, improved fuse pins in accordance with Boeing Alert Service Bulletin 777–57A0029, dated December 22, 1998.

**Spares**

(b) As of the effective date of this AD, no person shall install a main landing gear fuse pin having part number 112W1728–1, 112W1728–3, or 115W1670–1 on any airplane.

**Alternative Methods of Compliance**

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

**Special Flight Permits**

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 16, 1999.

**D.L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 99–21688 Filed 8–19–99; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 99–NM–81–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This proposal would require repetitive inspections to detect cracking of the lower corners of the door frame and cross beam of the forward cargo door, and corrective actions, if necessary. This proposal also would require eventual modification of the outboard radius of

the lower corners of the door frame and reinforcement of the cross beam of the forward cargo door, which would constitute terminating action for the repetitive inspections. This proposal is prompted by reports indicating that fatigue cracks have been detected in the lower corners of the door frame and cross beam of the forward cargo door. The actions specified by the proposed AD are intended to prevent fatigue cracking of the lower corners of the door frame and cross beam of the forward cargo door, which could result in rapid depressurization of the airplane.

**DATES:** Comments must be received by October 4, 1999.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–81–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98134–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1153; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–81–AD.'' The postcard will be date stamped and returned to the commenter.

## Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–81–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

## Discussion

The FAA has received several reports indicating that fatigue cracks have been detected in the lower corners of the door frame and cross beam of the forward cargo door on Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. Such fatigue cracking results from cabin pressurization cycles. The sizes of the cracks ranged from 3/8 inch to 17.5 inches in length, and were found on airplanes that had accumulated between 13,500 and 53,100 total flight hours and between 15,700 and 49,800 total flight cycles.

The manufacturer subsequently redesigned the door frame of the forward cargo door to be less susceptible to fatigue cracking. However, investigation has revealed that such cracking has been detected on airplanes equipped with the redesigned door frame of the forward cargo door. Recently, two operators reported finding cracks on the lower corner radius of the aft door frame of the forward cargo door. The first operator reported finding a 10-inch crack on the aft door frame and an undisclosed sized crack on the cross beam on an airplane that had accumulated 23,000 total flight cycles. The second operator reported finding a 14.5-inch crack on the aft door frame and an undisclosed sized crack on the cross beam on an airplane that had accumulated 29,000 total flight cycles. Such cracking, if not detected and corrected, could result in rapid depressurization of the airplane.

## Other Relevant Rulemaking

The FAA previously has issued AD 90–06–02, amendment 39–6489 (55 FR 8372, March 7, 1990), applicable to certain Boeing Model 737 series airplanes. AD 90–06–02 requires accomplishment of certain structural modifications. That amendment was prompted by reports of incidents involving fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their design life goal. For airplanes that have those modifications installed, this proposed AD would require additional modifications of the aft lower corner of the door frame of the forward cargo door.

Additionally, the FAA has issued AD 98–25–06, amendment 39–10931 (55 FR 67769, December 9, 1998), applicable to certain Boeing Model 737–200, –200C, –300, and –400 series airplanes. AD 98–25–06 requires repetitive inspections to detect cracking of the corners of the door frame and the cross beams of the aft cargo door, and corrective actions, if necessary. This proposed AD would not affect the requirements of that AD.

## Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing 737 Nondestructive Test Manual, Part 6, Section 51–00–00, Figure 4 and Figure 23, which describes procedures for performing high frequency eddy current inspections.

The FAA has also reviewed and approved Boeing Service Bulletin 737–52–1100, Revision 2, dated March 31, 1994, which describes procedures for, among other things, repetitive close visual inspections to detect cracking of the lower corners (forward and aft) of the door frame and cross beam (i.e., upper and lower chord and web sections) of the forward cargo door, and corrective actions, if necessary. The corrective actions involve replacement of the damaged door frame of the forward cargo door with a new door frame and reinforcement modification of the upper chord and web sections of the cross beam of the forward cargo door. The corrective actions also involve installation of a cross beam repair (if necessary), and preventative modification of the outboard radius of the lower corners of the door frame. This modification involves installing a reinforcement angle along the full length of the lower corners (forward and aft) over the outboard radius of the lower end of the door frame. For certain airplanes, installation of the preventative modification of the outboard radius of the lower corner of the door frame and reinforcement of the cross beam of the forward cargo door will eliminate the need for the repetitive inspections.

Accomplishment of the actions specified in the service documents is

intended to adequately address the identified unsafe condition.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service documents described previously, except as discussed below.

**Differences Between Proposed Rule and Service Bulletin**

- Operators should note that, whereas the Boeing service bulletin specifies close visual inspections only, this proposed AD would require a high frequency eddy current inspection to detect cracking of the door frame and a detailed visual inspection to detect cracking of the cross beam of the forward cargo door. The FAA has determined that, because of the safety implications and consequences associated with such fatigue cracking, close visual inspection methods alone may be inadequate in detecting cracks.
- While the Boeing service bulletin does not provide corrective actions for cracking detected on the lower chord of the cross beam, this proposed AD would require that the repair of the lower chord of the cross beam be accomplished in accordance with a method approved by the FAA.
- Operators should further note that, unlike the procedures described in the Boeing service bulletin, this proposed AD would not permit the alternative of replacing the door frame of the forward cargo door in the event that cracks are detected on the cross beam. This proposed AD would require installation of a cross beam repair (if necessary) and preventative modification of the outboard radius of the lower corners (forward and aft) of the door frame, and installation of a reinforcement modification of the cross beam of the forward cargo door. Additionally, this proposed AD would require additional actions in the event that cracks are detected in the door frame of the forward cargo door. This proposed AD would require replacement of the door frame with a new door frame, reinforcement of the cross beam, and installation of the preventative modification of the outboard radius of the lower corners of the door frame. The FAA finds that, in view of the reports that cracking has occurred on the redesigned door frames, and because of the safety implications and consequences associated with such cracking, replacing the door frame without further modification will not safely address the unsafe condition.
- This AD also proposes to mandate, within 4 years, the preventative modification of the outboard radius of the lower corners (forward and aft) of the door frame and the reinforcement modification of the cross beam of the forward cargo door as described in the Boeing service bulletin (previously described). The modification would be accomplished, for certain airplanes, in accordance with the Boeing service bulletin and for certain other airplanes, in accordance with a method approved by the FAA, and would eliminate the need for the repetitive inspections.

The FAA has determined that long-term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by repetitive inspections. Long-term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual inspections, has led the FAA to consider placing less emphasis on inspections and more emphasis on design improvements. The proposed modification requirements are in consonance with these conditions.

- The effectivity of the Boeing service bulletin includes Boeing Model 737 series airplanes having line numbers 0001 through 1231 inclusive. This proposed AD would be applicable to Boeing Model 737 series airplanes having line numbers 0001 through 1231 inclusive, and also would include Boeing Model 737 series airplanes having line numbers 1232 and on. The FAA is aware that a design change to the door frame of the forward cargo door was implemented on the production line at line number 1232. The FAA finds that, in view of the reports indicating that cracking has occurred on airplanes having later line numbers (1251 and 1790) with the change incorporated, the applicability specified in this proposed AD is appropriate.
- Further, operators should note that, although the Boeing service bulletin recommends that the initial inspection be performed within 4,500 flight cycles after an airplane has accumulated 12,000 total flight cycles, this proposed AD would require that the initial inspection be performed within 1 year or 4,500 flight cycles after the effective date of this AD, whichever occurs later. The FAA has determined that the number of total flight cycles for an airplane may not be a good indicator of the total cycle count for the subject forward cargo door, because a door may have been removed from an airplane that had accumulated many total flight cycles and reinstalled on an airplane that had accumulated relatively fewer total flight cycles. Due to the limited ability to accurately track the total flight cycles of the subject forward cargo door, the initial compliance time specified by this proposed AD is appropriate.

**Cost Impact**

There are approximately 3,100 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,400 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspections proposed by this AD on U.S. operators is estimated to be $84,000, or $60 per airplane, per inspection cycle.

It would take approximately 38 work hours per airplane to accomplish the proposed terminating modifications at an average labor rate of $60 per work hour. Required parts would cost $1,865 per airplane. Based on these figures, the cost impact of the terminating modifications proposed by this AD on U.S. operators is estimated to be $5,803,000, or $4,145 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

**Regulatory Impact**

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by

contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Boeing:** Docket 99–NM–81–AD.

*Applicability:* All Model 737–100, –200, –200C, –300, –400, and –500 series airplanes; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the lower corners of the door frame and cross beam of the forward cargo door, which could result in rapid depressurization of the airplane, accomplish the following:

**High Frequency Eddy Current Initial/ Repetitive Inspections**

(a) Within 1 year or 4,500 flight cycles after the effective date of this AD, whichever occurs later, perform a high frequency eddy current (HFEC) inspection to detect cracking of the lower corners (forward and aft) of the door frame of the forward cargo door in accordance with Boeing 737 Nondestructive Test Manual, Part 6, Section 51–00–00, Figure 4 or Figure 23.

(1) If no cracking is detected, repeat the HFEC inspection thereafter at intervals not to exceed 4,500 flight cycles, until the requirements of paragraph (c) of this AD have been accomplished.

(2) If any cracking is detected during any inspection required by paragraph (a) of this AD, prior to further flight, accomplish the requirements of paragraphs (a)(2)(i) and (a)(2)(ii) of this AD, which constitute terminating action for the repetitive inspections required by paragraph (a)(1) of this AD.

(i) Replace the door frame of the forward cargo door with a new door frame; install a cross beam repair and reinforcement modification of the cross beam in accordance with Boeing Service Bulletin 737–52–1100, Revision 2, dated March 31, 1994; and

(ii) Modify the replacement door frame of the forward cargo door in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair or modification method to be approved by the Manager, Seattle ACO, as required by this paragraph and paragraphs (b)(2), (b)(3)(ii), and (c)(2), the Manager's approval letter must specifically reference this AD.

**Detailed Visual Initial/Repetitive Inspections**

(b) Within 1 year or 4,500 flight cycles after the effective date of this AD, whichever occurs later, perform a detailed visual inspection to detect cracking of the cross beam (i.e., upper and lower chord and web sections) of the forward cargo door in accordance with Boeing Service Bulletin 737–52–1100, Revision 2, dated March 31, 1994.

**Note 2:** For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation or assembly to detect damage, failure or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required.''

(1) If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 4,500 flight cycles until the requirements of paragraph (c) of this AD have been accomplished.

(2) If any cracking is detected on the lower chord section of the cross beam during any inspection required by paragraph (b) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Seattle ACO, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings.

(3) If any cracking is detected on any area excluding the lower chord section of the cross beam (i.e., upper chord and web section) during any inspection required by paragraph (b) of this AD, prior to further flight, accomplish the requirements of paragraph (b)(3)(i) or (b)(3)(ii), as applicable, of this AD, which constitute terminating action for the repetitive inspections required by paragraph (b)(1) of this AD.

(i) For airplanes with line numbers 1 through 1231: Install a cross beam repair and preventative modification of the outboard radius of the lower corners (forward and aft) of the door frame in accordance with Boeing Service Bulletin 737–52–1100, Revision 2, dated March 31, 1994.

**Note 3:** Due to implications and consequences associated with cracking, this AD does not allow the option of replacing the door frame as an alternative method of compliance to installing the preventative modification.

(ii) For airplanes with line numbers 1232 and subsequent: Install a cross beam repair and preventative modification of the outboard radius of the lower corners (forward and aft) of the door frame in accordance with a method approved by the Manager, Seattle ACO or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings.

**Terminating Action**

(c) Within 4 years after the effective date of this AD: Install the preventative modification of the outboard radius of the lower corners (forward and aft) of the door frame and the reinforcement modification of the cross beam of the forward cargo door in accordance with paragraph (c)(1) or (c)(2) of this AD, as applicable. Accomplishment of paragraph (c)(1) or (c)(2) of this AD, as applicable, constitutes terminating action for the repetitive inspections required by paragraphs (a)(1) and (b)(1) of this AD.

(1) For airplanes with line numbers 1 through 1231: Accomplish the preventative modification and the reinforcement modification in accordance with Boeing Service Bulletin 737–52–1100, Revision 2, dated March 31, 1994.

(2) For airplanes with line numbers 1232 and subsequent: Accomplish the preventative modification and the reinforcement modification in accordance with a method approved by the Manager, Seattle ACO or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings.

**Modifications Previously Accomplished**

(d) For all airplanes on which modifications of the forward lower corner of the door frame and the cross beam of the forward cargo door were accomplished in accordance with Boeing Service Bulletin 737–52–1100, dated August 25, 1988, or Revision 1, dated July 20, 1989, or in accordance with the requirements of AD 90–06–02, amendment 39–6489: Within 4 years after the effective date of this AD, install the reinforcement modification of the aft corner of the door frame of the forward cargo door in accordance with Boeing Service Bulletin 737–52–1100, Revision 2, dated March 31, 1994. Accomplishment of such modification constitutes terminating action for the repetitive inspections required by this AD.

**Note 4:** Accomplishment of Boeing Service Bulletin 737–52–1100, Revision 2, dated March 31, 1994, does not supersede the requirements of AD 90–06–02, amendment 39–6489.

**Alternative Methods of Compliance**

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 5:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

**Special Flight Permits**

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 16, 1999.

**D. L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 99–21687 Filed 8–19–99; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 99–NM–88–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 747–100 and –200 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–100 and –200 series airplanes. This proposal would require repetitive inspections of the upper and lower chords of the wing front spar for cracks, and corrective action, if necessary. For airplanes on which no cracking is detected, this proposal would also provide optional terminating action in lieu of repetitive inspections. This proposal is prompted by reports of cracks in the upper chord of the wing front spar. The actions specified by the proposed AD are intended to detect and correct fatigue cracking of the upper and lower chords of the wing front spar, which could result in reduced structural capability and possible fuel leakage onto an engine and a resultant fire.

**DATES:** Comments must be received by October 4, 1999.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–88–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Tamara L. Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–88–AD.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–88–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

The FAA has received reports of cracks in the upper chord of the wing front spar at the fastener holes in the area of the number 2 and number 3 strut outboard upper link fitting. The cracks are believed to initiate by fatigue on the forward surface of the chord and propagate into the thickness of the part. The lower chord of the wing front spar is similar in design to the upper chord; therefore, the lower chord may be subject to the same unsafe condition. This condition, if not corrected, could result in reduced structural capability and possible fuel leakage onto an engine and resultant fire.

### Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 747–57–2305, Revision 1, dated January 21, 1999, which describes procedures for repetitive ultrasonic inspections of the upper and lower chords of the wing front spar for cracks, and corrective action, if necessary. The corrective action involves accomplishment of a terminating action that includes a high frequency eddy current inspection of the upper and lower chords of the spar, repair of cracks, and installation of oversized fasteners. For airplanes on which cracking is not detected, accomplishment of the terminating action is optional, and eliminates the need for the repetitive inspections.

### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below. This proposed AD also would provide optional terminating action for the repetitive inspections for airplanes on which no cracking is detected.

Operators should note that the FAA has determined that the repetitive inspections proposed by this AD can be

allowed to continue in lieu of accomplishment of a terminating action. In making this determination, the FAA considers that, in this case, long-term continued operational safety will be adequately assured by accomplishing the repetitive inspections to detect fatigue cracking of the upper and lower chords of the wing front spar before it represents a hazard to the airplane.

### Differences Between the Proposed Rule and Service Bulletin

Boeing Service Bulletin 747–57–2305, Revision 1, specifies accomplishment of the actions that would be required by paragraphs (a) and (b) of this AD in accordance with either the Boeing-specified manuals or ''operator's equivalent procedure.'' However, this proposed AD would require that the ultrasonic inspection and high frequency eddy current inspection actions required by those paragraphs be accomplished in accordance with the procedures specified in the Boeing 747 NDT Manual D6–7170. ''Operator's equivalent procedures'' may be used for Boeing-specified manuals with the exception of the Boeing 747 NDT Manual D6–7170. ''Operator's equivalent procedures'' to the Boeing 747 NDT Manual D6–7170 may be used only if approved as an alternative method of compliance in accordance with paragraph (c) of this AD.

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposed AD would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings. For a repair method to be approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, as specified by paragraph (a)(3) of this proposed AD, the Manager's approval letter must specifically reference this AD.

### Cost Impact

There are approximately 332 airplanes of the affected design in the worldwide fleet. The FAA estimates that 137 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $16,440, or $120 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional terminating action rather than continue the repetitive inspections, it would take approximately 37 work hours per airplane to accomplish the modification, at an average labor rate of $60 per work hour. Required parts would cost approximately $5,000 per airplane. Based on these figures, the cost impact of this optional terminating action is estimated to be $7,220 per airplane.

### Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Boeing:** Docket 99–NM–88–AD.

*Applicability:* Model 747–100 and –200 series airplanes, listed in Boeing Service Bulletin 747–57–2305, Revision 1, dated January 21, 1999, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the upper and lower chords of the wing front spar, which could result in reduced structural capability and possible fuel leakage onto an engine and a resultant fire, accomplish the following:

#### Inspections and Corrective Action

(a) Prior to the accumulation of 12,000 total flight cycles, or within 24 months after the effective date of this AD, whichever occurs later, accomplish an ultrasonic inspection for cracking of the upper and lower chord of the wing front spar, in accordance with Boeing Service Bulletin 747–57–2305, Revision 1, dated January 21, 1999.

(1) If no cracking is found, repeat this inspection thereafter at intervals not to exceed 6,000 flight cycles, until the requirements of paragraph (c) of this AD have been accomplished.

(2) If any cracking is found, prior to further flight, accomplish ''Part 2—Terminating Action'' of the Accomplishment Instructions of the service bulletin, except as provided by paragraph (b) of this AD. Accomplishment of this action constitutes terminating action for the requirements of this AD.

(b) During accomplishment of the terminating action required by paragraph (a)(2) of this AD, if any crack is found in the upper chord that is outside the limits specified in Boeing Service Bulletin 747–57–2305, Revision 1, dated January 21, 1999; or if any crack is found in the lower chord; prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in

accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this AD, the Manager's approval letter must specifically reference this AD.

**Optional Terminating Action**

(c) Accomplishment of ''Part 2—Terminating Action'' of the Accomplishment Instructions of Boeing Service Bulletin 747–57–2305, Revision 1, dated January 21, 1999, constitutes terminating action for the requirements of this AD.

**Alternative Methods of Compliance**

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

**Special Flight Permits**

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 16, 1999.

**D.L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 99–21686 Filed 8–19–99; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 99–NM–125–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 757 Series Airplanes Equipped With Rolls Royce Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 757 series airplanes. This proposal would require modification of the nacelle strut and wing structure of certain Boeing Model 757 series airplanes equipped with Rolls Royce RB211 engines. This proposal is prompted by reports indicating that the actual operational loads applied to the nacelle are higher than the analytical loads that were used during the initial design. Such an increase in loading can lead to fatigue cracking in primary strut structure prior to an airplane's reaching its design service objective. The actions specified by the proposed AD are intended to prevent fatigue cracking in primary strut structure and consequent reduced structural integrity of the strut.

**DATES:** Comments must be received by October 4, 1999.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–125–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207.

This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Rick Kawaguchi, Aerospace Engineer,Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1153; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–125–AD.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–125–D, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

The FAA has received reports indicating that the manufacturer has accomplished a structural reassessment of the damage tolerance capabilities of the Boeing Model 757 series airplane, equipped with Rolls Royce engines. This reassessment indicates that the actual operational loads applied to the nacelle strut and wing structure are higher than the analytical loads that were used during the initial design. Subsequent analysis and service history, which includes numerous reports of fatigue cracking on certain strut and wing structure, indicate that fatigue cracking can occur on the primary strut structure before an airplane reaches its design service objective of 20 years or 50,000 flight cycles. Analysis also indicates that such cracking, if it were to occur, would grow at a much greater rate than originally expected. Fatigue cracking in primary strut structure would result in reduced structural integrity of the strut.

### Explanation of Relevant Service Information

Boeing recently has developed a modification of the strut-to-wing attachment structure installed on Model 757 series airplanes equipped with Rolls Royce Model RB211 series engines. This modification significantly improves the load-carrying capability and durability of the strut-to-wing attachments. Such improvement also will substantially reduce the possibility of fatigue cracking and corrosion developing in the attachment assembly.

The FAA has reviewed and approved Boeing Service Bulletin 757–54–0035, dated July 17, 1997, which describes procedures to modify the nacelle strut

and wing structure of certain Boeing Model 757 series airplanes equipped with Rolls Royce RB211 engines. The modification consists of replacing many of the significant load-bearing components of the strut (e.g., the side link fittings assemblies, the upper link assembly, certain fuse bolt assemblies, etc.) with improved components. In addition, Table I of the service bulletin also identifies numerous related service bulletin modifications that must be accomplished before or at the same time as the service bulletin is accomplished. These modifications also entail the replacement of many of the significant load-bearing components of the strut with improved components.

In addition, the service bulletin contains a formula for calculating an optional compliance threshold for the specified modification. This formula is intended to be used as an alternative to the 20-year calendar threshold specified in the service bulletin.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the modifications specified in the service bulletin described previously, except as discussed below.

### Differences Between Proposed Rule and Service Bulletin

Operators should note that this proposed AD would provide a grace period of 3,000 flight cycles for airplanes that have already passed the initial compliance threshold specified in the service bulletin. The service bulletin was issued at a time when none of the affected airplanes had reached that initial compliance threshold.

### Cost Impact

There are approximately 394 airplanes of the affected design in the worldwide fleet. The FAA estimates that 176 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1,049 work hours per airplane to accomplish the proposed modification, and that the average labor rate is $60 per work hour. This work hour figure includes the time it would take to remove and reinstall the struts from the airplane as well as the time to gain and close access to the adjacent wing structure. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $11,077,440, or $62,940 per airplane.

This cost impact figure does not reflect the cost of the terminating actions described in the service bulletins listed in paragraph I.C., Table I, ''Strut Improvement Bulletins,'' on page 6 of Boeing Service Bulletin 757–54–0035, that are proposed to be accomplished prior to, or concurrently with, the modification of the nacelle strut and wing structure. Since some operators may have accomplished certain modifications on some or all of the airplanes in its fleet, while other operators may not have accomplished any of the modifications on any of the airplanes in its fleet, the FAA is unable to provide a reasonable estimate of the cost of accomplishing the terminating actions described in the service bulletins listed in Table I of the service bulletin. As indicated earlier in this preamble, the FAA invites comments specifically on the overall economic aspects of this proposed rule. Any data received via public comments to this notice will aid the FAA in developing an accurate accounting of the cost impact of the rule.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, the FAA has been advised that manufacturer warranty remedies are available for part costs associated with accomplishing the actions required by this proposed AD. Therefore, the future economic cost impact of this rule on U.S. operators may be less than the cost impact figure indicated above.

### Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Boeing:** Docket 99–NM–125–AD.

*Applicability:* Model 757 series airplanes equipped with Rolls Royce engines, line numbers 1 through 735 inclusive; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent fatigue cracking in primary strut structure and consequent reduced structural integrity of the strut, accomplish the following:

(a) Modify the nacelle strut and wing structure in accordance with Boeing Service Bulletin 757–54–0035, dated July 17, 1997, at the later of the times specified in paragraph (a)(1) or (a)(2). All of the terminating actions described in the service bulletins listed in paragraph I.C., Table I, ''Strut Improvement Bulletins,'' on page 6 of Boeing Service Bulletin 757–54–0035, must be accomplished in accordance with those service bulletins prior to, or concurrently with, the

accomplishment of the modification of the nacelle strut and wing structure required by this paragraph.

(1) Prior to the accumulation of 37,500 total flight cycles, or prior to 20 years since the date of manufacture of the airplane, whichever occurs first.

(2) Within 3,000 flight cycles after the effective date of this AD.

**Alternative Methods of Compliance**

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

**Special Flight Permits**

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 16, 1999.

**D.L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 99–21685 Filed 8–19–99; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 99–NM–156–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Raytheon Model Hawker 1000 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Raytheon Model Hawker 1000 series airplanes. This proposal would require a visual inspection of the PS wire bundle, shielded wires going to fuel probe ''G,'' and any other wire or wire bundle for chafing in the forward wing spar and forward ventral tank area; and corrective actions, if necessary. This proposal is prompted by reports indicating that, due to improper routing of a wire bundle, the wire bundle chafed against the forward ventral tank transfer/crossfeed valve, which caused an electrical short and resulted in failure of the landing light. The actions specified by the proposed AD are intended to prevent a short circuit due to wire chafing, which can cause a fire in the ventral fuel tank area.

**DATES:** Comments must be received by October 4, 1999.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–156–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

**FOR FURTHER INFORMATION CONTACT:** Philip Petty, Aerospace Engineer,Systems and Propulsion Branch, ACE–116W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4139; fax (316) 946–4407.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–156–AD.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–156–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

The FAA has received reports of a wire bundle chafing against the forward ventral tank transfer/crossfeed valve on Raytheon Model Hawker 1000 series airplanes. The wire insulation had worn through and caused an electrical short, which resulted in failure of the landing light. The cause of such chafing has been attributed to improper routing of the PS wire bundle at fuselage station 293.47 during production, which may allow the wire bundle to contact the forward ventral tank transfer/crossfeed valve. This condition, if not corrected, could result in an electrical short, which could cause a fire in the ventral fuel tank area.

### Explanation of Relevant Service Information

The FAA has reviewed and approved Raytheon Aircraft Service Bulletin SB 24–3201, dated October 1998. The service bulletin describes procedures for a detailed visual inspection of the PS wire bundle, shielded wires going to fuel probe ''G,'' and any other wire or wire bundle for chafing in the forward wing spar and forward ventral tank area; and corrective action, if necessary. The corrective actions involve ensuring adequate clearance between the PS wire bundle and the front ventral tank transfer/crossfeed valve actuator, and between the shielded wires going to fuel probe ''G'' and the wing transfer valve actuator; installing spiral wrap; repairing chafed wire; and replacing chafed wire with new wire. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

### Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

### Cost Impact

There are approximately 91 airplanes of the affected design in the worldwide fleet. The FAA estimates that 39 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,340, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

### Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Raytheon Aircraft Company (Formerly Beech):** Docket 99–NM–156–AD.

Applicability: Model Hawker 1000 series airplanes, serial numbers 258151, 258159, and 259003 through 259052 inclusive, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent a short circuit due to wire chafing, which can cause a fire in the ventral fuel tank area, accomplish the following:

#### Inspection and Modification

(a) Within 50 flight hours after the effective date of this AD, perform a detailed visual inspection of the PS wire bundle coming from the bung 'DF' for chafing against the front ventral tank transfer/crossfeed actuator, in accordance with Raytheon Aircraft Service Bulletin SB 24–3201, dated October 1998.

**Note 2:** For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(1) If no chafing is found, prior to further flight, ensure a minimum 0.25-inch clearance exists between the PS wire bundle and valve actuator; and install spiral wrap, as necessary; in accordance with the service bulletin.

(2) If any chafing is found on a 22, 20, 16, or 14 gauge (non-shielded) wire, prior to further flight, repair chafed wire by splicing the damaged section using MIL–S–81824/1 splices; ensure a minimum 0.25-inch clearance exists between the wire bundle and valve actuator; and install spiral wrap, as necessary; in accordance with the service bulletin.

(3) If any chafing is found on a 10 gauge wire, replace the entire wire with a new 10 gauge wire; ensure a minimum 0.25-inch clearance exists between the wire bundle and valve actuator; and install spiral wrap, as necessary; in accordance with the service bulletin.

(b) Within 50 flight hours after the effective date of this AD, perform a detailed visual inspection of the shielded wires going to the fuel probe ''G'' for chafing against the wing transfer valve actuator and mounting screws, in accordance with Raytheon Aircraft Service Bulletin SB 24–3201, dated October 1998.

(1) If no chafing is found, prior to further flight, ensure a minimum 0.25-inch clearance exists between the wire bundle and valve actuator; and install spiral wrap, as necessary; in accordance with the service bulletin.

(2) If any chafing is found, prior to further flight, replace the entire shielded wire with a new shielded wire; ensure a minimum 0.25-inch clearance exists between the wire bundle and valve actuator; and install spiral wrap, as necessary; in accordance with the service bulletin.

(c) Within 50 flight hours after the effective date of this AD, perform a borescope inspection of the entire forward wing spar/forward ventral tank area for chafing of any other wire or wire bundle; and install spiral wrap, as necessary; in accordance with Raytheon Aircraft Service Bulletin SB 24–3201, dated October 1998.

(1) If no chafing is found, no further action is required by this AD.

(2) If any chafed wire or wire bundle is found, prior to further flight, repair in accordance with a method approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. For a repair method to be approved by the Manager, Wichita ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

#### Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add

comments and then send it to the Manager, Wichita ACO.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

**Special Flight Permits**

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 16, 1999.

**D.L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 99–21684 Filed 8–19–99; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 99–NM–181–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A330 and A340 series airplanes. This proposal would require a one-time inspection of the rail release pins and parachute pins of the escape slide/raft pack assembly for correct installation, and corrective actions, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent improper deployment of the escape slide/raft and blockage of the door in the event of an emergency evacuation.

**DATES:** Comments must be received by September 20, 1999.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–181–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, Customer Services Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–181–AD.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–181–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has notified the FAA that an unsafe condition may exist on certain Airbus Model A330 and A340 series airplanes. The DGAC advises that cases of improper escape slide/raft deployment have been reported. One operator reported the escape slide/raft failed to deploy and the passenger/crew door was blocked part way open. Subsequent investigation revealed that the cause of this deployment failure and door blockage was incorrect installation of the rail release pins of the escape slide/raft pack assembly. Another operator reported that, after deployment of the escape slide/raft, the packboard of the escape slide/raft caught on the aft edge of the door, obstructing the escape path, instead of falling out of the airplane in a normal deployment. Investigation revealed that the obstruction of the escape path by the packboard of the escape slide/raft occurred because the parachute pin of the escape slide/raft assembly was already pulled out before the door was open. These conditions, if not corrected, could result in improper deployment of the escape slide/raft and blockage of the door in the event of an emergency evacuation.

### Explanation of Relevant Service Information

Airbus Industrie has issued Service Bulletins A330–25–3086 (for Model A330 series airplanes) and A340–25–4115 (for Model A340 series airplanes), both Revision 01, dated June 11, 1999; which describe procedures for a one-time inspection of the rail release pins and parachute pins of the escape slide/raft pack assembly for correct installation, and corrective actions, if necessary. Corrective actions include re-installation of the rail release pin into the release rail; or, if either the rail release pin cannot be re-installed or the parachute pin is found incorrectly installed, corrective actions include removal of the discrepant escape slide/raft pack assembly and replacement with a new pack assembly of the same part number. The DGAC classified these service bulletins as mandatory and issued French airworthiness directives 1999–178–086(B) (for Model A330 series airplanes) and 1999–179–107(B) (for Model A340 series airplanes), both dated May 5, 1999; in order to assure the continued airworthiness of these airplanes in France.

### FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement,

the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

### Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 7 work hours to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD would be $420 per airplane.

### Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Airbus Industrie:** Docket 99–NM–181–AD.

*Applicability:* Model A330 series airplanes, certificated in any category, serial numbers 12 through 223 inclusive, except serial numbers 181, 195, 209, and 222; and Model A340 series airplanes, certificated in any category, serial numbers 2 through 233 inclusive, except serial number 204.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent improper deployment of the escape slide/raft and blockage of the door in the event of an emergency evacuation, accomplish the following:

**Inspection**

(a) Within 2,000 flight hours or 6 months after the effective date of this AD, whichever occurs later: Perform a one-time detailed visual inspection of the rail release pins and parachute pins of the escape slide/raft pack assembly installed on all passenger/crew doors (type A) and emergency exit doors (type A or type 1) for correct installation, in accordance with Airbus Industrie Service Bulletin A330–25–3086 (for Model A330 series airplanes) or A340–25–4115 (for Model A340 series airplanes), both Revision 01, both dated June 11, 1999.

(1) During the inspection performed in accordance with paragraph (a) of this AD, if a rail release pin of the escape slide/raft pack assembly is found to be missing or incorrectly installed: Prior to further flight, re-install the rail release pin into the release rail, or, if re-installation is not possible, remove the discrepant escape slide/raft pack assembly and replace with a new pack assembly of the same part number; in accordance with the applicable service bulletin.

(2) During the inspection performed in accordance with paragraph (a) of this AD, if a parachute pin of the escape slide/raft pack assembly is found to be missing or incorrectly installed: Prior to further flight, remove the discrepant escape slide/raft pack assembly and replace with a new pack assembly of the same part number; in accordance with the applicable service bulletin.

**Note 2:** For the purposes of this AD, a detailed visual inspection is defined as: ''An extensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required.''

**Alternative Methods of Compliance**

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

**Special Flight Permits**

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Note 4:** The subject of this AD is addressed in French airworthiness directives 1999–178–086(B) (for Model A330 series airplanes) and 1999–179–107(B) (for Model A340 series airplanes), both dated May 5, 1999.

Issued in Renton, Washington, on August 16, 1999.

**D.L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 99–21683 Filed 8–19–99; 8:45 am]

BILLING CODE [4910–13–P

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 946**

**[VA–116–FOR]**

## Virginia Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing.

**SUMMARY:** OSM is announcing it received a proposed amendment to the Virginia regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of the following: a statutory change to the Virginia Act at section 45.1–235 C as enacted in the 1999 session of the Virginia General Assembly; proposed regulation changes at section 4 VAC 25–130–700.5 to the definitions of ''government financed construction'' and ''qualified laboratory;'' and proposed regulation changes to section 4 VAC 25–130 Part 795 concerning the small operator assistance program (SOAP). The amendment is intended to revise the Virginia program to be consistent with the corresponding Federal provisions.

**DATES:** Your written comments must be received by 4:00 p.m., on September 20, 1999. If you request a public hearing on the proposed amendment, it will be held on September 14, 1999. If you request to speak at the hearing, your request must be received by 4:00 p.m., on September 7, 1999.

**ADDRESSES:** Your written comments and requests to speak at the hearing should be mailed or hand delivered to Mr. Robert A. Penn, Director, Big Stone Gap Field Office at the first address listed below.

Copies of the Virginia program, the proposed amendment, a listing of any scheduled public hearings, and all written comments that we receive in response to this document will be available for your review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each person may receive one free copy of the proposed amendment by contacting OSM's Big Stone Gap Field Office.

Office of Surface Mining Reclamation and Enforcement:

Big Stone Gap Field Office, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219, Telephone: (703) 523–4303.

Virginia Division of Mined Land Reclamation, P. O. Drawer 900, Big Stone Gap, Virginia 24219, Telephone: (703) 523–8100.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert A Penn, Director, Big Stone Gap Field Office, Telephone: (703) 523–4303.

**SUPPLEMENTARY INFORMATION:**

### I. Background on the Virginia Program

On December 15, 1981, the Secretary of the Interior conditionally approved the Virginia program. You can find background information on the Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the December 15, 1981, **Federal Register** (46 FR 61085–61115). You can find later actions concerning the conditions of approval and program amendments at 30 CFR 946.12, 946.13, 946.15, and 946.16.

### II. Discussion of the Proposed Amendment

By letter dated August 2, 1999 (Administrative Record No. VA–978), the Virginia Department of Mines, Minerals and Energy (DMME) submitted an amendment to the Virginia program. This amendment is the State's response to changes made to the Federal SOAP regulations at 30 CFR Part 795, and to the Federal definition of ''government-financed construction'' at 30 CFR 707.5.

The proposed amendment consists of the following: a statutory change to the Virginia Act at section 45.1–235 C as enacted in the 1999 session of the Virginia General Assembly; proposed regulation changes at section 4 VAC 25–130–700.5 concerning the definitions of ''government financed construction'' and ''qualified laboratory;'' and proposed regulation changes to section 4 VAC 25–130 Part 795 concerning the SOAP program. The amendments are described below.

*Statute*

Section 45.1–235 of the Code of Virginia. Subsection 45.1–235 C, concerning SOAP, is amended by deleting the existing language and adding in its place the following language.

> To the extent that funds are available from the federal Office of Surface Mining, the Director shall provide for permit application assistance to small operators as provided in Section 507 (c) and (h) of the federal act. Such assistance shall be provided in accordance with regulations adopted by the Director.

*Regulations*

1. 4 VAC 25–130–700.5 Definitions

The definition of ''government-financed construction'' is amended to provide for less than 50 percent government funding. As amended, ''government financed construction'' means construction funded 50 percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds. Funding at less than 50 percent may qualify if the construction is undertaken as an approved reclamation project under Title IV of the Federal Act. Construction funded through government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments does not qualify as government-financed construction.

The definition of ''qualified laboratory'' is amended to add the phrase ''or other services as specified at 4 VAC 25–130–795.9.'' With this addition, ''qualified laboratory'' means a designated public agency, private firm, institution, or analytical laboratory which can prepare the required determination of probable hydrologic consequences or statement of results of test borings or core samplings or other services as specified at 4 VAC 25–130-795.9 under the SOAP program and which meets the standards of 4 VAC 25–130–795.10.

2. 4 VAC 25–130–795.1 Scope and Purpose

This provision is amended by deleting the words ''program administrator'' and replacing those words with the word ''Division.''

3. 4 VAC 25–130–795.6 Eligibility for Assistance

This provision is amended at subdivision 795.6(a)(2) by changing the qualifying annual tonnage limit from 100,000 tons to 300,000 tons. In addition, at subdivisions 795.6(a)(2)(i) and (ii), the pro rata share is increased from 5 percent to 10 percent.

4. 4 VAC 25–130–795.7 Filing for Assistance

This provision is amended at subdivision 795.7(e) by deleting subdivisions 795.7(e)(2) and (5), and renumbering the remaining provisions. Deleted subdivision 795.7(e)(2) required the names of property owners in the affected and adjacent areas. Deleted subdivision 795.7(e)(5) required the location of existing structures and developed water resources within the affected and adjacent areas.

5. 4 VAC 25–130–795.8 Application Approval and Notice

The sole sentence of this provision is deleted and replaced with the following. New subdivision 795.8(a) provides that if the Division finds the applicant eligible, the Division shall inform the applicant in writing that the application is approved. New subdivision 795.8(b) provides that if the Division finds the applicant ineligible, the Division shall inform the applicant in writing that the application is denied and shall state the reasons for denial.

6. 4 VAC 25–130–795.9 Program Services and Data Requirements.

In addition to non-substantive changes, the following changes are made to this provision. At subdivision 795.9(a), the phrase ''and provide other services'' is added. With this change, a ''qualified laboratory'' may be paid for other services in addition to the determination and statement referenced in subdivision 795.9(b).

At subdivision 795.9(b)(1), the phrase ''including the engineering analysis and designs necessary for the determination'' is added. Also, the citation ''4 VAC 25–130–784.14(g)'' is changed to ''. . . 784.14(e).''

At subdivision 795.9(b)(2), the words ''drilling and'' are added immediately following the first word of the sentence.

New subdivisions 795.9(b)(3), (4), (5), and (6) are added. New 795.9(b)(3), provides for the development of cross-section maps and plans required by 4 VAC 25–130–779.25 and 783.25. New 795.9(b)(4) provides for the collection of archaeological and historic information and related plans required by 4 VAC 25–130–779.12(b), 783.12(b), 780.31, 784.17, and any other archaeological and historic information required by the Director. New 795.9(b)(5) provides for pre blast surveys required by 4 VAC 25–130–780.13. New 795.9(b)(6) provides for the collection of site-specific resources information, the production of protection and enhancement plans for fish and wildlife habitats required by 4 VAC 25–130–780.16 and 784.21, and information and plans for any other environmental values required by the Division under the Act.

7. 4 VAC 25–130–795.10 Qualified Laboratories

Subdivision 4 VAC 25–130–795.10(a)(5) is amended by adding language which provides that other appropriate methods or guidelines for data acquisition may be approved by the Division. Subdivision 795.10(b) is amended to provide that subcontractors may be used to provide some of the required services provided their use is identified at the time a determination is made that a firm is qualified and they meet requirements specified by the Division. Prior to this amendment, subdivision 795.10(b) provided that subcontractors had to meet all applicable requirements for area of specialization pursuant to the program and this section. Subdivisions 795.10(c) and (d) are deleted. Subdivision 795.10(c) concerned the qualification of out-of-state firms. Subdivision 795.10(d) provided that review and approval of all laboratory qualifications would be made every 12 months.

8. 4 VAC 25–130–795.12 Applicant Liability

In subdivision 4 VAC 25–130–795.12(a), the term ''applicant'' is deleted and replaced by the phrase ''coal operator who has received assistance pursuant to 4 VAC 25–130–795.9.'' Also, the phrase ''laboratory services performed pursuant to this Part'' is changed to read ''services rendered.''

Subdivision 795.12(a)(2) is amended to change the 100,000 ton limit to 300,000 tons. This provision is also amended to provide that the tonnage will be determined during the 12 months immediately following the date on which the operator is issued the surface coal mining and reclamation permit. Prior to this change, the tonnage was determined during any consecutive 12-month period either during the term of the permit for which assistance is provided or during the first 5 years after issuance of the permit whichever is shorter.

Subdivision 795.12(a)(3) is amended to change the 100,000 ton limit to 300,000 tons. This provision is also amended to provide that if the mining rights granted under the permit are sold, transferred or assigned to another person, the tonnage will be determined during the 12 months immediately following the date on which the permit was originally issued. Prior to this change, the tonnage was determined during any 12-month period of the remaining term of the permit.

Subdivisions 4 VAC 25–130–795.12(b) and (c) are deleted. Subdivision 795.12(b) concerned the submission of notarized production reports. Subdivision 795.12(c) defined the term ''attributed production.''

## III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), we are now seeking your comments on whether the amendments proposed by Virginia satisfy the applicable program approval criteria of 30 CFR 732.15. If we determine that the amendments are adequate, they will become part of the Virginia program.

*Written Comments*

Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. If your comments are received after the time indicated under **DATES** or at locations other than the Big Stone Gap Field Office, we will not necessarily consider them in the final rulemaking or include them in the Administrative Record.

*Public Hearing*

If you wish to comment at the public hearing, you should contact the person listed above under **FOR FURTHER INFORMATION CONTACT** by close of business on September 7, 1999. If no one requests an opportunity to comment at a public hearing, we will not hold a hearing.

We request that you file a written statement at the time of the hearing, because it will greatly assist the transcriber. If you submit a written statement to OSM before the hearing, it will allow us to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

*Public Meeting*

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with us to discuss the proposed amendments, you may request a meeting at the Big Stone Gap Field Office by contacting the person listed above under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed above under **ADDRESSES**. A written summary of each public meeting will be made part of the Administrative Record.

If you are a disabled individual who has need for a special accommodation to attend a public hearing, please contact the person listed above under **FOR FURTHER INFORMATION CONTACT**.

## IV. Procedural Determinations

*Executive Order 12866*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

*Executive Order 12988*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

*National Environmental Policy Act*

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

*Unfunded Mandates*

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

### List of Subjects in 30 CFR Part 946

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 12, 1999.

**Allen D. Klein,**

*Regional Director, Appalachian Regional Coordinating Center.*

[FR Doc. 99–21643 Filed 8–19–99; 8:45 am]

BILLING CODE 4310–05–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 51

**[FRL–6421–1]**

## Additional Flexibility Amendments to Vehicle Inspection Maintenance Program Requirements; Proposed Amendment to the Final Rule

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes several substantive and minor revisions to the Motor Vehicle Inspection/Maintenance (I/M) requirements to provide additional flexibility to state I/M programs, both in response to the I/M provisions of the National Highway System Designation Act of 1995 (NHSDA), and in compliance with the Clean Air Act requirement that EPA's guidance for such programs be ''from time to time revised.'' The proposed amendments would: modify the current I/M performance standard modeling requirements to reflect delays caused by the NHSDA, and to provide states greater flexibility in how they meet the performance standard; also in response to the NHSDA, remove the I/M rule provision establishing the decentralized, test-and-repair credit discount; revise certain test procedure, standard, and equipment requirements to better accommodate alternative test types and program designs. This revision also entails changing the data collection, analysis, and reporting requirements to make them consistent with various alternative test and program types; as well as minor revisions to the inspector training requirements; revise the requirements for consumer protection and improving repair effectiveness to limit the current requirement to provide diagnostic information to those programs and test types capable of producing such information, reliably and practically; expand the options for complying with the on-road testing requirement to accommodate more recent variations, such as clean screening and non-tailpipe based, roadside tests.

**DATES:** Written comments on this proposal must be received no later than September 20, 1999. No public hearing will be held unless a request is received in writing by September 7, 1999.

**ADDRESSES:** Interested parties may submit written comments (in duplicate if possible) to Public Docket No. A–99–19. It is requested that a duplicate copy be submitted to David Sosnowski at the address in the **FOR FURTHER INFORMATION CONTACT** section below. The docket is located at the Air Docket, Room M–1500 (6102), Waterside Mall SW, Washington, DC 20460. The docket may be inspected between 8:30 a.m. and 12 noon and between 1:30 p.m. until 3:30 p.m. on weekdays. A reasonable fee may be charged for copying docket material.

**FOR FURTHER INFORMATION CONTACT:** David Sosnowski, Office of Mobile Sources, Regional and State Programs Division, 2000 Traverwood, Ann Arbor, Michigan, 48105. Telephone (734) 214–4823.

**SUPPLEMENTARY INFORMATION:**

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## II. Summary of Proposal

Under the Clean Air Act as amended in 1990 (CAA), 42 U.S.C. 7401 *et seq.*, the U.S. Environmental Protection Agency (EPA) published in the **Federal Register** on November 5, 1992, (40 CFR part 51, subpart S) a rule related to state air quality implementation plans for Motor Vehicle Inspection and Maintenance (I/M) programs (hereafter referred to as the I/M rule; see 57 FR 52950). EPA is proposing today to further amend this rule to provide greater flexibility to states to tailor their I/M programs to better meet local needs, both now and in the future. With today's notice EPA proposes to: (1) Amend the enhanced I/M performance standard requirements at 40 CFR 51.351 to change the performance standard modeling requirement from demonstrating that the performance standard is met on 2000 and each subsequent milestone (through to and including the attainment deadline) to a requirement that the performance standard be met (within +/− 0.02 grams-per-mile) on 2002, and that the same or better level of emission reduction be demonstrated for the attainment deadline, rounded to the nearest year; (2) in response to the National Highway System Designation Act of 1995 (NHSDA) and to provide greater flexibility to the states with regard to network design options: (a) Delete 40 CFR 51.353(b) which previously established the decentralized, test-and-repair credit discount, and (b) revise the definition of test-only at 40 CFR 51.353(a) to allow test-only stations to sell self-serve gasoline, pre-packaged oil, and any other items that are not directly related to automotive parts sales and/or service; (3) to better accommodate alternative test types and program designs: (a) Revise the test procedures and standards requirements at 40 CFR 51.357 to clarify that tailpipe exhaust testing is not a universal requirement for all I/M programs, that alternatives to the IM240 drive cycle are allowed under the requirements for transient testing, and that the standard for an acceptable alternative test is comparability, not necessarily equivalence, (b) revise the test equipment requirements at 40 CFR 51.358 to make the definition of ''computerized analyzer'' less prescriptive and to relax the requirement for a real-time data link for those areas required to do I/M, but which do not need to claim I/M emission reductions to meet their other, non-I/M CAA requirements, and (c) revise the data collection, analysis, and reporting requirements at 40 CFR 51.365 and 40 CFR 51.366 to clarify that the specific elements to be collected and reported are only required where applicable to the test type employed, and to make the requirements less prescriptive with regard to the test types assumed; (4) revise the requirements for consumer protection at 40 CFR 51.368 and improving repair effectiveness at 40 CFR 51.369 to limit the current requirement to provide diagnostic information to those programs and test types capable of producing such information, reliably and practically, and; (5) expand the options for complying with the on-road testing requirement at 40 CFR 51.371 by: (a) Removing language suggesting that such testing must be tailpipe-based, and (b) inserting language making the out-of-cycle repair requirement optional where on-road testing is used as a clean-screen approach.

The goal of these proposed amendments is to bring the rule up-to-date with current policy decisions and statutory requirements, while also providing states the additional flexibility they need to tailor their I/M programs now to better meet their future needs. Among these future needs are: (1) The need to maximize program efficiency and customer convenience by capitalizing on newer vehicle testing options, such as on-board diagnostic (OBD) system testing; (2) the need to accommodate an in-use fleet turning over to newer, cleaner, and more durable vehicle technologies over time; and (3) the need to assess the role I/M should play in areas once they have attained the National Ambient Air Quality Standards (NAAQS).

## III. Authority

Authority for the rule change proposed in this notice is granted to EPA by section 182 of the Clean Air Act as amended (42 U.S.C. 7401, *et seq.*) and by section 348 of the National Highway System Designation Act of 1995 (23 U.S.C. 101).

## IV. Background of the Proposed Amendments

### *A. Performance Standard Amendments*

Section 182(c)(3)(B)(i) of the Clean Air Act as amended in 1990 requires EPA to develop a performance standard for enhanced I/M areas to meet. EPA's I/M rule currently requires I/M programs to produce the same or better emission reductions as would be achieved by one of three possible enhanced I/M performance standards [1]—the high enhanced, low enhanced, and OTR low enhanced I/M performance standards. Currently, states demonstrate meeting the relevant performance standard by modeling their desired program along side the performance standard program, and comparing both to a no-I/M-program scenario, using the most current version of EPA's mobile source emission factor model, MOBILE, and assuming local conditions for fuel type, average temperature, fleet age distribution, vehicle miles traveled (VMT) accumulation, etc. The 1992 I/M rule required that enhanced I/M programs show they could meet the relevant performance standard beginning with a 2000 evaluation date (which was considered the closest modeling equivalent to the CAA's November 15, 1999 milestone date for Reasonable Further Progress) and for each CAA milestone thereafter (also rounded to the nearest evaluation year) through, to and including the relevant attainment date. EPA's policy for milestones beginning with 2003 and later was to consider the standard met if the projected emission reductions for the state's program came within ±0.02 grams-per-mile (gpm) of the performance standard's projected reductions, due to the uncertainty of modeled benefits for evaluation years after 2001.

Today's proposal would change the current enhanced I/M performance standard requirements in three ways:

First, today's proposal would change the requirement that enhanced I/M programs demonstrate meeting the performance standard beginning with 2000 and on each subsequent milestone through to and including attainment. Due to delays in program implementation arising from EPA's own 1995 and 1996 I/M flexibility amendments and the I/M provisions of the NHSDA, EPA proposes to push back the first required evaluation date by two years, to 2002. This proposed revision recognizes that as a result many programs delayed full implementation beyond a date that would allow for

[1] The current I/M rule actually contains four enhanced I/M performance standards as a result of a typographical oversight when EPA introduced its original flexibility amendments in 1995. EPA intended to delete the standard described in 40 CFR 51.351(a) and replace it with the standard described in paragraph (f) of that section. Unfortunately, both standards were retained. Along with the other actions proposed today, EPA proposes to correct this oversight.

meeting the performance standard before 2002.

Second, EPA proposes to reduce the modeling burden on states by limiting the number of milestones modeled to a maximum of two: 2002 and, for those areas with post-2002 attainment deadlines, the relevant CAA attainment deadline, rounded up to the nearest year. In the latter case—the attainment deadline milestone—the grams-per-mile (gpm) or percent reduction target for comparison would be the same as that modeled for the 2002 milestone; states would not be required to model the performance standard scenario for more than one evaluation date to establish the relevant gpm or percent reduction target. Rather, states must show that in the attainment year the area continues to show compliance with the performance standard as originally modeled for the 2002 compliance date. The purpose of this proposal is to streamline the I/M rule's modeling requirements and provide additional flexibility to the states, while still insuring that state I/M programs demonstrate compliance with the relevant performance standard.

Third, today's proposal would apply the current 2003 ±0.02 gpm rounding policy one year earlier—to the 2002 milestone. The original 2003 rounding policy was developed when it was discovered that, due to uncertainties related to long-term projections, even areas adopting EPA's recommended program appeared to be having trouble demonstrating compliance with the performance standard for post-2001 milestones, once local parameters such as vehicle age distribution were taken into consideration. Under the original I/M rule, there was no 2002 milestone. Instead, the ozone-based milestones began with 2000, followed by 2003; in between these was the carbon monoxide (CO) milestone of 2001, for those enhanced I/M areas in nonattainment for CO. The original 0.02 gpm rounding policy was actually a post-2001 policy, and was applied to what was then the first post-2001 milestone (i.e., 2003). With the delays caused by the I/M flexibility amendments and the NHSDA (discussed above), a new post-2001 milestone became necessary. EPA believes it is therefore appropriate to apply the 0.02 gpm rounding policy to this new milestone, and proposes to formalize that change as part of today's proposed amendments.

*B. Network Requirement Amendments*

Regarding I/M program network design requirements, the Clean Air Act as amended in 1990 does not prescribe a network for basic I/M programs while, at the same time, section 182(c)(3)(C)(vi) of the Act requires that enhanced I/M programs shall be operated ''on a centralized basis, unless the State demonstrates to the satisfaction of the Administrator that a decentralized program will be equally effective.'' In response to this provision, the 1992 I/M rule defined a decentralized network design that EPA deemed presumptively equivalent to a centralized program. The core difference between traditional centralized versus decentralized I/M programs—EPA then maintained—was the conflict-of-interest the latter were assumed to suffer from, because most such programs allowed the same individuals who tested the vehicle to also perform repairs and then retest the vehicle to determine the effectiveness of those repairs. It was therefore concluded that a decentralized program that separated these functions (i.e., a so-called ''test-only'' program) would be presumptively equivalent to a centralized program. In May 1994, EPA issued a policy document entitled, ''EPA Policy on Decentralized, Test-Only Stations,'' which interpreted the 1992 I/M rule as further barring decentralized, test-only stations from engaging in virtually all other for-profit activities other than testing, prohibiting (for example) the sale of convenience store type items. This prohibition was based upon the further assumption that decentralized stations would otherwise use the guarantee of a passing test as a way to attract customers to their other sales and services.

In 1995, the substance of the Clean Air Act's enhanced I/M network requirement was amended by implication by Section 348(b) of the National Highway System Designation Act which specified that ''[t]he Administrator shall not disapprove or apply an automatic discount to a State implementation plan revision under section 182 or 187 of the Clean Air Act (42 U.S.C. 7511a; 7512a) on the basis of a policy, regulation, or guidance providing for a discount of emissions credits because the inspection and maintenance program in such plan revision is decentralized or a test-and-repair program.'' States opting for the NHSDA's flexibility were allowed to claim prospective emission reduction credit for their I/M SIPs based upon a ''good faith estimate,'' and were to be granted an interim approval which would lapse after 18 months if the credit claims were not substantiated by way of a program effectiveness demonstration. While states were given a limited time during which they could apply for interim approval under the NHSDA (i.e., by March 28, 1996), the Highway Act's prohibition against automatic, decentralized or test-and-repair discounts has no such expiration date and therefore remains in effect permanently.

Today's proposal would amend the program network requirements at 40 CFR 51.353 in two ways:

First, the proposal would delete 40 CFR 51.353(b) which first established the automatic credit discount for decentralized, test-and-repair I/M programs. This amendment is proposed in recognition of and compliance with the requirements of the National Highway System Designation Act of 1995.

Second, the proposal would explicitly extend the definition of decentralized test-only to allow such stations to engage in the full range of sales not directly related to automotive parts sales or service, including but not limited to the sale of self-serve gasoline, pre-packaged oil, and other, non-automotive, convenience store items. This proposal is based upon EPA's determination that a literal reading of the 1992 I/M rule's definition does not support the broader prohibitions set by the subsequent, 1994 policy. Such prohibitions have been deemed irrelevant, post-NHSDA.

*C. Test Procedure and Related Amendments*

Section 182(c)(3)(C)(i) of the 1990 Clean Air Act established the minimum requirements for enhanced I/M programs regarding test equipment by stating that such programs must include ''(c)omputerized emission analyzers, including on-road testing devices.'' The 1992 I/M rule, in interpreting this requirement, was driven by the assumption that all enhanced I/M programs would include IM240 tailpipe emission testing and most (i.e., those required for ozone nonattainment or transport areas) would also include evaporative system purge and pressure testing. As a result, the 1992 I/M rule's requirements for test procedures and standards at 40 CFR 51.357 and test equipment at 40 CFR 51.358 (as well as other, related requirements throughout the 1992 I/M rule) tend to be prescriptive to the point of excluding valid, alternative, non-IM240 test methodologies. This is especially the case since EPA promulgated the I/M flexibility amendments in 1995 and 1996, and since passage of the National Highway System Designation Act of 1995, which, taken together, provided states the opportunity to explore a wide range of alternative test type and network design combinations not

anticipated under the 1992 I/M rule. For example, it is currently possible for some areas to design programs that meet the required enhanced I/M performance standard without any tailpipe testing at all, using, instead, a combination of alternative evaporative system pressure testing methods, onboard diagnostic system checks, and visual antitampering inspections. The problem is that the I/M rule, as currently written, includes several provisions effecting test procedures which assume tailpipe testing as a given, thus unnecessarily discouraging areas from pursuing a design option which otherwise meets the areas' needs and local conditions.

In response to the above dilemma, today's proposal would revise the I/M rule in three areas:

First, the proposal would revise the test procedure and standard requirements at 40 CFR 51.357 to clarify that tailpipe exhaust testing is not a universal requirement for all I/M programs and that alternatives to the IM240 drive cycle are allowed under the requirements for transient testing. These revisions would be achieved largely by deleting the words ''tailpipe'' and ''IM240,'' and inserting the caveat ''where applicable,'' as needed. Similar amendments would be made elsewhere in the regulatory text, to the extent that the existing text creates the impression that IM240 or tailpipe testing are absolute requirements, or that alternative test methods are otherwise barred.

The proposal would also clarify that the standard for an acceptable alternative test is comparability, not necessarily equivalence. Establishing ''equivalence'' as the standard for acceptability has the effect of requiring that alternative tests individually get the same level of reductions as the test being replaced. EPA believes that this is an unnecessarily strict standard, and somewhat arbitrary if other program parameters can be adjusted so the overall performance standard is still met. That is, a slightly less effective test could still be acceptable if performed more frequently or on a larger number of vehicles to offset potential emission reduction losses due to the alternative test's being comparable, but not strictly equivalent.

Second, the proposal would revise the test equipment requirements at 40 CFR 51.358 to make the regulatory definition of ''computerized analyzer'' less prescriptive to allow evaporative emission testing devices and onboard diagnostic computer (OBD) scanners to qualify as ''computerized analyzers'' under the Act. The current regulatory definition of ''computerized analyzers'' focuses on a system centered on a traditional, personal computer, with keyboard input, etc. EPA believes this is no longer appropriate under the Clean Air Act, given the recent changes under the NHSDA discussed above. Under the broader definition proposed, the focus would concentrate on the existence of a central processing unit, and whether or not the criteria for making pass/fail decisions are automated. EPA also proposes to relax the requirement for a real-time data link for those areas required to do I/M, but which do not need to claim I/M emission reductions to meet their other, non-I/M CAA requirements. This is proposed to provide flexibility to those areas which are not relying on I/M to meet their CAA goals and that have opted to employ stand-alone test equipment that is not readily connected to a centralized, real-time database. EPA believes a real-time data link is not necessary for these types of programs.

Third, the proposal would revise the data collection, analysis, and reporting requirements at 40 CFR 51.365 and 40 CFR 51.366 to clarify that the elements to be collected and reported are only required where applicable to the program type in use in the area, and to make the requirements less prescriptive with regard to the test types assumed. These proposed revisions would also have the effect of streamlining this portion of the rule and would likely reduce the paperwork burden these reporting requirements place on states without compromising overall program effectiveness.

### *D. Consumer Protection and Repair Effectiveness Amendments*

Section 51.368(a) of the I/M rule currently requires that enhanced I/M programs provide motorists that fail the inspection with ''software-generated, interpretive diagnostic information based on the particular portions of the test that were failed.'' Section 51.369(c) of the I/M rule requires that repair technicians receive training in diagnostic theory related to transient and evaporative emission test failures. In both cases, these requirements were developed based upon the assumption that enhanced I/M programs would be built around the IM240 test and would produce second-by-second emissions data that could be used as an important diagnostic tool, with certain component failures producing characteristic speed versus emission traces. Since the 1992 rule was promulgated, however, a wide-range of non-transient, alternative I/M tests have been approved for use in enhanced I/M programs. These tests do not produce the detailed kind of diagnostic information that is possible with a transient test like the IM240, though they are certainly capable of producing generic diagnostic information, based upon which tests and/or standards are failed. Therefore, today's proposal would revise the diagnostic information provisions at 40 CFR 51.368 and 40 CFR 51.369 to make the requirement to provide diagnostic information more generic and only required where applicable to the test type employed.

### *E. On-Road Testing Amendments*

Section 182(c)(3)(C)(i) of the 1990 Clean Air Act requires that enhanced I/M programs include ''on-road testing devices.'' In its 1992 I/M rule, EPA indicated that this requirement could be met by either using remote sensing devices (RSD) or by conducting road-side pull-over, tailpipe testing. In either case, vehicles which failed the test were required to get out-of-cycle repairs, the presumption being that the purpose of such testing was to identify dirty vehicles in need of such repairs.

Today's proposal would revise the on-road testing requirements at 40 CFR 51.371 in two ways:

First, the proposal would remove language suggesting that the road-side pull-over test must be a tailpipe test. The purpose of this change is to open up this requirement so that it can be met using alternative evaporative system pressure testing and/or OBD conducted at the roadside, consistent with changes in I/M program design discussed above.

Second, the proposal would remove the requirement for out-of-cycle repairs where on-road testing is used as a pre-test clean screen method. The purpose of this change is to allow states to use alternative applications for RSD that have been developed since the 1992 I/M rule was promulgated. These alternatives include an approach known as ''clean screening,'' where the goal is not to identify high polluting vehicles for out-of-cycle repairs, but rather to identify especially clean vehicles which can be exempted from the routine test. Since such clean screening programs do not generate emission reductions so much as run the risk of losing those reductions by falsely identifying (and therefore exempting) vehicles needing repairs as ''clean,'' the proposal would also clarify that only on-road programs requiring out-of-cycle repairs are eligible to claim additional emission reduction credit for such pre-screening on-road testing.

## V. Discussion of Major Issues

### *A. Emission Impact of the Proposed Amendments*

Today's proposal introduces additional flexibilities which EPA believes are needed to allow states to adopt and/or revise their I/M programs in a way which helps them to meet local needs as smoothly as possible. Today's proposal is also aimed at removing certain restrictions in the 1992 I/M rule that would impede transition to the I/M of the future, which EPA believes will focus largely on OBD-based testing technologies available on 1996 and later model-year vehicles, as opposed to today's traditional tailpipe tests. Although today's proposal does have the potential for allowing some states to implement more modest I/M programs than would otherwise be the case, nothing in this notice should be construed as requiring or compelling states to downsize their programs. Furthermore, nothing in this notice changes the Clean Air Act's other requirements with regard to 15%, Reasonable Further Progress, or Attainment plans. Instead, this proposal is aimed at allowing states greater flexibility in deciding how to apportion the emission reductions they need, reflecting local needs and conditions to the best extent possible. In that regard, the intention of this proposal is to take the focus off ''I/M for the sake of I/M'' and return it where it belongs—on cleaning the air by whatever method makes the most sense.

### *B. Impact on Existing and Future I/M Programs*

Only states that choose to utilize the additional flexibilities discussed in this notice will be affected by today's proposal to change the I/M rule. Modifications to a state's I/M program as a result of this rule change may require a SIP revision, if a plan has already been submitted and approved. Each case is likely to be different, depending upon the magnitude and direction of the change. It is important to note that today's proposal in no way increases the existing burden on states. States that currently comply, or are in the process of complying, with the existing I/M rule would only be affected by today's rule revisions if they so choose. Today's proposed amendments represent options (not obligations or requirements) for those states that choose to take advantage of the flexibilities proposed in today's notice.

Should a state with an approved I/M program for which credit is being claimed as part of an approved Reasonable Further Progress (RFP) and/or Attainment SIP choose to revise its I/M program in such a way as to lower the emission reductions attributable to the I/M program, then such state will need to not only revise its I/M SIP but also its affected RFP and Attainment SIPs to address this shortfall. Specifically, the emission reduction losses due to the state's changes to its I/M program will have to be made up through the adoption and implementation of additional measures which will need to be incorporated as revisions to the affected RFP and Attainment SIPs. Such revisions will be subject to notice-and-comment rulemaking, and must be approved by the Administrator.

## VI. Economic Costs and Benefits

Today's proposed revisions provide states additional flexibility that lessens rather than increases the potential economic burden on states. Furthermore, states are under no obligation, legal or otherwise, to modify existing plans meeting the previously applicable requirements as a result of today's proposal.

## VII. Public Participation

EPA desires full public participation in arriving at final decisions in this rulemaking action. EPA solicits comments on all aspects of this proposal from all parties. Wherever applicable, full supporting data and detailed analysis should also be submitted to allow EPA to make maximum use of the comments. All comments should be directed to the Air Docket, Docket No. A–99–19.

## VIII. Administrative Requirements

### *A. Administrative Designation*

It has been determined that these proposed amendments to the I/M rule do not constitute a significant regulatory action under the terms of Executive Order 12866 and this action is therefore not subject to OMB review. Any impacts associated with these revisions do not constitute additional burdens when compared to the existing I/M requirements published in the **Federal Register** on November 5, 1992 (57 FR 52950) as amended. Nor does the proposed amendment create an annual effect on the economy of $100 million or more or otherwise adversely affect the economy or the environment. It is not inconsistent with nor does it interfere with actions by other agencies. It does not alter budgetary impacts of entitlements or other programs, and it does not raise any new or unusual legal or policy issues.

### *B. Reporting and Recordkeeping Requirement*

There are no additional information requirements in this supplemental proposed rule which require the approval of the Office of Management and Budget under the Paperwork Reduction Act 44 U.S.C. 3501 *et seq.*

### *C. Regulatory Flexibility Act*

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this proposal will not have a significant economic impact on a substantial number of small entities and, therefore, is not subject to the requirement of a Regulatory Impact Analysis. A small entity may include a small government entity or jurisdiction. This certification is based on the fact that the I/M areas impacted by the proposed rulemaking do not meet the definition of a small government jurisdiction, that is, ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' The basic and enhanced I/M requirements only apply to urbanized areas with population in excess of either 100,000 or 200,000 depending on location. Furthermore, the impact created by the proposed action does not increase the preexisting burden of the existing rules which this proposal seeks to amend.

### *D. Unfunded Mandates Act*

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule where the estimated costs to State, local, or tribal governments, or to the private sector, will be $100 million or more. Under § 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly impacted by the rule. To the extent that the rules being proposed by this action would impose any mandate at all as defined in § 101 of the Unfunded Mandates Act upon the state, local, or tribal governments, or the private sector, as explained above, this proposed rule is not estimated to impose costs in excess of $100 million. Therefore, EPA has not prepared a statement with respect to budgetary impacts. As noted above, this rule offers opportunities to states that would enable them to lower economic burdens

from those resulting from the currently existing I/M rule.

*E. Executive Order 12875: Enhancing the Intergovernmental Partnership*

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates. Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

*F. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Today's rule does not create a mandate on tribal governments or create any additional burden or requirements for tribal government. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

*G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it is not economically significant under E.O. 12866 and because it is based on technology performance and not on health or safety risks.

*H. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) directs all Federal agencies to use voluntary consensus standards instead of government-unique standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling and analytical procedures, business practices, etc.) that are developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the National Fire Protection Association (NFPA), and the Society of Automotive Engineers (SAE). The NTTAA requires Federal agencies like EPA to provide Congress, through OMB, with explanations when an agency decides not to use available and applicable voluntary consensus standards.

These proposed amendments do not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

**List of Subjects in 40 CFR Part 51**

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Transportation.

Dated: August 6, 1999.

**Carol M. Browner,**

*Administrator.*

For the reasons set out in the preamble, part 51 of title 40, chapter I of the Code of Federal Regulations is proposed to be amended to read as follows:

## PART 51—[AMENDED]

1. The authority citation for part 51 is revised to read as follows:

**Authority:** 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

2. Section 51.350 is amended by revising paragraph (c) to read as follows:

**§ 51.350 Applicability.**

* * * * *

(c) *Requirements after attainment.* All I/M programs shall provide that the program will remain effective, even if the area is redesignated to attainment status or the standard is otherwise rendered no longer applicable, until the State submits and EPA approves a SIP revision which convincingly demonstrates that the area can maintain the relevant standard(s) without benefit of the emission reductions attributable to the I/M program. The State shall commit to fully implement and enforce the program until such a demonstration can be made and approved by EPA. At a minimum, for the purposes of SIP approval, legislation authorizing the program shall not sunset prior to the attainment deadline for the applicable National Ambient Air Quality Standards (NAAQS).

* * * * *

3. Section 51.351 is amended by removing and reserving paragraphs (a), revisings (b), (f) introductory text, (f)(13), (g)(13) and (h)(11) to read as follows:

**§ 51.351 Enhanced I/M performance standard.**

(a) [Reserved]

(b) *On-road testing.* The performance standard shall include on-road testing (including out-of-cycle repairs in the case of confirmed failures) of at least 0.5% of the subject vehicle population, or 20,000 vehicles whichever is less, as a supplement to the periodic inspection required in paragraphs (f), (g), and (h) of this section. Specific requirements are listed in § 51.371 of this subpart.

* * * * *

(f) *High Enhanced Performance Standard.* Enhanced I/M programs shall be designed and implemented to meet or exceed a minimum performance standard, which is expressed as emission levels in area-wide average grams per mile (gpm), achieved from highway mobile sources as a result of the program. The emission levels achieved by the State's program design shall be calculated using the most current version, at the time of submittal, of the EPA mobile source emission factor model or an alternative model approved by the Administrator, and shall meet the minimum performance standard both in operation and for SIP approval. Areas shall meet the performance standard for the pollutants which cause them to be subject to enhanced I/M requirements. In the case of ozone nonattainment areas subject to enhanced I/M and subject areas in the Ozone Transport Region, the performance standard must be met for both oxides of nitrogen (NOx) and volatile organic compounds (VOCs), except as provided in paragraph (d) of this section. Except as provided in paragraphs (g) and (h) of this section, the model program elements for the enhanced I/M performance standard shall be as follows:

* * * * *

(13) *Evaluation date.* Enhanced I/M program areas subject to the provisions of this paragraph shall be shown to obtain the same or lower emission levels as the model program described in this paragraph by January 1, 2002 to within +/−0.02 gpm. Subject programs shall demonstrate through modeling the ability to maintain this level of emission reduction (or better) through their attainment deadline for the applicable NAAQS standard(s).

(g) * * *

(13) *Evaluation date.* Enhanced I/M program areas subject to the provisions of this paragraph shall be shown to obtain the same or lower emission levels as the model program described in this paragraph by January 1, 2002 to within +/−0.02 gpm. Subject programs shall demonstrate through modeling the ability to maintain this level of emission reduction (or better) through their attainment deadline for the applicable NAAQS standard(s).

(h) * * *

(11) *Evaluation date.* Enhanced I/M program areas subject to the provisions of this paragraph shall be shown to obtain the same or lower VOC and NOx emission levels as the model program described in this paragraph by January 1, 2002 to within +/-0.02 gpm. Subject programs shall demonstrate through modeling the ability to maintain this level of emission reduction (or better) through their attainment deadline for the applicable NAAQS standard(s). Equality of substituted emission reductions to the benefits of the low enhanced performance standard must be demonstrated for the same evaluation date.

4. Section 51.353 is amended by revising the introductory text and paragraph (a) and by removing and reserving (b) to read as follows:

**§ 51.353 Network type and program evaluation.**

Basic and enhanced I/M programs can be centralized, decentralized, or a hybrid of the two at the State's discretion, but shall be demonstrated to achieve the same (or better) level of emission reduction as the applicable performance standard described in either § 51.351 or § 51.352 of this subpart. For decentralized programs other than those meeting the design characteristics described in paragraph (a) of this section, the State must demonstrate that the program is achieving the level of effectiveness claimed in the plan within 12 months of the plan's approval. The adequacy of these demonstrations will be judged by the Administrator on a case-by-case basis through notice-and-comment rulemaking.

(a) *Presumptive equivalency.* A decentralized network consisting of stations that only perform official I/M testing (which may include safety-related inspections) and in which owners and employees of those stations, or companies owning those stations, are contractually or legally barred from engaging in motor vehicle repair or service, motor vehicle parts sales, and motor vehicle sale and leasing, either directly or indirectly, and are barred from referring vehicle owners to particular providers of motor vehicle repair services (except as provided in § 51.369(b)(1) of this subpart) shall be considered presumptively equivalent to a centralized, test-only system including comparable test elements. States may allow such stations to engage in the full range of sales not covered by the above prohibition, including self-serve gasoline, pre-packaged oil, or other, non-automotive, convenience store items. At the State's discretion, such stations may also fulfill other functions typically carried out by the State such as renewal of vehicle registration and driver's licenses, or tax and fee collections. Decentralized networks designed around these restrictions need not provide any additional demonstration to substantiate their I/M SIP emission reduction credit claims, with the exception of the biennial program evaluation required of all enhanced I/M programs and described in paragraph (c) of this section.

(b) [Reserved]

* * * * *

5. Section 51.357 is amended by revising paragraphs (a)(3), (a)(4), (a)(6), (a)(11), and (a)(13) to read as follows:

**§ 51.357 Test procedures and standards.**

* * * * *

(a) * * *

(3) An official test, once initiated, shall be performed in its entirety regardless of intermediate outcomes except in the case of invalid test condition, unsafe conditions, fast pass/fail algorithms, or, in the case of the on-board diagnostic (OBD) system check, unset readiness codes.

(4) Tests involving measurement shall be performed with program-approved equipment that has been calibrated according to the quality procedures contained in appendix A to this subpart.

* * * * *

(6) Vehicles shall be retested after repair for any portion of the inspection that is failed on the previous test to determine if repairs were effective. To the extent that repair to correct a previous failure could lead to failure of another portion of the test, that portion shall also be retested. Evaporative system repairs shall trigger an exhaust emissions retest (in programs which conduct an exhaust emission test as part of the initial inspection).

* * * * *

(11) Transient emission test. The transient emission test shall consist of mass emission measurement using a constant volume sampler (or an Administrator-approved alternative methodology for accounting for exhaust volume) while the vehicle is driven through a computer-monitored driving cycle on a dynamometer. The driving cycle shall include acceleration, deceleration, and idle operating modes as specified in appendix E to this subpart (or an approved alternative).

The driving cycle may be ended earlier using approved fast pass or fast fail algorithms and multiple pass/fail algorithms may be used during the test cycle to eliminate false failures. The transient test procedure, including algorithms and other procedural details, shall be approved by the Administrator prior to use in an I/M program.

* * * * *

(13) Approval of alternative tests. Alternative test procedures may be approved if the Administrator finds that such procedures would produce comparable emission reductions from the I/M program as a whole, in combination with other program elements.

* * * * *

6. Section 51.358 is amended by revising the introductory text, paragraphs (a) introductory text, (a)(2)(i), (a)(2)(ii), (a)(2)(iv), (a)(3) introductory text, (a)(3)(iv), (a)(3)(vi), (a)(3)(ix), (b) introductory text, (b)(2) and (c) and by removing and reserving (b)(1) and (3) to read as follows:

**§ 51.358 Test equipment.**

Computerized test systems are required for performing an official emissions test on subject vehicles.

(a) Performance features of computerized test systems. With the exception of test procedures relying upon a vehicle's onboard diagnostic (OBD) system (which is certified as part of the overall vehicle certification process), the test equipment shall be certified by the program, and newly acquired systems shall be subjected to acceptance test procedures to ensure compliance with program specifications.

(2) * * *

(i) Shall be automated;

(ii) Shall be secured from tampering and/or abuse;

(iii) * * *

(iv) Shall be capable of simultaneously sampling dual exhaust vehicles in the case of tailpipe-based emission test equipment.

(3) The vehicle owner or driver shall be provided with a record of test results, including all of the items listed in 40 CFR part 85, subpart W as being required on the test record (as applicable). The test report shall include:

* * * * *

(iv) The type(s) of test(s) performed;

* * * * *

(vi) The test results, by test, and, where applicable, by pollutant;

* * * * *

(ix) For vehicles that fail the emission test, information on the possible cause(s) of the failure.

(b) Functional characteristics of computerized test systems. The test system is composed of motor vehicle test equipment controlled by a computerized processor and shall make automatic pass/fail decisions.

(1) [Reserved]

(2) Test systems in enhanced I/M programs shall include a real-time data link to a host computer that prevents unauthorized multiple initial tests on the same vehicle in a test cycle and to insure test record accuracy. For areas which have demonstrated the ability to meet their other, non-I/M Clean Air Act requirements without relying on emission reductions from the I/M program (and which have also elected to employ stand-alone test equipment as part of the I/M program), such areas may adopt alternative methods for preventing multiple initial tests, subject to approval by the Administrator.

(3) [Reserved]

* * * * *

(c) *SIP requirements.* The SIP shall include written technical specifications for all test equipment used in the program and shall address each of the above requirements (as applicable). The specifications shall describe the testing process, the necessary test equipment, the required features, and written acceptance testing criteria and procedures.

7. Section 51.359 is amended by revising the introductory text, and paragraph (a)(1), removing and reserving (a)(3) and revising (c) and (d) to read as follows:

**§ 51.359 Quality control.**

Quality control measures shall insure that emission testing equipment is calibrated and maintained properly, and that inspection, calibration records, and control charts are accurately created, recorded and maintained (where applicable).

(a) * * * (1) The practices described in this section and in appendix A to this subpart shall be followed for those tests (or portions of tests) which fall into the testing categories identified. Alternatives or exceptions to these procedures or frequencies may be approved by the Administrator based on a demonstration of comparable performance.

(2) * * *

(3) [Reserved]

* * * * *

(c) Requirements for transient exhaust emission test equipment. Equipment shall be maintained according to demonstrated good engineering practices to assure test accuracy. Computer control of quality assurance checks and quality control charts shall be used whenever possible. Exceptions to the procedures and the frequency of the checks described in appendix A of this subpart may be approved by the Administrator based on a demonstration of comparable performance.

(d) Requirements for evaporative system functional test equipment. Equipment shall be maintained according to demonstrated good engineering practices to assure test accuracy. Computer control of quality assurance checks and quality control charts shall be used whenever possible. Exceptions to the procedures and the frequency of the checks described in appendix A of this subpart may be approved by the Administrator based on a demonstration of comparable performance.

* * * * *

8. Section 51.362 is amended by revising paragraphs (a)(2) and (b)(4) to read as follows:

**§ 51.362 Motorist compliance enforcement program oversight.**

* * * * *

(a) * * *

(2) Facilitation of accurate critical test data and vehicle identifier collection through the use of automatic data capture systems such as bar-code scanners or optical character readers, or through redundant data entry (where applicable);

* * * * *

(b) * * *

(4) Maintain and ensure the accuracy of the testing database through periodic internal and/or third-party review;

* * * * *

9. Section 51.363 is amended by revising paragraphs (a)(4)(vii), (b)(1), (c)(10), (d)(1)(i) to read as follows:

**§ 51.363 Quality assurance.**

* * * * *

(a) * * *

(4) * * *

(vii) Where applicable, access to on-line inspection databases by State personnel to permit the creation and maintenance of covert vehicle records.

(b) * * *

(1) Automated record analysis to identify statistical inconsistencies, unusual patterns, and other discrepancies;

* * * * *

(c) * * *

(10) A check of the pressure monitoring devices used to perform the evaporative canister pressure test(s); and

* * * * *

(d) * * *

(1) * * *

(i) The use of test equipment and/or procedures;

* * * * *

10. Section 51.365 is amended by revising the introductory text, paragraphs (a)(3), (a)(23), (a)(24), (a)(25), and (b) to read as follows:

**§ 51.365 Data collection.**

Accurate data collection is essential to the management, evaluation, and enforcement of an I/M program. The program shall gather test data on individual vehicles, as well as quality control data on test equipment (with the exception of test procedures for which either no testing equipment is required or those test procedures relying upon a vehicle's OBD system).

(a) * * *

(3) Test system number (where applicable);

* * * * *

(23) Results of the evaporative system pressure test(s) expressed as a pass or fail;

(24) Results of the evaporative system purge test expressed as a pass or fail along with the total purge flow in liters achieved during the test (where applicable); and

(25) Results of the on-board diagnostic check expressed as a pass or fail along with the diagnostic trouble codes revealed (where applicable).

(b) Quality control data. At a minimum, the program shall gather and report the results of the quality control checks required under § 51.359 of this subpart, identifying each check by station number, system number, date, and start time. The data report shall also contain the concentration values of the calibration gases used to perform the gas characterization portion of the quality control checks (where applicable).

11. Section 51.366 is amended by revising paragraphs (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(2)(iv), (a)(2)(v), (a)(2)(vi), (b)(3)(i), (b)(3)(ii), (b)(3)(iii) and (b)(3)(iv) to read as follows:

**§ 51.366 Data analysis and reporting.**

* * * * *

(a) * * *

(2) * * *

(i) Failing initially, per test type;

(ii) Failing the first retest per test type;

(iii) Passing the first retest per test type;

(iv) Initially failed vehicles passing the second or subsequent retest per test type;

(v) Initially failed vehicles receiving a waiver; and

(vi) Vehicles with no known final outcome (regardless of reason).

* * * * *

(b) * * *

(3) * * *

(i) Conducted with the vehicle set to fail per test type;

(ii) Conducted with the vehicle set to fail any combination of two or more test types;

(iii) Resulting in a false pass per test type;

(iv) Resulting in a false pass for any combination of two or more test types;

* * * * *

12. Section 51.367 is amended by revising paragraphs (a)(1)(vi) and (a)(3) to read as follows:

**§ 51.367 Inspector training and licensing or certification.**

* * * * *

(a) * * * (1) * * *

(vi) Test equipment operation, calibration, and maintenance (with the exception of test procedures which either do not require the use of special equipment or which rely upon a vehicle's OBD system);

* * * * *

(3) In order to complete the training requirement, a trainee shall pass (i.e., a minimum of 80% of correct responses or lower if an occupational analysis justifies it) a written test covering all aspects of the training. In addition, a hands-on test shall be administered in which the trainee demonstrates without assistance the ability to conduct a proper inspection and to follow other required procedures. Inability to properly conduct all test procedures shall constitute failure of the test. The program shall take appropriate steps to insure the security and integrity of the testing process.

* * * * *

13. Section 51.368 is amended by revising paragraph (a) to read as follows:

**§ 51.368 Public information and consumer protection.**

(a) *Public awareness.* The SIP shall include a plan for informing the public on an ongoing basis throughout the life of the I/M program of the air quality problem, the requirements of Federal and State law, the role of motor vehicles in the air quality problem, the need for and benefits of an inspection program, how to maintain a vehicle in a low-emission condition, how to find a qualified repair technician, and the requirements of the I/M program. Motorists that fail the I/M test in enhanced I/M areas shall be offered a list of repair facilities in the area and information on the results of repairs performed by repair facilities in the area, as described in § 51.369(b)(1) of this subpart. Motorists that fail the I/M test shall also be provided with information concerning the possible cause(s) for failing the particular portions of the test that were failed.

* * * * *

14. Section 51.369 is amended by revising paragraphs (c)(2) and (c)(3) to read as follows:

**§ 51.369 Improving repair effectiveness.**

* * * * *

(c) * * *

(2) The application of emission control theory and diagnostic data to the diagnosis and repair of failures on the transient emission test and the evaporative system functional checks (where applicable);

(3) Utilization of diagnostic information on systematic or repeated failures observed in the transient emission test and the evaporative system functional checks (where applicable); and

* * * * *

15. Section 51.371 is amended by revising the introductory text, paragraphs (a)(2), (a)(3), (b)(2) and (b)(3) to read as follows:

**§ 51.371 On-road testing.**

On-road testing is defined as testing of vehicles for conditions directly impacting the emission of HC, CO, $NO_x$ and/or $CO_2$ emissions on any road or roadside in the nonattainment area or the I/M program area. On-road testing is required in enhanced I/M areas and is an option for basic I/M areas.

(a) * * *

(2) On-road testing is not required in every season or on every vehicle but shall evaluate the emission performance of 0.5% of the subject fleet statewide or 20,000 vehicles, whichever is less, per inspection cycle.

(3) The on-road testing program shall provide information about the performance of in-use vehicles, by measuring on-road emissions through the use of remote sensing devices or by assessing vehicle emission performance through roadside pullovers including onboard diagnostic (OBD) system testing or other emission testing. The program shall collect, analyze and report on-road testing data.

* * * * *

(b) * * *

(2) The SIP shall include the legal authority necessary to implement the on-road testing program, including the authority to enforce off-cycle inspection and repair requirements (where applicable).

(3) Emission reduction credit for on-road testing programs shall be granted for a program designed to obtain significant emission reductions over and

above those already predicted to be achieved by other aspects of the I/M program. Emission reduction credit will only be granted to those programs which require out-of-cycle repairs for confirmed high-emitting vehicles identified under the on-road testing program. The SIP shall include technical support for the claimed additional emission reductions.

[FR Doc. 99–21661 Filed 8–19–99; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 99–269, RM–9698]**

### Digital Television Broadcast Service; Salinas, CA

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Hearst-Argyle Stations, Inc., licensee of station KSBW (TV), NTSC Channel 8, Salinas, California, requesting the substitution of DTV Channel 10 for station KSBW (TV)'s assigned DTV Channel 43. DTV Channel 10 can be allotted to Salinas, California, in compliance with the principle community coverage requirements of section 73.625(a) at reference coordinates 36–45–23 N and 121–30–05 W. As requested, we propose to modify station KSBW (TV)'s authorization to specify operation on DTV Channel 10 at Salinas, California, with a power of 24.2 (kW) and a height above average terrain (HAAT) of 692 meters.

**DATES:** Comments must be filed on or before September 27, 1999, and reply comments on or before October 12, 1999.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Mark J. Prak, Esq., Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., Post Office Box 1800, Raleigh, North Carolina 27602 (Counsel for Hearst-Argyle Stations, Inc.).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–269, adopted August 10, 1999, and released August 13, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

### List of Subjects in 47 CFR Part 73

Digital Television Broadcasting.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 99–21723 Filed 8–19–99; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 99–268, RM–9691]**

### Digital Television Broadcast Service; Chattanooga, TN

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Sarkes Tarzian, Inc., licensee of station WRCB–TV, NTSC Channel 3, Chattanooga, Tennessee, proposing the substitution of DTV Channel 13 for station WRCB–TV's assigned DTV Channel 55. DTV Channel 3 can be allotted to Chattanooga, Tennessee, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 35–09–40 N and 85–18–52 W. As requested, we propose to modify station WRCB–TV's authorization to specify operation on DTV Channel 13 at Chattanooga, Tennessee, with a power of 37 (kW) and a height above average terrain (HAAT) of 325 meters.

**DATES:** Comments must be filed on or before September 27, 1999, and reply comments on or before October 12, 1999.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Brian M Madden, Esq., Leventhal, Senter & Lerman, 2000 K Street, NW, Suite 600 Washington, DC 20006–1809 (Counsel for Sarkes Tarzian, Inc.).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–268, adopted August 10, 1999, and released August 13, 1999. The full text of this Commission's decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

### List of Subjects in 47 CFR Part 73

Digital television broadcasting.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 99–21722 Filed 8–19–99; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Parts 600 and 649

**[I.D. 080999H]**

## Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Applications for Exempted Fishing Permits (EFPs)

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

**SUMMARY:** NMFS issues this document to announce that the Regional Administrator, Northeast Region, NMFS (Regional Administrator), is considering approval of 21 EFPs to conduct exempted experimental fishing activities otherwise restricted by regulations governing the Fisheries of the Northeastern United States. These EFPs would allow the fieldwork for a study that proposes to ascertain the overfished status of American lobster (*Homarus americanus*) through the collection of stock assessment information. These EFPS would allow for the temporary possession of sublegal and egg-bearing female lobsters (berried female lobsters) in industry-standard lobster traps during normal fishing operations for tag, v-notch, and release purposes only. The tagging/v-notch program will be conducted by participating commercial fishermen in designated American lobster Management Areas 2 and 3 and the Area 2/3 overlap area from mid-September 1999 through mid-September 2000. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act provisions require publication of this notification to provide interested parties the opportunity to comment on the proposed EFPs.

**DATES:** Comments on this document must be received by September 7, 1999.

**ADDRESSES:** Comments should be sent to the Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on Proposed Experimental Fisheries.''

**FOR FURTHER INFORMATION CONTACT:** Bonnie VanPelt, Fishery Management Specialist, 978–281–9244.

**SUPPLEMENTARY INFORMATION:** The Rhode Island Lobsterman's Association (RILA), University of Rhode Island (URI), and the Rhode Island Division of Environmental Management (RIDEM) have submitted a joint proposal to conduct a lobster tag and release program in inshore/nearshore and offshore waters within two of the seven numeric lobster management areas; specifically, from the Upper Narragansett Bay, East and West Passage, Rhode Island Sound, Block Island Sound to the Offshore Canyons (Block and Hudson).

A lobster tagging program has been conducted in Rhode Island state waters under the joint management of the URI and Rhode Island Sea Grant for the past 5 years. This cooperative effort was developed to help shift the responsibility of the lobster tagging and release program from its current joint management to the RILA.

The project is funded through a Saltonstall-Kennedy grant and would commence in mid-September 1999 and continue over the course of 1 year. Approximately 60,000 American lobsters will be tagged and released; 40,000 sub-legal lobsters and 20,000 berried female lobsters. There are three main objectives of the experimental fishery: (1) To collect information for use in models that currently assess overfished status (e.g., NMFS' Eggs Per Recruit Model) and to provide updated information for inclusion to the Atlantic States Marine Fisheries Commission's stock assessment for lobsters; (2) to educate and provide training to fishermen about the v-notch program and to recognize v-notched lobsters; and (3) to share the responsibility in data collection for the co-management of the American lobster resource.

URI and RIDEM will provide sea sampling coverage on a combined total of 70 inshore and nearshore trips throughout the course of the experiment. Due to time and money constraints the offshore areas in the Canyons (Block and Hudson) will not be monitored by sea samplers. However, the two vessels that will be involved in tagging activities offshore will also conduct trips inshore that are being monitored.

The study involves the tag, v-notch, and release of American lobsters only; no other species will be retained. It is anticipated that the lobsters will be held for no longer than 3–4 hours before they are released. All program participants will receive training on tagging and v-notching protocols prior to the start of operations.

The participating vessel owners have obtained collectors permits from the RIDEM that will enable them to catch, tag, and release juvenile lobsters as well as egg-bearing female lobsters in state waters.

EFPs would be issued to 21 participating federally permitted lobster vessels to exempt them from the size and possession restrictions of the American Lobster Fishery Management Plan. Exemption to the regulations specified at 50 CFR 649.20(b) and (d) will remain in effect until Federal authority to manage the American lobster fishery is transferred from the Magnuson-Stevens Act to the Atlantic Coastal Cooperative Management Act, at which time the authority for this exemption will transfer to the regulations specified at 50 CFR 697.20(b) and (d).

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: August 16, 1999.

**Gary C. Matlock,**

*Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 99–21592 Filed 8–19–99; 8:45 am]

BILLING CODE 3510–22–F

# Notices

Federal Register

Vol. 64, No. 161

Friday, August 20, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## AGENCY FOR INTERNATIONAL DEVELOPMENT

### Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the newly appointed Advisory Committee on Voluntary Foreign Aid (ACVFA).

**DATE:** September 8, 1999 (8:30 a.m. to 5:00 p.m.).

**LOCATION:** U.S. Navy Memorial Foundation, Naval Heritage Center, ''Arleigh and Roberta Burke Theater'', 701 Pennsylvania Avenue, N.W., Washington, DC 20004–2608.

This meeting will feature updates on important items of interest to the community of private voluntary organizations working in international development. Agenda items include discussion of proposed revisions to USAID's Strategic Plan; an assessment of the effectiveness of changes made to streamline USAID's results reporting process; and a status report on the relationship between USAID and the Department of State. There will also be updates on Balkan reconstruction and Hurricane Mitch rehabilitation in Central America, as well as on ACVFA's assessment of USAID's Gender Plan of Action. USAID's new administrator, J. Brady Anderson, has been invited to give the keynote address.

The meeting is free and open to the public. However, Notification by September 6, 1999 Through the Advisory Committee Headquarters is Required. Persons wishing to attend the meeting must fax their name, organization and phone number to Lisa J. Harrison (703) 741–0567.

Dated: August 11, 1999.

**Noreen O'Meara,**

*Executive Director, Advisory Committee on Voluntary Foreign Aid (ACVFA).*

[FR Doc. 99–21681 Filed 8–19–99; 8:45 am]

BILLING CODE 6116–01–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Lake Tahoe Basin Federal Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice and request for nominations.

**SUMMARY:** The Secretary of Agriculture has established an advisory committee, chartered under the Federal Advisory Committee Act, to provide advice to the Secretary of Agriculture on implementing the terms of the Federal Interagency Partnership for the Lake Tahoe Region. Nominations of persons to serve as the 20th member, member-at-large, of the Committee are invited.

**DATES:** Nominations for membership on the Committee must be received in writing by September 7, 1999.

**ADDRESSES:** Send nominations with telephone numbers for membership on the Committee to: FACA Nominations, Lake Tahoe Basin Management Unit, 870 Emerald Bay Road, South Lake Tahoe, CA 96150.

**FOR FURTHER INFORMATION CONTACT:** Jeannie Stafford, Lake Tahoe Basin Management Unit, (530) 573–2641.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Secretary of Agriculture has established the Lake Tahoe Federal Advisory Committee on July 13, 1998 and will be selecting nominations for a 20th member. The purpose of the Committee is to provide advice to the Secretary of Agriculture on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Basin and other matters raised by the Secretary.

The Secretary has determined that the work of the Committee is in the public interest and relevant to the duties of the Department of Agriculture.

The Committee will meet on a quarterly basis, conducting public meetings to discuss management strategies, gather information and review federal agency accomplishments, and prepare a progress report every six months for submission to regional federal executives.

The Committee will consist of no more than 20 members representing a broad array of interests in the Lake Tahoe Region. Representatives have been selected from the following sectors: (1) Gaming; (2) environmental; (3) natural resources; (4) ski resorts; (5) North Shore economic and recreation interests; (6) South Shore economic and recreation interests; (7) resort associations; (8) education; (9) property rights advocates; (10) member-at-large; (11) member-at-large; (12) science and research; (13) local government; (14) Washoe Tribe; (15) State of California; (16) State of Nevada; (17) Tahoe Regional Planning Agency; (18) Union/labor interests; (19) transportation; and (20) member-at-large (vacant).

Nominations for the 20th member representing member-at-large should describe and document the proposed member's qualifications for membership on the Lake Tahoe Basin Advisory Committee.

Vacancies on the Committee will be filled in the manner in which the original appointment was made.

Appointments to the Committee will be made by the Secretary of Agriculture. Equal opportunity practices, in line with USDA policies, will be followed in all appointments to the committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership should include to the extent practicable individuals with demonstrated ability to represent minorities, women, persons with disabilities, and senior citizens.

Dated: August 11, 1999.

**Juan Palma,**

*Forest Supervisor, Lake Tahoe Basin Management Unit.*

[FR Doc. 99–21597 Filed 8–19–99; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Wolf Creek Ditch Special Use Permit, Okanogan National Forest, Okanogan County, WA

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The USDA, Forest Service, will prepare an environmental impact statement (EIS) on a proposal to issue an easements and special use permits to the Wolf Creek Reclamation District to

operate and maintain the Wolf Creek and Little Wolf Creek irrigation ditches and access the ditches over Forest Service roads. In addition to issuing easements and special use permits, the proposed action includes replacing the existing log diversion structure with a concrete structure, which will allow for fish passage, and realigning the existing culvert at the beginning of the ditch. The EIS will develop a range of alternatives for operation and maintenance of the ditch. The alternatives will include the No Action alternative, whereby no easements or special use permits would be issued to the Wolf Creek Reclamation District, and no water would be allowed to flow down the ditch, and alternatives that respond to issues identified during the scoping process. The proposed action is consistent with the direction in the 1989 Okanogan National Forest Land and Resource Management Plan (Forest Plan), as amended by the 1994 Northwest Forest Plan, which provide overall guidance for management of the area. Implementation of this proposal is scheduled to begin in summer 2000. The Forest Service invites written comments on this project. In addition, the agency gives notice of this environmental analysis so that interested and affected people are aware of how they may participate and contribute to the decision making process.

**DATES:** Comments concerning the scope and implementation of the proposal should be received in writing by September 10, 1999.

**ADDRESSES:** Send written comments and suggestions concerning this project to Sonny J. O'Neal, Forest Supervisor, Okanogan National Forest, 1240 S. Second Ave., Okanogan, Washington, 98840.

**FOR FURTHER INFORMATION CONTACT:** Direct questions about the proposed action and the scope of analysis to Jan Flatten, Project Team Leader at 1240 South Second Avenue, Okanogan, WA, (509) 826–3277.

**SUPPLEMENTARY INFORMATION:** The Wolf Creek Reclamation District has held a special use permit to operate and maintain the Wolf Creek irrigation ditch since 1921. The Reclamation District provides both domestic and agricultural water to residents, businesses and public agencies along the ditch. The portion of the ditch on National Forest System lands (NFS) is located in Sections 1 and 2 of Township 34 North, Range 20 East, Willamette Merdian. The ditch on NFS lands spans approximately one mile, from the headgate on Wolf Creek just below the boundary of the Lake Chelan-Sawtooth Wilderness, across Little Wolf Creek to private land. The ditch eventually empties into Patterson Lake, where it is then channeled around Patterson Mountain to service private lands and the Methow Valley School District. The ditch currently has a log diversion dam and a temporary flat fish screen installed in the summer of 1999 at the headgate on Wolf Creek. The headgate is currently inaccessible by road and is located at the edge of the Sawtooth inventoried Roadless Area. The Reclamation District currently holds a temporary special use permit for operation and maintenance of the ditch. In 1997, steelhead were listed as an endangered species under the Endangered Species Act. Bull trout were listed as a threatened species in 1998, and Upper Columbia River Spring Chinook Salmon were listed as an endangered species in 1999. All three species are found in Wolf Creek. The Wolf Creek Reclamation District does not hold a special use permit for the little Wolf Creek ditch.

The analysis area is located entirely in matrix lands under the Northwest Forest Plan, and is managed for wildlife (MA–5; 30%) under the Okanogan National Forest Land and Resource Management Plan (Forest Plan). This EIS will tier to the Forest Plan, as amended by the Northwest Forest Plan. The amended Forest Plan provides forest-wide standards and guidelines, management area standards and guidelines, management area standards and guidelines, and desired future conditions for the various lands on the Forest. This direction is provided for management practices that will be utilized during the implementation of the amended Forest Plan.

In the early 1990s, the Wolf Creek Reclamation District applied for an easement for the ditch under Public Law 99–545 (Colorado Ditch Bill), which makes issuance of the easement to qualifying irrigation ditches non-discretionary.

The proposed action for the Wolf Creek Ditch easements and special use permits would permit the Wolf Creek Reclamation District to continue to operate and maintain the Wolf Creek and Little Wolf Creek irrigation ditches. Not allowing continued operation and maintenance of the ditches might have adverse social and economic impacts. Access to the Wolf Creek headgate would be via helicopter, all terrain vehicles and a ¼ to ½ mile long tractor trail to allow for replacement of the headgate and diversion structure and realignment of the culvert. The proposed action would be adjusted between draft and final EIS to comply with any terms and conditions identified by the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) as a result of a Biological Opinion on the listed species.

The following preliminary issues have been identified for this project: (1) Species listed under the Endangered Species Act (steelhead, bull trout and spring Chinook salmon) reside in Wolf Creek and may be adversely affected; (2) The headgate for the ditch is located near the boundary of an inventoried roadless area and building an access trail could potentially substantially alter the unroaded and undeveloped character of that portion of the roadless area; (3) The Lake-Chelan Sawtooth Wilderness boundary is approximately 500 feet upstream from the existing headgate and reconstruction activities may have short term impacts on wilderness users; and (4) Trail construction and stream crossings of heavy equipment, headgate replacement, culvert re-alignment, and diversion dam construction may increase sedimentation in Wolf Creek.

The Forest Service will be seeking information, comments and assistance from Federal, State, local agencies, tribes, and other individuals or organizations who may be interested or affected by the proposed project. This information will be used to determine the issues significant to the development and analysis of alternatives, to determine the appropriate range of alternative ways of implementing the proposed action, and to guide the analysis of effects.

The scoping process will include the following:

- Identification of potential issues;
- Identification of issues to be analyzed in depth;
- Elimination of insignificant issues or those which have been covered by a relevant previous environmental process;
- Exploration of alternative ways to implement the proposed actions based on the issues identified during the scoping process; and
- Determination of environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).

The analysis will develop a range of alternatives from No Action to alternatives allowing for operation and maintenance of the irrigation that respond to the significant issues.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for

public review by January 2000. The comment period on the draft EIS will be 45 days from the date EPA publishes the notice of availability of the draft EIS in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, a reviewer of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 f. 2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objectives are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points).

Individuals and organizations who write to comment on projects may have their letters released in their entirety, if requested under the Freedom of Information Act.

The final EIS is scheduled to be completed in March 2000. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding this proposal. Sonny O'Neal, Forest Supervisor, is the responsible official. As responsible official, he will document the project decision and rationale in a Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR Part 215 and 36 CFR 251).

Dated: August 13, 1999.

**Stuart Woolley,**

*Acting Deputy Forest Supervisor, Okanogan National Forest.*

[FR Doc. 99–21635 Filed 8–19–99; 8:45 am]

BILLING CODE 3410–11–M

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## DEPARTMENT OF AGRICULTURE

### Forest Service

### Goose Restoration Projects, Winema National Forest, Klamath County, Oregon

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The USDA, Forest Service, will prepare an environmental impact statement (EIS) for restoration projects on the Klamath Ranger District of the Winema National Forest. The planning area is located in T32S, R6E, T32S, R7 1/2E, T33S, R6E, and T33S, R7 1/2E, Willamette Meridian. Projects included under this analysis include commercial timber harvest, precommercial thinning, underburning, post and pole harvest, reforestation, evaluation of access and travel opportunities, road closures and obliterations, correction of sediment problems at the Annie Creek dispersed site, and elk forage enhancement. The Forest Service is initiating the process of preparing an EIS to analyze and disclose the effects of the proposed action and alternatives.

**DATES:** Comments concerning the scope of the analysis should be received in writing by September 20, 1999.

**ADDRESSES:** Submit written comments to Goose Project, Klamath Ranger District, 1936 California Ave., Klamath Falls, Oregon, 97601.

**FOR FURTHER INFORMATION CONTACT:** Phil Jahns, Klamath Ranger District, Winema National Forest, 1936 California Avenue, Klamath Falls, Oregon 97601, phone 541–885–3400 or e-mail at: pjahns/r6pnw__,winema@fs.fed.us.

**SUPPLEMENTARY INFORMATION:** The Goose Planning Area is located on the east side of the southern Cascades immediately south of Crater Lake National Park. The elevation ranges from 4000 to 6000 feet and encompasses forest types ranging from lodgepole pine and white fir in the lower elevations to Shasta red fir and Mountain hemlock in the higher reaches. The planning area contains one of the largest root disease pockets in western North America.

This project-level EIS will tier to the 1990 Winema National Forest Land and Resource Management Plan, as amended by the 1994 Record of Decision for ''Amendments to Forest Service and Bureau of Land Management Planning Document Within the Range of the Northern spotted Owl'' (Forest Plan). The Forest Plan provides guidance for management activities within the potentially affected area through its goals objectives, management area direction, and standards and guidelines. The project would occur primarily within Scenic Management Area (MA3) and to a lesser extent within Late Successional Reserve (MA16) and Timber Management Area (MA12).

#### Purpose and Need

The purpose of the project is to (1) develop implementable treatments that will reduce the risk of large scale disturbances and/or encourage development of old growth characteristics within the planning area, (2) review the adequacy of the transportation system for the future and recommend deletion of those segments that are surplus to the needs or that are contributing to water quality problems, and (3) produce a timber product from matrix lands.

#### Proposed Action

The proposal contains a series of projects which reduce forest mortality to root disease while improving watershed condition. Up to 1930 acres of commercial harvest with thinning prescriptions will be proposed. Up to 2320 acres may be treated with prescribed underburning, possibly in conjunction with thinning. Up to 335 acres will be precommercially thinned and up to 100 acres will have opportunities to harvest posts and poles. Other proposed activities are 150 acres of seeding to improve elk foraging habitat, evaluation of access and travel opportunities and up to 40 miles of road may be closed or obliterated. In addition, the recreation site by Annie Creek will be reconstructed to minimize sediment.

#### Alternatives

The No Action alternative will serve as a baseline for comparison of alternatives and will be fully developed and analyzed. With the No Action alternative, there would be no activities implemented based on the Goose analysis. Previously approved activities, and routine protection and maintenance activities will continue. The proposed action, as described above, will be considered and other alternatives will be developed around the proposed

action to address issues identified in the scoping and public involvement process.

**Issues**

The preliminary issues that have been identified include the importance of the area for elk calving, the need to improve connectivity of late seral habitat between blocks of Late Successional Reserve and Crater Lake National Park, and the potential impact of the project on roadless values.

**Public Involvement**

Public participation will be important at several points during the EIS preparation. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information and comments from Federal, State, and local agencies, tribes, and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft EIS.

Public scoping will be achieved through mailings, notification in the Klamath Falls Herald & News, and if interest dictates, public meetings will be held within the Klamath Basin.

A range of alternatives will be considered including the No Action alternative. As issues are identified, other potential alternatives will be developed.

Comments received in response to this notice, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

**Estimated Dates For Draft and Final EIS**

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in January 2000. The comment period on the draft EIS will be 45 days from the date EPA's Notice of Availability appears in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoom* v. *Hodel,* 803 F.2d. 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can be meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the 45 day comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final EIS. The final EIS is scheduled to be completed by April 2000. In the final EIS, the Forest Service is required to respond to the comments received (40 CFR 1503.4). Forest Supervisor, Winema National Forest, is the responsible official and will consider comments, responses, environmental consequences discussed in the EIS and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR Part 215).

Dated: August 12, 1999.

**Mary C. Erickson,**

*Acting Deputy Forest Supervisor, Winema National Forest.*

[FR Doc. 99–21634 Filed 8–19–99; 8:45 am]

BILLING CODE 3410–11–M

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## DEPARTMENT OF AGRICULTURE

### Forest Service

### Lake Tahoe Basin Federal Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on September 28, 1999, at the Granlibakken Conference Center, 725 Granlibakken Road, Tahoe City, CA. This Committee, established by the Secretary of Agriculture on December 15, 1998 (64 FR 2876), is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

**DATES:** The meeting will be held September 28, beginning at 9:00 a.m. and ending at 4:30 p.m.

**ADDRESSES:** The meeting will be held at the City of South Lake Tahoe Chamber Office, 1900 Lake Tahoe Blvd., South Lake Tahoe, CA.

**FOR FURTHER INFORMATION CONTACT:** Ed Gee or Jeannie Stafford, Lake Tahoe Basin Management Unit, Forest Service, 870 Emerald Bay Road Suite 1, South Lake Tahoe, CA 96150, (530) 573–2642.

**SUPPLEMENTARY INFORMATION:** The committee will meet jointly with the Lake Tahoe Basin Executives Committees. Items to be covered on the agenda include: (1) Recommendations to the Federal Partners on the Watershed Assessment; (2) Recommendations to the Federal Partners regarding federal budget priorities; (3) discussion of the USDA Forest Supervisor Replacement; (4) Open Public Comment. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. Issues may be brought to the attention of the Committee during the open public comment period at the

meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: August 11, 1999.

**Juan Palma,**

*Forest Supervisor.*

[FR Doc. 99–21596 Filed 8–19–99; 8:45 am]

BILLING CODE 3410–11–M

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Additions and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed additions to and deletions from Procurement List.

**SUMMARY:** The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities and services previously furnished by such agencies.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** September 20, 1999.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 603–7740.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

### Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

*Base Supply Center and Operation of Individual Equipment Element Store*

Barksdale Air Force Base, Louisiana
NPA: Louisiana Association for the Blind, Shreveport, Louisiana

*Laundry Service*

Naval Air Station, Brunswick, Maine and Portsmouth, New Hampshire
NPA: Newport County Chapter of Retarded Citizens, Inc., Middletown, Rhode Island

*Janitorial/Custodial*

Gerow USARC, Fort Lee, Virginia
NPA: Goodwill Services, Inc., Richmond, Virginia

*Janitorial/Custodial*

New River Valley Memorial USARC, Dublin, Virginia
NPA: New River Valley Workshop, Inc., Radford, Virginia

*Janitorial/Custodial*

PFC Cloyse E. Hall USARC, Salem, Virginia
NPA: Goodwill Industries of Tinker Mountain, Inc., Salem, Virginia

*Janitorial/Custodial*

Various USARCs, Fort Pickett, Virginia
NPA: Goodwill Services, Inc., Richmond, Virginia

*Grounds Maintenance*

Naval Air Station, Joint Reserve Base, Fort Worth, Texas
NPA: Goodwill Industries of Fort Worth, Fort Worth, Texas

### Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for deletion from the Procurement List.

The following commodities and services have been proposed for deletion from the Procurement List:

*Commodities*

Ladder, Extension (Wood)
5440–00–242–1000
Ladder, Straight (Wood)
5440–00–242–7151
Stepladder
5440–00–531–2589
Ammonia Inhalant Solution, Aromatic
6505–00–106–0875
Brush, Floor Sweeping
7920–00–292–2363
7920–00–292–2365
7920–00–292–2362
Brush, Scrub
7920–00–951–8795
Brush, Wire, Scratch
7920–00–269–0933
Brush, Wire, Stainless Steel
7920–00–958–1157

*Services*

Commissary Shelf Stocking and Custodial
Fort Devens, Massachusetts

*Janitorial/Custodial*

Fort Ritchie, Maryland

*Janitorial/Custodial*

U.S. Federal Building and Courthouse, 301 South Park Avenue, Helena, Montana

*Janitorial/Custodial*

U.S. Army Reserve Center, Allison Park, Reserve Center #2, Buildings 1 and 5, Allison Park, Pennsylvania

*Janitorial/Custodial*

Federal Center, Buildings 603, 604, 605, 606, 607, 608, 608A, 609, 610, 611, 612, 613, 613A, 615, 616, 617, 618, 619, 620, 621 and 624, Walla Walla, Washington

**Rita L. Wells,**

*Deputy Director (Policy and Program Coordination).*

[FR Doc. 99–21669 Filed 8–19–99; 8:45 am]

BILLING CODE 6353–01–P

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Additions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Additions to the Procurement List.

**SUMMARY:** This action adds to the Procurement List services to be

furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**EFFECTIVE DATE:** September 20, 1999.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 603–7740

**SUPPLEMENTARY INFORMATION:** On September 11, and December 11, 1998, January 29, May 28, June 18 and 25, and July 2, 1999, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (63 FR 48696 and 68427, and 64 FR 4638, 28972, 32844, 34187, 35987 and 35988) of proposed additions to the Procurement List.

## Additions

*The Following Comments Pertain to Food Service, Fort Lee, Virginia*

Comments were received from a contractor under the 8(a) Program which is not the current contractor for this service. The commenting contractor objected to removal of this service from competitive procurement. The Committee does not consider loss of the opportunity to bid on a contract, without a showing of further economic impact or a demonstrated history of dependency on the contract, to be a severe adverse impact on a contractor.

*The Following Comments Pertain to Mailroom and Warehouse Operation, U.S. Army Corps of Engineers, Construction Engineering Research Laboratory, Champaign, Illinois*

Comments were received from the current contractor for these services. The commenter claimed to be a struggling small disadvantaged business. Loss of its contracts for these services, it claimed, would halt its expansion and could result in the end of the company. The commenter also questioned whether blind people would be able to safely perform the mailroom and warehouse operations involved in providing the services to the Government.

The percentage of the commenter's total sales which its contracts for these services represent is slightly higher than the percentage range which the Committee has historically considered not to constitute severe adverse impact on a current contractor. However, the Government contracting activity for these services has informed the Committee that the commenter's numerous failures to pay its employees performing the services properly has raised concerns that performance could be impaired if some or all of the employees walk off the job. The Department of Labor is currently investigating the commenter for possible violations of the Service Contract Act related to these payment problems, and debarment of the commenter from Federal contracting is a possible result of the investigation. Because current Federal acquisition regulations permit contracting activities to place considerable weight on past performance as a factor in assessing the risk of poor performance on future contracts, the contracting activity believes that it would be unlikely to award future contracts for these services to the commenter if the payment problems are not corrected. In addition, these payment problems could lead to disqualification of the commenter for future contract awards on the grounds of financial nonresponsibility.

Under these circumstances, the Committee believes the commenter would likely not receive future contracts for these services whether or not the Committee added them to the Procurement List.

Any financial impact the commenter would experience would thus not necessarily be a direct result of the Committee's addition decision. Accordingly, the Committee has concluded that addition of these services to the Procurement List is not likely, in itself, to have a severe adverse impact on the commenter.

The Committee's determination that the nonprofit agency for the blind which will be performing these services is capable of doing so is based on an evaluation of the nonprofit agency's capability which took into account the ability of blind workers to perform the tasks involved in a safe manner. Accordingly, the Committee does not agree with the commenter's contention that blind people cannot safely perform these tasks.

*The Following Material Pertains to All of the Services Being Added to the Procurement List*

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

*Base Supply Center and Operation of Individual Equipment Element Store*

Vandenberg Air Force Base, California

*Commissary Shelf Stocking, Custodial and Warehousing*

Kaneohe Bay, Hawaii

*Food Service*

Fort Lee, Virginia

*Janitorial/Custodial*

Agriculture Cotton Annex, 14th and Independence Avenue, Washington, DC

*Janitorial/Custodial*

Herbert Hoover Building and White House Visitor's Center, 14th & Constitution Avenue, N.W., Washington, DC

*Janitorial/Custodial*

Naval War College, Newport, Rhode Island

*Mailroom and Warehouse Operation*

U.S. Army Corps of Engineers, Construction Engineering Research Laboratory, Champaign, Illinois

*Mailroom Operation*

Internal Revenue Service, University Plaza Building, 949 East 36th Avenue, Room 112, Anchorage, Alaska

*Internal Revenue Service and U.S. Coast Guard*

Prince Jonah Kuhio Kalanianaole (PJKK) Federal Building, 300 Ala Moana Boulevard, Honolulu, Hawaii

*Internal Revenue Service*

Edith Green/Wendell Wyatt Federal Building, 1220 SW Third Avenue, Portland, Oregon

*Internal Revenue Service*

Jackson Federal Building, 915 Second Avenue, Room 2450, Seattle, Washington

*Recycling Service*

March Air Reserve Base, California

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

**Rita L. Wells,**

*Deputy Director (Policy and Program Coordination).*

[FR Doc. 99–21670 Filed 8–19–99; 8:45 am]

BILLING CODE 6353–01–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–489–602]**

### Continuation of Antidumping Duty Order: Aspirin From Turkey

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Continuation of Antidumping Duty Order: Aspirin from Turkey.

**SUMMARY:** On July 6, 1999, the Department of Commerce (''the Department''), pursuant to sections 751(c) and 752 of the Tariff Act from 1930, as amended (''the Act''), determined that revocation of the antidumping duty order on aspirin from Turkey would be likely to lead to continuation or recurrence of dumping (64 FR 36328 (July 6, 1999)). On August 4, 1999, the International Trade Commission (''the Commission''), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty order on aspirin from Turkey would likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (64 FR 42414 (August 4, 1999)). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of the antidumping duty order on aspirin from Turkey.

**FOR FURTHER INFORMATION CONTACT:** Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW, Washington, DC 20230; telephone (202) 482–6397 or (202) 482–1560, respectively.

**EFFECTIVE DATE:** August 20, 1999.

### Background

On March 1, 1999, the Department initiated, and the Commission instituted, a sunset review (64 FR 9970 and 64 FR 10012, respectively) of the antidumping duty order on aspirin from Turkey pursuant to section 751(c) of the Act. As a result of this review, the Department found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the order to be revoked. (*See Final Results of Expedited Sunset Review: Aspirin from Turkey*, 64 FR 36328 (July 6, 1999)).

On August 4, 1999, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on aspirin from Turkey would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. (*See Aspirin from Turkey*, 64 FR 42414 (August 4, 1999), and USITC Pub. 3215, Inv. No. 731–TA–364 (Review) (July 1999)).

### Scope

The merchandise covered by this antidumping duty order is acetylsalicylic acid (aspirin) from Turkey containing no additives, other than inactive substances (such as starch, lactose, cellulose, or coloring materials), and/or active substances in concentrations less than that specified for particular nonprescription drug combinations of aspirin and active substances as published in the Handbook of Nonprescription Drugs, eighth edition, American Pharmaceutical Association, and is not in tablet, capsule or similar forms for direct human consumption. This product is classified under the Harmonized Tariff Schedule (HTS) subheading 2918.22.10. The HTS number is provided for convenience and customs purposes. The written description remains dispositive.

### Determination

As a result of the determinations by the Department and the Commission that revocation of this antidumping duty order would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on aspirin from Turkey. The Department will instruct the U.S. Customs Service to continue to collect antidumping duty deposits at the rate in effect at the time of entry for all imports of subject merchandise. Pursuant to section 751(c)(6)(A)(iii) of the Act, any subsequent five-year review of this order will be initiated not later than the fifth anniversary of the effective date of continuation of this order.

The effective date of continuation of a finding, order, or suspension agreement will be the date of publication in the **Federal Register** of the Notice of Continuation. As provided in 19 CFR 351.218(f)(4), the Department will issue its determination to continue a finding, order, or suspended investigation not later than seven days after the date of publication in the **Federal Register** of the Commission's determination concluding the sunset review and immediately thereafter will publish its notice of continuation in the **Federal Register**. As a result, pursuant to section 751(c)(2) and 751(c)(6)(A) of the Act, the Department intends to initiate the next five-year review of this order not later than thirty (30) days before the fifth anniversary of the effective date of this notice.

Dated: August 13, 1999.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 99–21714 Filed 8–19–99; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–614–801]**

### Fresh Kiwifruit From New Zealand: Initiation and Preliminary Results of Changed Circumstances Review and Intent To Revoke Order, and Rescission of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of initiation and preliminary results of changed circumstances review and intent to revoke order, and rescission of antidumping duty administrative review.

**SUMMARY:** In response to a request from the petitioner, the California Kiwifruit Commission, the Department of Commerce (the Department) is initiating a changed circumstances review and is issuing this notice of intent to revoke the antidumping duty order on fresh kiwifruit from New Zealand. The petitioner requested that the Department revoke the order on fresh kiwifruit from New Zealand retroactive to June 1, 1997, because it no longer has an interest in maintaining the order. The California Kiwifruit Commission is a domestic interested party and was the petitioner in the less-than-fair-value (LTFV)

investigation. We are initiating this changed circumstances review and issuing this notice of our preliminary determination to revoke the order retroactive to June 1, 1997. In addition, in response to the respondent's withdrawal of its request for the present (sixth) administrative review, the Department is rescinding the sixth administrative review of the order.

**EFFECTIVE DATE:** August 20, 1999.

**FOR FURTHER INFORMATION CONTACT:** Sunkyu Kim or John P. Maloney, Jr., Office 2, AD/CVD Enforcement Group I, Import Administration-Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–2613 or (202) 482–1503, respectively.

**SUPPLEMENTARY INFORMATION:**

## The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (April 1998).

## Background

On July 30, 1999, the petitioner, the California Kiwifruit Commission, requested that the Department conduct a changed circumstances review to revoke the antidumping duty order on fresh kiwifruit from New Zealand retroactive to June 1, 1997. The petitioner stated that circumstances have changed such that the petitioner no longer has an interest in maintaining the antidumping duty order. On August 5, 1999, the petitioner submitted a supplement to its request indicating that it represents all kiwifruit growers in California and virtually all commercial growers of kiwifruit in the United States.

The petitioner also requested that, due to the pendency of the ongoing administrative review of the order, the Department initiate and complete the changed circumstances review on an expedited basis.

On July 14, 1999, the New Zealand Kiwifruit Marketing Board (NZKMB), the sole respondent in this proceeding, filed a withdrawal of its request for an administrative review of the June 1, 1997, through May 31, 1998, review period (the sixth review), and requested that the Department rescind the sixth review. Given that the respondent's withdrawal and rescission request was filed after the 90-day period for withdrawing a request for a review, the respondent asked the Department to exercise its regulatory discretion to rescind the sixth review.

## Scope of Review

The product covered by this review is fresh kiwifruit. Processed kiwifruit, including fruit jams, jellies, pastes, purees, mineral waters, or juices made from or containing kiwifruit are not covered under the scope of this review. This merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 0810.90.20.60. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

## Initiation and Preliminary Results of Changed Circumstances Review and Intent To Revoke Order

Pursuant to section 751(d)(1) of the Act, the Department may revoke, in whole or in part, an antidumping duty order based on a review under section 751(b) of the Act (*i.e.,* a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request containing sufficient information concerning changed circumstances.

The Department's regulations at 19 CFR 351.216(d) require the Department to conduct a changed circumstances review in accordance with 19 CFR 351.221 if it decides that changed circumstances sufficient to warrant a review exist. Section 782(h) of the Act and 19 CFR 351.222(g)(1)(i) provide further that the Department may revoke an order, in whole or in part, if it concludes that the order under review is no longer of interest to producers accounting for substantially all of the production of the domestic like product. In addition, in the event that the Department concludes that expedited action is warranted, 19 CFR 351.221(c)(3)(ii) permits the Department to combine the notices of initiation and preliminary results.

The California Kiwifruit Commission is a domestic interested party as defined by section 771(9)(E) of the Act and 19 CFR 351.102(b) and was the petitioner in the LTFV investigation of this proceeding. We preliminarily determine that the California Kiwifruit Commission represents producers accounting for substantially all of the production of the domestic like product. Therefore, based on the affirmative statement by the California Kiwifruit Commission of no interest in the continued application of the antidumping duty order on fresh kiwifruit from New Zealand, we are initiating this changed circumstances review. Further, based on the request by the petitioner and its affirmative statement of no interest dating back to June 1, 1997, we have determined that expedited action is warranted, and we are combining these notices of initiation and preliminary results. We have preliminarily determined that there are changed circumstances sufficient to warrant revocation of the order in whole. We are hereby notifying the public of our intent to revoke in whole the antidumping duty order on fresh kiwifruit from New Zealand retroactive to June 1, 1997.

If final revocation of the order occurs, we intend to instruct the Customs Service to end the suspension of liquidation and to refund any estimated antidumping duties collected for all unliquidated entries of fresh kiwifruit from New Zealand on or after June 1, 1997, in accordance with 19 CFR 351.222(g)(4). We will also instruct the Customs Service to pay interest on such refunds in accordance with section 778 of the Act. The current requirement for a cash deposit of estimated antidumping duties will continue until publication of the final results of this changed circumstances review.

## Rescission of Administrative Review

On July 14, 1999, NZKMB withdrew its request for review in the sixth review period (June 1, 1997, through May 31, 1998). In accordance with 19 CFR 351.213(d)(1), we are rescinding this review because NZKMB withdrew its request for a review and no other interested party requested that NZKMB be reviewed. Although NZKMB did not file its withdrawal request within 90 days of the publication of initiation of the requested review, we are exercising the discretion to extend that time limit afforded by 19 CFR 351.213(d)(1). That section allows the Department to rescind a review after 90 days when it is reasonable to do so. In this case, the petitioner concomitantly has filed a request for a changed circumstances review and revocation of the order based on a lack of domestic interest dating back to June 1, 1997, the month the request was filed for the sixth review. Given the lack of domestic interest prior to the date of initiation of the sixth review, we have determined that it is reasonable to rescind the sixth review based on NZKMB's filing of a withdrawal of its request for a review on July 14, 1999.

**Public Comment**

Any interested party may request a hearing within 10 days of publication of this notice. Any hearing, if requested, will be held no later than 28 days after the date of publication of this notice. Written comments from interested parties may be submitted not later than 14 days after the date of publication of this notice. Rebuttal comments to written comments, limited to issues raised in those comments, may be filed not later than 21 days after the date of publication of this notice. All written comments shall be submitted in accordance with 19 CFR 351.303. Persons interested in attending the hearing should contact the Department for the date and time of the hearing. The Department will publish the final results of this changed circumstances review, including the results of its analysis of issues raised in any written comments.

This notice is in accordance with section 751(b)(1) of the Act and 19 CFR 351.216 and 351.222.

Dated: August 13, 1999.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 99–21715 Filed 8–19–99; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–201–504]**

## Porcelain-on-Steel Cookware From Mexico: Notice of Extension of Time Limit for Preliminary Results in Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** August 20, 1999.

**FOR FURTHER INFORMATION CONTACT:** Kate Johnson at (202) 482–4929, or Rebecca Trainor at (202) 482–4007, Office 2, AD/CVD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C., 20230.

**SUMMARY:** The Department of Commerce is extending the time limit for the preliminary results of the twelfth administrative review of the antidumping duty order on porcelain-on-steel cookware from Mexico, which covers the period December 1, 1997, through November 30, 1998.

**Postponement**

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (the Act), the Department of Commerce (the Department) shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period. The Department finds that it is not practicable to complete the preliminary results in this twelfth administrative review of certain porcelain-on-steel cookware from Mexico within this time limit due to a number of complex issues, including reimbursement.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time for completion of the preliminary results of this review until November 1, 1999.

Dated: August 16, 1999.

**Susan Kuhbach,**

*Acting Deputy Assistant Secretary for Import Administration.*

[FR Doc. 99–21717 Filed 8–19–99; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–588–041]**

## Revocation of Antidumping Finding: Synthetic Methionine From Japan

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of revocation of antidumping finding: Synthetic methionine from Japan.

**SUMMARY:** Pursuant to section 751(c) of the Tariff Act from 1930, as amended (''the Act''), the United States International Trade Commission (''the Commission'') determined that revocation of the antidumping finding on synthetic methionine from Japan is not likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (64 FR 38693 (July 19, 1999)). Therefore, pursuant to section 19 CFR 351.222(i)(1), the Department of Commerce (''the Department'') is revoking the antidumping finding on synthetic methionine from Japan. Pursuant to section 751(c)(6)(A)(iv) of the Act, the effective date of revocation is January 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

**EFFECTIVE DATE:** January 1, 2000.

**Background**

On August 3, 1998, the Department initiated, and the Commission instituted, a sunset review (63 FR 41227 and 63 FR 41290, respectively) of the antidumping finding on synthetic methionine from Japan pursuant to section 751(c) of the Act. As a result of the review, the Department found that revocation of the antidumping finding would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the finding to be revoked (*see Final Results of Expedited Sunset Review: Synthetic Methionine from Japan*, 63 FR 67665 (December 8, 1998), as amended 64 FR 30488 (June 8, 1999)).

On July 19, 1999, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping finding on synthetic methionine would not likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Synthetic Methionine from Japan*, 64 FR 38693 (July 19, 1999), and USITC Pub. 3205, Inv. No. AA1921–115 (Review) (July 1999)).

**Scope**

The merchandise covered by this finding is shipments of synthetic methionine other than synthetic L methionine. Synthetic methionine is an amino acid produced in two grades, DL methionine national formula grade (used for research and pharmaceutical purposes) and L methionine feed grade (used as a food additive). Both grades of synthetic methionine are currently classifiable under item 425.0420 of the Tariff Schedules of the United States Annotated and Harmonized System item number 2930.40.00. Although the HTSUS subheading is provided for convenience and customs purposes, the written description remains dispositive.

**Determination**

As a result of the determination by the Commission that revocation of this antidumping finding is not likely to lead

to continuation or recurrence of material injury to an industry in the United States, the Department, pursuant to section 751(d)(2) of the Act, will revoke the antidumping finding on synthetic methionine from Japan. Pursuant to section 751(c)(6)(A)(iv) of the Act, this revocation is effective January 1, 2000. The Department will instruct the U.S. Customs Service to discontinue suspension of liquidation and collection of cash deposit rates on entries of the subject merchandise entered or withdrawn from warehouse on or after January 1, 2000 (the effective date). The Department will complete any pending administrative reviews of this order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

Dated: August 13, 1999.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 99–21713 Filed 8–19–99; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–570–601]**

## Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Preliminary Results of New Shipper Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of new shipper review of tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China.

**SUMMARY:** In response to requests from Zhejiang Changshan Changhe Bearing Company and Weihai Machinery Holding (Group) Corporation Limited, the Department of Commerce is conducting a new shipper review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China. This review covers these companies' entries of tapered roller bearings and parts thereof, finished and unfinished, to the United States during the period June 1, 1998, through November 30, 1998.

We have preliminarily found that, during the period of review, Zhejiang Changshan Changhe Bearing Company and Weihai Machinery Holding (Group) Corporation Limited have not made sales of subject merchandise below normal value. If these preliminary results are adopted in our final results, we will instruct the Customs Service not to assess antidumping duties.

Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** August 20, 1999.

**FOR FURTHER INFORMATION CONTACT:** James Breeden or Zak Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–1174 and (202) 482-0189, respectively.

### Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, all references to the Department of Commerce's (''Department's'') regulations are to 19 CFR 351 (April 1998).

### Background

On November 30, 1998, Zhejiang Changshan Changhe Bearing Company (''ZCCBC''), a producer and exporter, requested that we conduct a new shipper review. ZCCBC's request was followed by a similar request on December 30, 1998, by Weihai Machinery Holding (Group) Corporation Limited (''Weihai''), an exporter. We published the notice of initiation for this new shipper review on February 19, 1999 (64 FR 8312).

### Scope of Review

Merchandise covered by this review includes tapered roller bearings (''TRBs'') and parts thereof, finished and unfinished, from the People's Republic of China (''PRC''); flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. This merchandise is classifiable under the Harmonized Tariff Schedule of the United States (''HTSUS'') item numbers 8482.20.00, 8482.91.00.50, 8482.99.30, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.99.80.15, and 8708.99.80.80. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order and this review is dispositive.

### Separate Rates Determination

To establish whether a company operating in a state-controlled economy is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (''*Sparklers*''), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''). Under this policy, exporters in nonmarket economies (''NMEs'') are entitled to separate, company-specific margins if they can demonstrate an absence of government control, both in law and in fact, with respect to export activities. Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors: (1) whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management (*see Silicon Carbide*, 59 FR at 22587 and *Sparklers*, 56 FR at 20589).

With respect to Weihai, information submitted during this review indicates that Weihai is owned by its shareholders. These shareholders consist of the companies Weihai Machinery Industries Co. Ltd. (''MIC'') and United Collective Enterprises of Weihai (''UCE''). Record evidence indicates that MIC is owned ''by all the people of the People's Republic of China'' and that UCE is collectively owned by its employees.

An analysis performed by the CIA, which has been put on the record of this proceeding, states that although collectively owned enterprises (''collectives'') are theoretically owned by the company's workers rather than

''all the people,'' the Chinese consider collectives to be another form of public ownership. *See 1992 Central Intelligence Agency Report to the Joint Economic Committee, Hearings on Global Economic and Technological Change: Former Soviet Union and Eastern Europe and China, Pt. 2* (102 Cong., 2d Sess.). Thus, similar to companies that are owned ''by all the people,'' UCE belongs to the community of its employees who are ''entrusted with the management of the company.'' (*See Silicon Carbide*, 59 FR at 22586–7.) Based on these facts, the Department preliminary determines that Weihai is eligible to be considered for a separate rate.

As discussed below, Weihai and ZCCBC meet both the *de jure* and *de facto* criteria. Accordingly, we preliminarily determine to apply separate rates to Weihai and ZCCBC.

*De Jure Analysis: Weihai and ZCCBC*

The following laws indicate a lack of *de jure* government control over these companies, and establish that the responsibility for managing companies owned by ''all of the people'' and collectives has been transferred from the government to the enterprises themselves. These laws include: ''Law of the PRC on Industrial Enterprises Owned by the Whole People,'' adopted on April 13, 1988 (''1988 Law''); ''Regulations for Transformation of Operational Mechanism of State-Owned Industrial Enterprises,'' approved on August 23, 1992 (''1992 Regulations''); and the ''Temporary Provisions for Administration of Export Commodities,'' approved on December 21, 1992 (''Export Provisions''). The 1988 Law states that enterprises have the right to set their own prices (*see* Article 26). This principle was restated in the 1992 Regulations (*see* Article IX). Finally, the 1992 ''Temporary Provisions for Administration of Export Commodities'' list those products subject to direct government control. TRBs do not appear on this list and are not subject, therefore, to the constraints of these provisions.

With respect to ZCCBC, information submitted during this review indicates that it is a joint venture company formed under the laws of the PRC. The Chinese company participating in this joint venture is controlled by private shareholders and independent from national, provincial and local Chinese government entities (*see* ZCCBC questionnaire response dated June 22, 1999). Furthermore, the following laws, which have been placed on the record in this case, indicate a lack of *de jure* government control over joint venture companies, and establish that these companies are responsible for managing themselves. These laws include the ''Law of the PRC on Chinese-Foreign Cooperative Joint Ventures,'' adopted on April 13, 1988 (''Joint Venture Law'') and the ''Foreign Trade Law of the PRC,'' approved on May 12, 1994 (''Foreign Trade Law''). The Joint Venture Law states that a cooperative venture is to conduct its operations and management in accordance with its approved articles of association and that no interference with regard to the management autonomy of these enterprises is allowed (*see* Article 11). In addition, the Foreign Trade Law states that enterprises engaged in international trade shall enjoy full autonomy in their business operation and be responsible for their own profits and losses (*see* Article 11).

Therefore, consistent with Silicon Carbide, we preliminarily determine that the existence of these laws demonstrates that Weihai and ZCCBC are not subject to *de jure* government control with respect to export activities.

In light of reports indicating that laws shifting control from the government to the enterprises themselves have not been implemented uniformly,[1] an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to government control with respect to export activities.

*De facto Analysis: Weihai and ZCCBC*

The following record evidence, which is contained in Weihai's and ZCCBC's questionnaire responses, indicates a lack of *de facto* government control over the export activities of these companies.

Weihai's chairman and sales representatives authorized by the chairman, and ZCCBC's general manager have the right to contractually bind their respective companies concerning the sale of TRBs. Both Weihai and ZCCBC have stated that export decisions are not subject to any government review or approval and there are no government policy directives that affect these decisions.

Weihai's senior management is selected by the company's board of directors. The remaining managers are appointed by the general manager. The results of Weihai's senior management selections are recorded with the State Administration for Industry and Commerce. There is no evidence that this government authority controls the selection process or that it has rejected senior managers selected through the election process. The general manager of ZCCBC is appointed by the company's stockholders and ZCCBC does not notify the government of its management selections. Accordingly, there is no evidence that the government controls the selection process or that it has rejected a general manager selected.

Weihai's and ZCCBC's sources of funds are their own respective revenues or bank loans. They have sole control over, and access to, their bank accounts, which are held in Weihai's and ZCCBC's own names, respectively.

Furthermore, there are no restrictions on the use of the respondents' revenues or profits, including export earnings.

Based on the foregoing analysis of the evidence on the record, we find neither *de jure* nor *de facto* government control over the export activities of Weihai or ZCCBC. Accordingly, we preliminarily determine that Weihai and ZCCBC are not part of any ''PRC enterprise'' and are entitled to separate rates.

**United States Sales**

For sales made by Weihai and ZCCBC, we based the U.S. sales on export price (''EP''), in accordance with section 772(a) of the Act, because the subject merchandise was sold to unaffiliated purchasers in the United States prior to importation into the United States and because the constructed export price methodology was not indicated by other circumstances.

We calculated EP based on, as appropriate, the FOB or CIF port price to unaffiliated purchasers. From this amount we deducted amounts, where appropriate, for foreign inland freight, ocean freight, and marine insurance. We valued the deduction for foreign inland freight using Indian freight costs (*see* the *Normal Value* section of this notice for a discussion of our surrogate selection). Marine insurance and ocean freight were provided by PRC-owned companies. Therefore, we valued the deductions using amounts charged by international providers.

**Normal Value**

Section 773(c)(1) of the Act provides that the Department shall determine normal value (''NV'') using a factors-of-production (''FOP'') methodology if: (1) The merchandise is exported from an NME, and (2) the information does not permit the calculation of NV under section 773(a) of the Act. The Department has treated the PRC as an NME in all previous antidumping cases. In accordance with section 771(18)(C)(i)

[1] ''PRC Government Findings on Enterprise Autonomy,'' in Foreign Broadcast Information Service—China—93–133 (July 14, 1993), and 1992 Central Intelligence Agency Report to the Joint Economic Committee, Hearings on Global Economic and Technological Change: Former Soviet Union and Eastern Europe and China, Pt. 2 (102 Cong., 2d Sess.).

of the Act, any determination that a foreign country is an NME shall remain in effect until revoked by the administering authority. None of the parties to this proceeding has contested such treatment in this review. Moreover, parties to this proceeding have not argued that the PRC tapered roller bearing industry is a market-oriented industry. Consequently, we have no basis to determine that the information would permit the calculation of NV using PRC prices or costs. Therefore, except as noted below, we calculated NV based on factors of production in accordance with sections 773(c)(3) and (4) of the Act and section 351.408(c) of our regulations.

Under the FOP methodology, we are required to value the NME producer's inputs in a comparable market economy country that is a significant producer of comparable merchandise. We have relied on India as the primary surrogate for valuing the PRC producers' inputs. We have used Indonesia as a secondary source of values (*see* Memorandum to Susan Kuhbach from Jeff May: ''Tapered Roller Bearings (''TRBs'') from the People's Republic of China (''PRC''): Nonmarket Economy Status and Surrogate Country Selection,'' dated June 4, 1999, and Memorandum to Susan Kuhbach: ''Selection of a Surrogate Country and Steel Value Sources,'' dated August 10, 1999 (''Steel Values Memorandum''), for a further discussion of our surrogate selection). We note that, in past reviews of this order, we have found that both India and Indonesia are economically comparable to the PRC and are significant producers of TRBs (*see Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Preliminary Results of 1997–1998 Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review*, 64 FR 36853 (July 8, 1999) (''*Preliminary TRBs XI*'')).

We used Indian data to value the various factors of production with the exception of the following: hot-rolled alloy steel bars for the production of cups and cones, cold-rolled steel rods used in the production of rollers, and steel scrap from the production of cups, cones, and rollers. To value hot-rolled alloy steel bars for the production of cups and cones, we used data on imports into Indonesia. Specifically, we used Japanese export prices of cup and cone quality steel to Indonesia. Use of Japanese export data allowed us to identify bearing quality steel. To value cold-rolled steel rods used in the production of rollers, we used Indonesian import data. We valued scrap using information from the same country we used to value steel. In these instances where we used Indonesian data, we did so because we found the Indian data for those inputs to be unreliable. (*See* Steel Values Memorandum.)

All valuations were made using publicly available information, as described below. For a complete description of the factor values used, see the ''Memorandum to Susan Kuhbach: Factors of Production Values Used for the Preliminary Results,'' dated August 10, 1999.

1. Steel Inputs. For hot-rolled alloy steel bars used in the production of cups and cones, we used a weighted average of Japanese export values to Indonesia from the Harmonized Tariff Schedule (''HTS'') category 7228.30.900 obtained from Official Japan Ministry of Finance statistics. This is consistent with the approach followed in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1996-1997 Antidumping Duty Administrative Review and New Shipper Review and Determination Not to Revoke Order in Part*, 63 FR 63842, 63845 (November 17, 1998) (''*TRBs X*''). For cold-rolled steel rods used in the production of rollers, we used Indonesian import data for Indonesian tariff subheading 7228.50000, as reported in *Biro Pusat Statistik, Republik Indonesia*. For cold-rolled steel sheet for the production of cages, we used Indian import data for Indian tariff subheading 7209.4200, as reported in the *Monthly Statistics of the Foreign Trade of India, Vol. II—Imports*. (For further discussion of selection of steel value sources, *see* Steel Values Memorandum).

As in previous administrative reviews, we eliminated from our calculation steel imports from NME countries and imports from market economy countries that were made in small quantities. For steel used in the production of cups, cones, and rollers, we also excluded imports from countries that do not produce bearing-quality steel (*see, e.g., TRBs X*).

We made adjustments to include freight costs incurred using the shorter of the reported distances from either the closest PRC port to the TRBs factory or the domestic supplier to the TRBs factory (*see Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From the People's Republic of China*, 62 FR 51410 (October 1, 1997), and *Sigma Corporation* versus *United States*, 117 F. 3d 1401 (Fed. Cir. 1997)). We also made adjustments to include freight costs incurred between primary producers and their subcontractors.

One producer in this review purchased steel sheet from a market economy supplier and paid for the steel with market economy currency. Thus, in accordance with section 351.408(c)(1) of our regulations, we valued this steel input using the actual price reported for directly imported inputs from a market economy.

To be consistent with the valuation of steel for cups, cones, and rollers, we valued scrap recovered from the production of cups, cones, and rollers using official Japanese government statistics on Japanese scrap exports to Indonesia from HTS category 7204.29.000. Similarly, scrap recovered from the production of cages was valued using import data from the Indian tariff subheading 7204.4100.

2. Labor. Section 351.408(c)(3) of our regulations requires the use of a regression-based wage rate. We have used the regression-based wage rate on Import Administration's internet website at www.ita.doc.gov/import__admin/records/wages.

3. Overhead, SG&A Expenses, and Profit. For factory overhead, we used information obtained from the fiscal year 1997–98 annual reports of six Indian bearing producers. We calculated factory overhead and selling, general and administrative (''SG&A'') expenses (exclusive of labor and electricity) as percentages of direct inputs (also exclusive of labor) and applied these ratios to each producer's direct input costs (exclusive of labor). For profit, we totaled the reported profit before taxes for the six Indian bearing producers and divided it by the total calculated cost of production (''COP'') of goods sold. This percentage was applied to each respondent's total COP to derive a company-specific profit value.

4. Packing. We used surrogate values for each packing material reported using values obtained from the *Monthly Statistics of the Foreign Trade of India, Vol. II—Imports by Commodity* (April 1997 through December 1997). We adjusted the values to reflect inflation using the Indian wholesale price index (''Indian WPI'').

5. Electricity. We used a simple average of 1995 regional electricity prices in India for large industries as reported in *India's Energy Sector*, published by the Centre for Monitoring Indian Economy Pvt. Ltd. (September 1996). We adjusted the value to reflect inflation using the Indian WPI.

6. Inland Freight. We valued truck freight using a rate derived from the April 20, 1994 issue of *The Times of*

*India.* We adjusted the rate to reflect inflation through the POR using the Indian WPI. We valued rail freight using rates published by the Indian Railway Conference Association in 1995. We calculated an average rate per kilometer and adjusted the rate to reflect inflation through the POR using the Indian WPI.

7. Ocean Freight. We calculated a value for ocean freight based on 1996 rate quotes from Maersk Inc. We adjusted the rate to the POR using the United States producer price index.

8. Marine Insurance. We calculated a value for marine insurance based on the CIF value of the TRBs shipped. We obtained the rate used through queries we made directly to an international marine insurance provider. Because the information obtained was from a period contemporaneous with the POR, no further adjustments were necessary.

**Preliminary Results of the Review**

We preliminarily determine that the following dumping margins exist for the period June 1, 1998, through November 30, 1998:

| Manufacturer/exporter | Margin (percent) |
|---|---|
| Weihai | 0.00 |
| ZCCBC | 0.00 |

Any interested party may request a hearing within 30 days of publication. A hearing, if requested, will be held 42 days after the publication of this notice, or the first workday thereafter.

Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument with an electronic version included.

The Department will publish the final results within 90 days after the date on which these results were issued. The final results will include our analysis of issues raised in the briefs or hearing.

If these preliminary results are adopted in the final results, we will instruct the Customs Service to liquidate the entries of the subject merchandise entered, or withdrawn from warehouse, for consumption during the POR, without regard to antidumping duties. The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) for the PRC companies named above, the cash deposit rates will be the rates for these firms established in the final results of this review, except that, for exporters with *de minimis* rates, *i.e.,* less than 0.50 percent, no deposit will be required; (2) for previously-reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will be the company-specific rate established for the most recent period; (3) for all other PRC exporters, the rate will be the PRC country-wide rate, which is 33.12 percent; and (4) for all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under section 351.402(f) of our regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 10, 1999.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 99–21716 Filed 8–19–99; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 081699A]**

### Environmental Impact Statement (EIS) for the Proposed Fishery Management Plan (FMP) for the Coral Reef Ecosystem Fishery Management Plan of the Western Pacific Region (Coral Reef Ecosystem FMP); EIS for the FMP for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region; (Bottomfish and Seamount Groundfish Fisheries FMP)

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of intent to prepare EISs; request for comments; notice of scoping meeting.

**SUMMARY:** NOAA announces its intention to prepare an EIS in accordance with the National Environmental Policy Act of 1969 for the proposed Coral Reef Ecosystem FMP, and an EIS for the Bottomfish and Seamount Groundfish Fisheries FMP. The Western Pacific Fishery Management Council (Council) will hold a public scoping hearing in Kona, Hawaii, on management alternatives to be analyzed under both EISs.

**DATES:** Written comments on the intent to prepare the EISs will be accepted on or before September 10, 1999. A public scoping meeting is scheduled for August 31, 1999.

**ADDRESSES:** Written comments on the intent to prepare the EISs or other aspects of the scoping documents, which contain suggested alternatives and potential impacts, should be sent to, and copies of the scoping documents are available from, Kitty M. Simonds, Executive Director, Western Pacific Regional Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, and to Charles Karnella, Administrator, National Marine Fisheries Service, Pacific Islands Area Office, 1601 Kapiolani Blvd., Suite 1110, Honolulu HI 96814.

The following location and time have been set for the scoping meeting: King Kamehameha's Kona Beach Hotel (phone 808–329–2911), 2–Elua Room, August 31, 1999, 6–8 p.m. Phone contact 808–522–8220 for information.

**FOR FURTHER INFORMATION CONTACT:** Kitty M. Simonds, at 808–522–8220.

**SUPPLEMENTARY INFORMATION:** A summary of the Coral Reef Ecosystem FMP will be presented including initial

recommendations for management action, as described here. Comments will be solicited from the public on these and any other management alternatives the public cares to offer.

Management measures that might be adopted in the Coral Reef Ecosystem FMP include permit and reporting requirements for non-subsistence harvest of coral reef resources, marine protected areas to ensure greater conservation and management to special locations (e.g., Penguin Bank, Northwestern Hawaiian Islands), allowable gear types to harvest coral reef resources in the U.S. exclusive economic zone (EEZ, 3–200 miles (5.56 to 370.4 km) from shore in Hawaii and from most other U.S. Pacific Islands), prohibition on use of gear in ways destructive to habitat, and a framework management process to add future new measures. The FMP would also include essential fish habitat and habitat areas of particular concern, including fishing and non-fishing threats, as well as other components of FMPs required under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). An additional measure, still under consideration for possible inclusion, is a ban on the possession or collection, for commercial purposes, of wild live rock and coral (other than coral covered by the Fishery Management Plan for the Precious Corals Fisheries of the Western Pacific Region). The collection of live rock or coral for scientific and research purposes and the collection of small amounts of live coral as brood-stock for captive breeding/aquaculture would be allowed by permit.

The Coral Reef Ecosystem FMP, and its associated EIS, would be the Council's fifth FMP for the EEZ for all U.S. Pacific Islands. This area includes nearly 11,000 $km^2$ (4,000 square miles) of coral reefs. Development of the Coral Reef Ecosystem FMP is timely, considering such new mandates and initiatives as the April 1999 report to Congress by the Ecosystem Principles Advisory Panel on Ecosystem-Based Fishery Management, the President's 1998 Executive Order on Coral Reefs (E.O. 13089), and priorities of the U.S. Coral Reef Task Force and the U.S. Coral Reef Initiative, as well as the provisions of the Magnuson-Stevens Act, as amended by the Sustainable Fisheries Act. The draft Coral Reef Ecosystem FMP would describe the importance of coral reef resources to Hawaii and the region and current and potential threats that warrant an FMP at this time. Information regarding the harvest of these resources in the EEZ is largely unknown. Potential for unregulated harvest and bio-prospecting for reef fish, live grouper, live rock and coral exists throughout the region.

The public is also invited to assist the Council in developing the scope of alternatives and impacts that should be analyzed in an EIS for the Bottomfish and Seamount Groundfish Fisheries FMP. An EIS has not been prepared for the FMP. Since the FMP was implemented in 1986, many changes have occurred in this fishery, and with the stocks and management regimes. As part of the scoping process for the EIS for this FMP, the public is also invited to comment on an alternative being considered for the addition of bottomfish species in the EEZ around the U.S. Pacific Island possessions (and the Commonwealth of the Northern Mariana Islands (CNMI)), to the management unit of the Bottomfish and Seamount Groundfish FMP. Federal regulations for the EEZ off the U.S. Pacific Island possessions (and the CNMI) that would provide basic protection and conservation measures are already established in the EEZs for other parts of the Western Pacific Region, and include no taking with explosives, poisons, trawl nets or bottom-set gillnets. A definition of overfishing for a list of identified FMP management unit species would be established and evaluated annually, with required action in the event of overfishing.

## Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (see **ADDRESSES**), 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to the meeting date.

**Authority:** 16 U.S.C. 1801 et seq.

Dated: August 16, 1999.

**Gary C. Matlock,**

*Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 99–21594 Filed 8–19–99; 8:45 am]

BILLING CODE 3510–22–F

## COMMODITY FUTURES TRADING COMMISSION

## Citrus Associates of the New York Cotton Exchange: Proposed Amendments to the Frozen Concentrated Orange Juice–2 (FCOJ–2) Futures Contract Providing for Delivery of FCOJ Originating in Florida and Brazil Only, Changing the Contract's Quality Specifications and Providing for Trading of the FCOJ–2 Futures Contract at a Price Differential to the Existing FCOJ–1 Futures Contract

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of availability of proposed amendments to contract terms and conditions.

**SUMMARY:** The Citrus Associates of the New York Cotton Exchange (CANYCE or Exchange) has proposed amendments to the Exchange's dormant frozen concentrated orange juice–2 (FCOJ–2) futures contract. The proposed amendments would provide for the delivery of FCOJ originating in Florida and Brazil only, make the contract's quality specifications conform to the quality specifications of the FCOJ–1 futures contract, amend the contract's speculative position limits, and provide for the trading of the FCOJ–2 futures contract as a differential price spread to the FCOJ–1 futures contract. The Exchange also proposes to recommence trading in this dormant contract pursuant to the provisions for Commission Regulation 5.2. The proposed amendments were submitted under the Commission's 45-day Fast Track procedures which provides that, absent any contrary action by the Commission, the proposed amendments may be deemed approved on September 27, 1999—45 days after the Commission's receipt of the proposals. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that the proposed amendments are of major economic significance, within the meaning of section 5a(a)(12) of the Commodity Exchange Act (Act), and that their publication is in the public interest and will assist the Commission in considering the views of interested persons.

**DATES:** Comments must be received on or before September 7, 1999.

**ADDRESSES:** Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three

Lafayette Centre, 21st Street, NW Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the proposed amendments to the CANYCE FCOJ–2 futures contract.

**FOR FURTHER INFORMATION CONTACT:** Please contact John Bird of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581, telephone (202) 418–5274. Facsimile number: (202) 418–5527. Electronic mail: jbird@cftc.gov

**SUPPLEMENTARY INFORMATION:** The Exchange currently is designated to trade two FCOJ futures contracts, the actively traded FCOJ–1 futures contract and dormant FCOJ–2 futures contract. The terms and conditions of the FCOJ–1 and FCOJ–2 futures contracts are identical, except with respect to the contracts' quality specifications. In this regard, the FCOJ–1 futures contract provides for the delivery of FCOJ having a Brix value of acid ratio of not less than 14.0 to 1 and not more than 18.0 to 1 and a minimum score of 94, with minimum component quality factors of 37 for color, 37 for flavor, and 19 for defects. In contract, the FCOJ–2 futures contract provides for the delivery of FCOJ having a Brix value to acid ratio of not less than 13.0 to 1 and not more than 19.0 to 1 and a minimum score of 92, with minimum component quality factors of 36 for color, 36 for flavor, and 19 for defects.

The existing terms of the FCOJ–1 and FCOJ–2 futures contracts permit delivery of FCOJ of all origins, imported or domestic. In addition, both futures contracts provide for the delivery of shipping certificates, which require the certificate issuers to load FCOJ into transportation equipment provided by the certificate holder. The contracts' delivery points consist of approved delivery facilities located at Wilmington, Delaware; Newark and Port Elizabeth, New Jersey, in 11 specified counties in California; and in 16 specified counties in central Florida. FCOJ is deliverable at par at delivery facilities located in Florida, Wilmington, Newark and Port Elizabeth. FCOJ in delivery facilities in California is deliverable at a discount of 10 cents per pound. Currently, a trader's combined position in the FCOJ–1 and FCOJ–2 futures contracts is subject to speculative position limits of 3,000 contracts in all contract months combined, 1,800 contracts in individual non-spot contract months, and 300 contracts in the spot month.

The proposed amendments to the FCOJ–2 futures contract would limit the origins of deliverable FCOJ to FCOJ produced in Florida and Brazil. In addition, the proposed amendments would make the FCOJ–2 futures contract's quality specifications identical to the quality specifications of the FCOJ–1 futures contract, as noted above.

The proposed amendments also would provide for the trading of the FCOJ–2 futures contract as a component of a differential price spread between the FCOJ–2 and FCOJ–1 futures contracts (''FCOJ Differential Contracts'') during most of the trading life of an FCOJ–2 contract month. In this respect, the proposed amendments define a long FCOJ Differential Contract as consisting of a long FCOJ–2 futures contract and a short FCOJ–1 futures contract. A short FCOJ Differential Contract is defined as a short FCOJ–2 futures contract and a long FCOJ–1 futures contract. The FCOJ Differential Contract will be traded as a single contract until the second business day preceding the first delivery notice day for the expiring contract month. The proposed amendments would provide that, on the second business day preceding the first delivery notice day for a contract month, each FCOJ Differential Contract position in the expiring contract month will be divided into its component FCOJ–1 and FCOJ–2 positions, i.e., a trader will receive by book entry a long (short) position in the FCOJ–2 futures contract and an opposite short (long) position in the FCOJ–1 futures contract. Trading in the FCOJ–2 futures contract will then continue until the first delivery notice day, with the quoted prices reflecting the value of FCOJ originating in Florida and Brazil (not the price spread differential between the FCOJ–2 and FCOJ–1 futures contracts). Trading in the FCOJ–2 futures contract would end on the first delivery notice day for a contract month and all positions remaining open after the close of trading on that day would be settled by delivery. The proposed amendments would not change the existing trading and delivery notice periods for expiring FCOJ–1 futures contract months.

In addition, the proposed amendments will provide for speculative position limits of 3,000 contracts for each of the FCOJ–1 and FCOJ–2 futures contracts in all contract months combined and 1,800 contracts for each of the FCOJ–1 and FCOJ–2 futures contracts in individual non-spot contract months. The spot month speculative position limit would continue to be applicable to a trader's combined gross position in the FCOJ–1 and FCOJ–2 futures contracts.

The CANYCE intends to make the proposed amendments effective in October 1, 1999 with the commencement of trading in the revised FCOJ–2 futures contract.

In support of the proposed amendments, the CANYCE indicated that the proposal to trade the FCOJ–2 futures contract as a component of a differential price spread between the FCOJ–2 and FCOJ–1 futures contract is intended to avoid diluting the open interest and trading activity in the FCOJ–1 futures contract. The Exchange also indicated that proposal to divide each FCOJ Differential Contract position into its FCOJ–2 futures contract and FCOJ–1 futures contract components two business days before the first notice day of expiring contract months is intended to allow traders sufficient time to adjust their futures positions as necessary. In addition, the CANYCE indicated that, because FCOJ that meets the proposed delivery requirements of the FCOJ–2 futures contract constitutes approximately 90% of all FCOJ currently deliverable on the FCOJ–1 futures contract, there will be an adequate deliverable supply of FCOJ available for the amended FCOJ–2 futures contract.

The Division is requesting comments on the proposed amendments to the FCOJ–2 futures contract.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581. Copies of the proposed amendments can be obtained through the Office of the Secretariat by mail at the above address, by phone at (202) 418–5100, or via the Internet at secretary@cftc.gov.

Other materials submitted by the CANYCE in support of the proposal may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 C.F.R. Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 C.F.R. 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 C.F.R. 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed amendments, or with respect to other materials submitted by the CANYCE, should send such comments to Jean A. Webb, Secretary, Commodity

Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on August 16, 1999.

**John R. Mielke,**

*Acting Director.*

[FR Doc. 99–21671 Filed 8–19–99; 8:45 am]

BILLING CODE 6351–01–M

## DEPARTMENT OF EDUCATION

**[CFDA No. 84.170]**

### Office of Postsecondary Education, Department of Education; Notice Inviting Applications for Jacob K. Javits Fellowship Program New Awards for Fiscal Year (FY) 2000

*Purpose of Program:* The purpose of the Jacob K. Javits Fellowship (JKJ) Program is to award fellowships to eligible students of superior ability, selected on the basis of demonstrated achievement, financial need, and exceptional promise to undertake graduate study leading to a doctoral degree or a Master of Fine Arts (MFA) at accredited institutions of higher education in selected fields of the arts, humanities, or social sciences.

*Eligible Applicants:* Individuals who at the time of application have not yet completed their first year of graduate study or will be entering graduate school in academic year 2000–2001, and who are eligible to receive any grant, loan, or work assistance and intend to pursue a doctoral degree or MFA in fields selected by the JKJ Board at accredited U.S. institutions of higher education. Individuals must be U.S. citizens or nationals, permanent residents of the U.S., or citizens of any one of the Freely Associated States.

*Deadline for Transmittal of Applications:* November 29, 1999.

*Applications Available:* September 27, 1999.

*Available Funds:* $1,973,400. The estimated amount of funds available for new awards is based on the Administration's request for this program for FY 2000. The actual level of funding, if any, is contingent on final congressional action.

*Estimated Range of Awards:* $11,000—$25,500.

*Estimated Average Size of the Awards:* $25,300.

*Estimated Number of Awards:* 78 individual fellowships.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 48 months.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except as provided in 34 CFR 650.3(b)), 77, 82, 85 and 86; and (b) The regulations in 34 CFR part 650.

**SUPPLEMENTARY INFORMATION:**

#### Stipend Level

The Secretary will determine the maximum allowable fellowship stipend for academic year 2000–2001, based on the level of support that the National Science Foundation will provide for its graduate fellowships. We anticipate that the fellowship stipend will be $15,000 or the individual fellow's financial need, as determined by part F of title IV of the Higher Education Act of 1965, as amended, whichever is less.

#### Institutional Payment

The Secretary will determine the institutional payment for academic year 2000–2001 by adjusting the academic year 1999–2000 institutional payment, which was $10,375 per fellow, by the Department of Labor's December 1999 projection of the Consumer Price Index for the year 2000.

**FOR FURTHER INFORMATION CONTACT:** Melissa Burton, Jacob K. Javits Fellowship Program, U.S. Department of Education, International Education and Graduate Programs Service, 400 Maryland Avenue, SW., Suite 600-B, Portals Building, Washington, DC 20202–5247. Telephone: (202) 260–3574. The e-mail address for Ms. Burton is melissa__burton@ed.gov.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph. Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

**FOR APPLICATIONS CONTACT:** Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. Individuals who use a telecommunications device for the deaf (TDD) may call (toll free): 1–877–576–7734. You may also contact ED Pubs via its Web site at: http://www.ed.gov/pubs/edpubs.html or at its e-mail address: edpubs@inet.ed.gov.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA 84.170.

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To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

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**Program Authority:** 20 U.S.C. 1134–1134d.

Dated: August 16, 1999.

**Claudio R. Prieto,**

*Acting Assistant Secretary, Office of Postsecondary Education.*

[FR Doc. 99–21628 Filed 8–19–99; 8:45 am]

BILLING CODE 4000–01–U

## DEPARTMENT OF EDUCATION

**[CFDA No.: 84.153A]**

### Office of Postsecondary Education, Business and International; Education Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000

*Purpose of Program:* The Business and International Education Program provides grants to institutions of higher education to enhance international business education programs and to expand the capacity of the business community to engage in international economic activities.

*Eligible Applicants:* Institutions of higher education that enter into agreements with trade associations, business enterprises or trade organizations that are engaged in international economic activity.

*Deadline for Transmittal of Applications:* November 1, 1999.

*Deadline for Intergovernmental Review:* December 31, 1999.

*Applications Available:* September 7, 1999.

*Available Funds:* $1,900,000. The estimated amount of funds available for new awards under this competition is based on the Administration's request for this program for FY 2000. The actual level of funding, if any, is contingent on final congressional action.

*Estimated Range of Awards:* $50,000–$90,000.

*Estimated Average Size of Awards:* $82,609 per year.

*Estimated Number of Awards:* 23.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 24 months.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86; and (b) The regulations for these programs as follows: 34 CFR parts 655 and 661.

**SUPPLEMENTARY INFORMATION:** Matching requirement: Under Part B, section 613(d) Higher Education Act of 1965 (HEA), Business and International Education Program grantees must provide no less than 50 percent of the total cost of projects in each fiscal year. Example: The institution's total costs of the proposed project will be $140,000 per year. The institution may request a grant in the amount of $70,000 or less. The institution must provide the remaining $70,000 in cash or in-kind contributions.

**FOR APPLICATIONS OR INFORMATION CONTACT:** Tanyelle Richardson, Business and International Education Program, U.S. Department of Education, International Education and Graduate Programs Service, 400 Maryland Avenue, SW., Suite 600 Portals Building, Washington, DC 20202–5331. Telephone: 202–260–3383. The e-mail address for Ms. Richardson is tanyelle__richardson@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph. Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

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http://ocfo.ed.gov/fedreg.htm
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To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have any questions about using the PDF, call the U.S. Government Printing Office (GPO) toll free, at 1–888–293–6498; or in the Washington, D.C. area, at (202) 512–1530.

**Note:** The official version of a document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

**Program Authority:** 20 U.S.C. 1130a–1130b.

Dated: August 16, 1999.

**Claudio R. Prieto,**

*Acting Assistant Secretary Office of Postsecondary Education.*

[FR Doc. 99–21629 Filed 8–19–99; 8:45 am]

BILLING CODE 4000–01–U

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## DEPARTMENT OF EDUCATION

**[CFDA No 84.274A]**

## Office of Postsecondary Education, Department of Education; Notice Inviting Applications for American Overseas Research Centers Program New Awards for Fiscal Year (FY) 2000

*Purpose of Program:* The American Overseas Research Centers (AORC) Program supports American overseas research centers that are consortia of institutions of higher education, to enable these centers to promote postgraduate research, exchanges, and area studies.

Support includes funds to pay all or a portion of the costs of establishing or operating centers or programs of activities, including: faculty and staff stipends and salaries; faculty, staff, and student travel; operation and maintenance of overseas facilities; teaching and research materials; acquisition, maintenance, and preservation of library collections; bringing visiting scholars and faculty to a center to teach or to conduct research; organizing and managing conferences; and the publication and dissemination of material for the scholarly and general public.

*Eligible Applicants:* Centers that: (1) Receive more than 50 percent of their funding from public or private United States sources; (2) have a permanent presence in the country in which the overseas center is located; and, (3) are organizations described in section 501(c)(3) of the Internal Revenue Code of 1986, which are exempt from taxation under section 501(a) of the Code.

*Deadline for Transmittal of Applications:* November 4, 1999.

*Deadline for Intergovernmental Review:* January 3, 2000.

*Applications Available:* September 2, 1999.

*Available Funds:* $700,000. The estimated amount of funds available for new awards is based on the Administration's request for this program for FY 2000. The actual level of funding, if any, is contingent upon final congressional action.

*Estimated Range of Awards:* $55,000—$95,000.

Estimated Average Size of Awards: $64,000 per year.

*Estimated Number of Awards:* 11.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* 36 months.

*Applicable Regulations:* There are no program specific regulations. Applicants are directed to section 609 of part A, title VI, of the Higher Education Act of 1965, as amended, the authorizing statute governing the AORC Program; and, the Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86.

**FOR APPLICATIONS OR INFORMATION CONTACT:** Cheryl E. Gibbs, American Overseas Research Centers Program, U.S. Department of Education, International Education and Graduate Programs Service, 400 Maryland Avenue, SW, Suite 600, Portals Building, Washington, DC 20202–5331. Telephone: (202) 401–9785. The e-mail address for Ms. Gibbs is *cheryl—gibbs@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person specified in the preceding paragraph. Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

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*http://ocfo.ed.gov/fedreg.htm*
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To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have any questions about using the PDF, call the U.S. Government Printing Office (GPO) toll free, at 1–888–293–6498; or in the Washington, DC area, at (202) 512–1530.

**Note:** The official version of a document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

**Program Authority**: 20 U.S.C. 1128a.

Dated: August 16, 1999.

**Claudio R. Prieto,**

*Acting Assistant Secretary, Office of Postsecondary Education.*

[FR Doc. 99–21630 Filed 8–19–99; 8:45 am]

BILLING CODE 4000–01–U

## DEPARTMENT OF ENERGY

### Office of Science; Office of Science Financial Assistance Program Notice 99–23: Outstanding Junior Investigator Program

**AGENCY:** U.S. Department of Energy (DOE).

**ACTION:** Notice inviting grant applications.

**SUMMARY:** The Division of High Energy Physics of the Office of Science (SC), U.S. Department of Energy, hereby announces its interest in receiving grant applications for support under its Outstanding Junior Investigator (OJI) Program. Applications should be from tenure-track faculty investigators who are currently involved in experimental or theoretical high energy physics or accelerator physics research, and should be submitted through a U.S. academic institution. The purpose of this program is to support the development of individual research programs of outstanding scientists early in their careers. Awards made under this program will help to maintain the vitality of university research and assure continued excellence in the teaching of physics.

**DATES:** To permit timely consideration for award in fiscal year 2000, formal applications submitted in response to this notice should be received before November 2, 1999.

**ADDRESSES:** Completed formal applications referencing Program Notice 99–23 should be forwarded to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, Maryland 20874–1290, ATTN: Program Notice 99–23. The above address must also be used when submitting applications by U.S. Postal Service Express Mail, any other commercial mail delivery service, or when hand carried by the applicant. An original and seven copies of the application must be submitted. Due to the anticipated number of reviewers, it would be helpful for each applicant to submit an additional four copies of the application.

**FOR FURTHER INFORMATION CONTACT:** Dr. Jeffrey Mandula, Division of High Energy Physics, SC–221 (GTN), U.S. Department of Energy, 19901 Germantown Road, Germantown, Maryland 20874–1290. Telephone: (301) 903–4829. E-Mail: jeffrey.mandula@science.doe.gov

**SUPPLEMENTARY INFORMATION:** The Outstanding Junior Investigator program was started in 1978 by the Department of Energy's Office of Energy Research. A principal goal of this program is to identify exceptionally talented new high energy physicists early in their careers and assist and facilitate the development of their research programs. Eligibility for awards under this notice is therefore restricted to non-tenured investigators who are conducting experimental or theoretical high energy physics or accelerator physics research. Since its debut, the program has initiated support for between five and ten new Outstanding Junior Investigators each year. The program has been very successful and contributes importantly to the vigor of the U.S. High Energy Physics program. Applicants should request support under this notice for normal research project costs as required to conduct their proposed research activities. The full range of activities currently supported by the Division of High Energy Physics is eligible for support under this program.

The DOE expects to make five to ten grant awards in fiscal year 2000 to meet the objectives of this program. It is anticipated that approximately $400,000 will be available in fiscal year 2000, subject to availability of appropriated funds. In the past, awards have averaged $50,000 per year, with the number of awards determined by the number of excellent applications and the total funds available for this program. Multiple year funding of grant awards is expected, with funding provided on an annual basis subject to availability of funds. Renewal beyond the initial project period is normal so long as the recipient's tenure status is unchanged.

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following criteria, which are listed in descending order of importance as set forth in 10 CFR 605.10 (d):

1. Scientific and/or technical merit of the project;
2. Appropriateness of the proposed method or approach;
3. Competency of applicant's personnel and adequacy of proposed resources; and
4. Reasonableness and appropriateness of the proposed budget.

General information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures are contained in the Application Guide for the Office of Science Financial Assistance Program and 10 CFR Part 605. Electronic access to the application guide and required forms is available on the World Wide Web at: http://www.er.doe.gov/production/grants/grants.html

The Catalog Of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, DC on August 13, 1999.

**John Rodney Clark,**

*Associate Director of Science for Resource Management, Office of Science.*

[FR Doc. 99–21651 Filed 8–19–99; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. IC99–423–000, FERC Form No. 423]**

### Proposed Information Collection and Request for Comments

August 16, 1999.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice of proposed information collection and request for comments.

**SUMMARY:** In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the

specific aspects of the information collection described below.

**DATES:** Consideration will be given to comments submitted on or before October 19, 1999.

**ADDRESSES:** Copies of the proposed collection of information can be obtained from, and written comments may be submitted to, the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street NE, Washington, DC 20426.

**FOR FURTHER INFORMATION CONTACT:** Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 208–2425 and by E-mail at *mike.miller@ferc.fed.us.*

**SUPPLEMENTARY INFORMATION:** The information collected under the requirements of FERC Form No. 423, ''Monthly Report of Cost and Quality of Fuels for Electric Plants'' (OMB No. 1902–0024) is used by the Commission to implement the statutory provisions of Section 205, of the Federal Power Act, as amended by Section 208 of the Public Utility Regulatory Policies Act (49 Stat. 851; 16 U.S.C. 824d). The Commission describes Form 423 filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Part 141.61.

FERC Form No. 423 gathers basic cost and quality of fuels for electric plants. The Commission staff uses the Form 423 information to conduct fuel reviews under Section 205(a) and (e) of the FPA, rate investigations, and to track wholesale market changes and trends under emerging competitive forces. Other government agencies use Form 423 to track the supply, disposition and prices of fuel on national and regional levels and for environmental assessments. Electric utilities and other wholesale electric participants use the Form 423 data to assess the competitive marketplace.

## Action

The Commission is requesting a three-year extension of the current expiration date. The Commission staff is currently exploring the fling of Form 423 information electronically (using a web-based application) in lieu of the present system of mailing paper filings to the Commission. If the Commission proposes to convert to electronic filing of Form 423 data, a Notice of Proposed Rulemaking will be issued proposing to amend the Commission's regulations to provide for the electronic filing of FERC 423. Such a proposal may also seek to eliminate the current signature requirement and simply require the identification of a representative at each utility responsible for submitting the data electronically. The representative will be given a password and identification code to ensure system integrity.

## Burden Statement

Public reporting burden for this collection is estimated as:

| Number of respondents | Annual responses per respondent | Average burden hours per response | Total annual burden hours |
|---|---|---|---|
| (1) | (2) | (3) | (1)×(2)×(3) |
| 702 | 12 | 1.5 | 12,636 |

The reduction in the number of annual respondents (plants) from 735 to 702 is due to mergers and dispositions of various utilities generating assets and plants that have retired in the last three years. Estimated cost burden to respondents: 12,636 hours/2080 hours per year × $109,889=$667,576; (*i.e.*, 12,636 hours divided by 2,080 hours per full time emloyee per year multiplied by $109,889 per year equals $667,576). Reporting burden includes the total time, effort and financial resources expended to generate, maintain, retain, disclose or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information. The estimate of respondent cost is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indrect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical applications; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utilization and clarity of the information to be collected; (4) ways to minimize the burden of the collection on respondents, including the proposed electronic submission of responses; (5) the magnitude of the impact of the conversion to electronic filing on respondents; (6) the proposed elimination of signature requirement; (7) any existence of a competitive disadvantage caused by publicly providing information in Form 423 to which competitors would have access (without a corresponding obligation on its competitiors not subject to the Commission's reporting requirements); and (8) the relevancy of the information currently collected given the current transition from cost-based to a fully competitive wholesale electric market.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–21599 Filed 8–19–99; 8:45 am]

**BILLING CODE 6717–01–M**

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. IC99–714–000, FERC Form No. 714]**

## Proposed Information Collection and Request for Comments

August 16, 1999.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice of proposed information collection and request for comments.

**SUMMARY:** In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy

Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

**DATES:** Consideration will be given to comments submitted on or before October 19, 1999.

**ADDRESSES:** Copies of the proposed collection of information can be obtained from, and written comments may be submitted to, the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street, NE, Washington, DC, 20426.

**FOR FURTHER INFORMATION CONTACT:** Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 208–2425, and by E-mail at mike.miller@ferc.fed.us.

**SUPPLEMENTARY INFORMATION:** The information collected under the requirements for FERC Form No. 714, ''Annual electric Control and Planning Area Report'' (OMB No. 1902–0140), is used by the Commission to implement the statutory provisions of Sections 202, 207, 210, 211–213 of the Federal Power Act (FPA), as amended (49 Stat. 838; 16 U.S.C. 791a–825r), and particularly Sections 304, 309, and 311. The Commission describes the Form 714 filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Part 141.51.

FERC Form No. 714 gathers basic utility operating and planning information, primarily on a control area basis. The Commission staff uses the Form 714 data for the purpose of evaluating utility operations related to proposed mergers, interconnections, wholesale rate investigations, and wholesale market changes and trends under emerging competitive forces. Such evaluations are made to assess system reliability, costs and other operating attributes. Other government agencies use the Form 714 data to monitor power plant emissions. Electric utilities and other wholesale electric participants use the Form 714 data to identify and monitor economic and capacity constraints in the transmission system.

## Action

The Commission is requesting a three-year extension of the current expiration date.

The United States Environmental Protection Agency (EPA) filed comments during the last OMB recertification process for the FERC Form 714 recommending the following three modifications:

- Development of an electronic filing procedure;
- Submission of monthly data along with the annual reporting of Part II, Schedule 5 information (interchange with neighboring control areas); and
- Change the filing date of Form 714 from June 1, to March 1, in order to provide for a timely analysis of the structural changes in the industry.

Unfortunately, there was not enough time available during the last clearance cycle to address EPA's request. During this cycle, the Commission staff intends to address EPA's suggestions, and invites comments on them. Specifically, the Commission staff is currently exploring the filing of Form 714 information electronically (using a web-based application) in lieu of the present combined system of mailing paper filings and electronic media (diskettes) to the Commission. If the Commission decides to propose to convert to electronic filing of Form 714, a Notice of Proposed Rulemaking will be issued proposing to amend the Commission's regulations to provide for the electronic filing of Form 714. Such a proposal may also seek to eliminate the current signature requirement and simply require the identification of a representative at each utility responsible for submitting the data electronically. The representative will be given a password and identification code to ensure system integrity.

The Commission staff is also considering the adoption of the other suggestions made by EPA: requiring the submission of monthly scheduled and actual Interchange energy data in addition to the annual data reported in Part II, Schedule 5; and moving the filing date to March 1.

## Burden Statement

Public reporting burden for this collection is estimated as:

| Number of respondents (1) | Annual responses per respondent (2) | Average burden hours per response (3) | Total annual burden hours (1) × (2) × (3) |
|---|---|---|---|
| 237 | 1 | 45 | 10,665 |

The reduction of annual respondents from 250 to 237 is due to an increase in the number of mergers and a corresponding reduction in the number of Form 714 respondents. In addition, the conversion to electronic filing is estimated to reduce average burden hours per respondent (from 50 hours presently, to 45). The estimated cost burden to respondents: 10,665 hours/2080 hours per year × $109,889 per year = $563,445. Reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purpose of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information. The estimate of respondent cost is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed information collection, including the EPA proposed modifications, is necessary for the proper performance of the functions of the Commission, including whether the information will have practical applications; (2) the accuracy of the Commission's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utilization and clarity of the collected information; (4) ways to minimize the burden of the information collection on respondents, including the proposed electronic submission of responses; (5) the magnitude of the impact of the

conversion to electronic filing on respondents; (6) the proposed elimination of the signature requirement; (7) any existence of a competitive disadvantage caused by publicly providing information in Form 714 to which competitors would have access (without a corresponding obligation on its competitors not subject to the Commission's reporting requirements); (8) the relevancy of the information currently collected given the current transition from cost-based to a fully competitive wholesale electric market; (9) whether the proposed filing date change from June 1 to March 1 is unduly burdensome; and (10) the burden of requiring monthly control area scheduled and actual interchange data.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–21600 Filed 8–19–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. IC99–715–000, FERC Form No. 715]**

## Proposed Information Collection and Request for Comments

August 16, 1999.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice of proposed information collection and request for comments.

**SUMMARY:** In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

**DATES:** Consideration will be given to comments submitted on or before October 19, 1999.

**ADDRESSES:** Copies of the proposed collection of information can be obtained from, and written comments may be submitted to, the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street, NE, Washington, DC 20426.

**FOR FURTHER INFORMATION CONTACT:** Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 208–2425, and by E-mail at mike.miller@ferc.fed.us.

**SUPPLEMENTARY INFORMATION:** The information collected under the requirements for FERC Form No. 715, ''Annual Transmission Planning and Evaluation Report'' (OMB No. 1902–0171), is used by the Commission to implement the statutory provisions of Sections 202, 207, 210, 211–213 of the Federal Power Act (FPA), as amended (49 Stat. 838; 16 U.S.C. 791a–825r) and particularly Sections 213(b), 304, 309, and 311. The Commission describes the Form 715 filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Part 141.300.

FERC Form No. 715 gathers basic electric transmission systems information. The Commission staff uses the Form 715 information to evaluate available transmission capacity and transmission constraints on electric transmission systems. Electrical transmission system customers use the information to determine transmission availability. Transmission dependent utilities use the information to determine transmission availability from alternative wholesale suppliers. Federal, military and private agencies use the information to simulate various scenarios and test theories in order to improve the current transmission system.

### Action

The Commission is requesting a three-year extension of the current expiration date. The Commission staff is currently exploring the filing of Form 715 information electronically (using a web-based application) in lieu of the present combined system of mailing paper filings and electronic media (diskettes) to the Commission. If the Commission proposes to convert to electronic filing of Form 715 data, a Notice of Proposed Rulemaking will be issued proposing to amend the Commission's regulations to provide for the electronic filing of Form 715. Such a proposal may also seek to eliminate the current signature requirement and simply require the identification of a representative at each utility responsible for submitting the data electronically. The representative will be given a password and identification code to ensure system integrity.

### Burden Statement

Public reporting burden for this collection is estimated as:

| Number of respondents (1) | Annual responses per respondent (2) | Average burden hours per response (3) | Total annual burden hours (1)×(2)×(3) |
|---|---|---|---|
| 117 | 1 | 95 | 11,115 |

The reduction of annual respondents from 200 to 117 is due to two factors. The first factor is an increase in the number of mergers. The second factor is the increase in the use of a secondary entity to file the Form 715. For example, the data is compiled by individual utilities and submitted to the NERC region. The NERC region consolidates the information of its members into a single response and submits it to the Commission. These two factors resulted in a reduction in the number of Form 715 respondents. In addition, the conversion to electronic filing (if implemented) is estimated to reduce average burden hours per respondent (from 100 hours presently, to 95). The estimated cost burden to respondents: 11,115/2080 hours per year × $109,889 per year = $587,219. Reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information. The estimate of respondent cost is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an

organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed information collection is necessary for the proper performance of the functions of the Commission, including whether the information will have practical applications; (2) the accuracy of the Commission's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utilization and clarity of the collected information; (4) ways to minimize the burden of the information collection on respondents, including the proposed electronic submission of responses; (5) the magnitude of the impact of the conversion to electronic filing on respondents; (6) the proposed elimination of the signature requirement; (7) any existence of a competitive disadvantage caused by publicly providing information in Form 715 to which competitors would have access (without corresponding obligation on its competitors not subject to the Commission's reporting requirements); and (8) the relevancy of the information currently collected given the current transition from cost-based to a fully competitive wholesale electric market.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–21601 Filed 8–19–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP99–384–001]**

## ANR Storage Company; Notice of Compliance Filing

August 16, 1999.

Take notice that on August 10, 1999, ANR Storage Company (ANRS) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheet listed below, to be effective August 1, 1999.

Substitute Second Revised Sheet No. 132B

ANRS states the attached sheet is being filed in compliance with the Commission's Order issued on July 27, 1999, at Docket No. RP99–384–000.

ANRS states that copies of the filing were served upon the company's Jurisdictional customers.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–21606 Filed 8–19–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP99–372–001]**

## Blue Lake Gas Storage Company; Notice of Compliance Filing

August 16, 1999.

Take notice that on August 10, 1999, Blue Lake Gas Storage Company (Blue Lake) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheet listed below, to be effective August 1, 1999.

Substitute Third Revised Sheet No. 133A

Blue Lake states the attached tariff sheet is being filed in compliance with the Commission's Order issued on July 27, 1999, at Docket No. RP99–372–000.

Blue Lake states that copies of the filing were served upon the company's Jurisdictional customers.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–21605 Filed 8–19–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP99–452–001]**

## Caprock Pipeline Co.; Notice of Tariff Filing

August 16, 1999.

Take notice that on August 12, 1999, Caprock Pipeline Co. (CAPROCK) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff Sheet, with an effective date of September 1, 1999:

Substitute Original Sheet No. 24J

CAPROCK is submitting this filing to correct the duplication of below listed tariff sheet that occurred when the original filing to incorporate new interactive computer system was made on July 30, 1999.

CAPROCK states that copies of this filing have been served upon all affected firm customers of CAPROCK and applicable state agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–21611 Filed 8–19–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP99–423–001]**

### Cove Point LNG Limited Partnership; Notice of Tariff Filing

August 16, 1999.

Take notice that on August 11, 1999, Cove Point LNG Limited Partnership (Cove Point) tendered for filing to become part of Cove Point's FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to be effective August 1, 1999:

Substitute Sixth Revised Sheet No. 136

Cove Point states that this tariff sheet is being filed to comply with the Commission's Office of Pipeline Regulation letter order of July 27, 1999, requiring Cove Point to incorporate GISB standard 2.3.20 by reference or verbatim.

Cove Point states that copies of the filing were served upon Cove Point's customers and interested state regulatory commissioners.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http:www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–21607 Filed 8–19–99; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP99–437–001]**

### Dauphin Island Gathering Partners; Notice of Compliance Filing

August 16, 1999.

Take notice that on August 10, 1999, Dauphin Island Gathering Partners (DIGP) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of August 1, 1999:

Substitute First Revised Sheet No. 255
Substitute Original Sheet No. 255A

DIGP states that the filing is being made in compliance with the Commission's order issued on July 27, 1999 in Docket No. RP99–437–000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–21610 Filed 8–19–99; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP99–428–001]**

### East Tennessee Natural Gas Company; Notice of Compliance Filing

August 16, 1999.

Take notice that on August 11, 1999, East Tennessee Natural Gas Company (East Tennessee), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Fifth Revised Sheet No. 101, Substitute Sixth Revised Sheet No. 176 and Second Revised Sheet No. 177, with an effective date of August 1, 1999.

East Tennessee states the attached tariff sheets are submitted in compliance with the Commission's July 27, 1999 Letter Order (July 27 Order) in Docket No. RP99–428. East Tennessee states that in the July 23 Order, the Commission required East Tennessee to file revised tariff sheets which (1) separately identifies as Version 1.2 the existing data sets for which an extension of time was granted and (2) incorporates as Version 1.3 Data Set 3.4.4, which East Tennessee excluded from its extension as related to a service which it did not provide. East Tennessee further states that the attached revised tariff sheets reflect the required changes.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–21608 Filed 8–19–99; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP99–434–001]**

### Gulf States Transmission Corporation; Notice of Compliance Filing

August 16, 1999.

Take notice that on August 10, 1999, Gulf States Transmission Corporation (Gulf States) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, certain revised tariff sheets, with an effective date of August 1, 1999.

Gulf States states that it is filing these tariff sheets to comply with the Commission's July 27, 1999 Letter Order in the above-referenced docket (July 27 Letter Order).

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/

rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–21609 Filed 8–19–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP99–238–001]**

## Sea Robin Pipeline Company; Notice of Proposed Changes to FERC Gas Tariff

August 16, 1999.

Take notice that on August 12, 1999, Sea Robin Pipeline Company (Sea Robin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Seventh Revised Sheet No. 95, to become effective September 1, 1999.

Sea Robin states that the purpose of this filing is to comply with the Commission's order dated July 28, 1999 in the above-referenced docket. Sea Robin states that consistent with the July 28 order, it has removed the reference to markets or other geographic areas in category five of its new section 29 to the General Terms and Conditions. Such new Section 29 specifies the types of rate discounts Sea Robin may grant to its shippers without filing a nonconforming service agreement.

Sea Robin states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–21604 Filed 8–19–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. GT99–64–000]**

## Tennessee Gas Pipeline Company; Notice of Tariff Filing

August 16, 1999

Take notice that on August 11, 1999, Tennessee Gas Pipeline Company (Tennessee), tendered for filing and Commission approval: (1) a Gas Transportation Agreement between Tennessee and Pemex Gas y Petroquímica Básica (PGPB Service Agreement), and (2) Fifth Revised Sheet No. 413 of Tennessee's FERC Gas Tariff, Fifth Revised Volume No. 1. Tennessee requests an effective date of September 1, 1999.

Tennessee states the PGPB Service Agreement is being filed as a non-conforming service agreement. In addition, Tennessee states the tariff sheet references the PGPB Service Agreement as a non-conforming service agreement.

On October 20, 1998, in Docket No. CP99–28–000, Tennessee filed pursuant to Section 3 of the NGA and Subparts B and C of Part 153 of the Commission's Regulations for: (i) an order authorizing the siting, construction, operation, and maintenance of pipeline facilities and the place of entry and exit for import and export of natural gas at the International boundary between the United States and Mexico in Hidalgo County, Texas; and (ii) a Presidential Permit for the construction, operation, maintenance, and connection of such facilities. In addition, on October 20, 1998 in Docket No. CP99–29–000, Tennessee filed a request under the Commission's blanket authorization prior notice procedures in order to obtain Commission authorization to construct and operate a new delivery point and related facilities to permit delivery of up to 185,000 Dth per day of natural gas to PGPB near the International boundary between the United States and Mexico. In connection with this project, on September 30, 1998, Tennessee and PGPB executed the PGPB Service Agreement for use under Tennessee's Rate Schedule FT–A for transportation of up to 185,000 Dth per day for PGPB upon completion and in-service of the facilities.

Tennessee states that it is filing the PGPB Service Agreement for Commission approval as a non-conforming service agreement pursuant to Section 154.1(d) of the Commission's regulations because the PGPB Service Agreement contains provisions which may ''deviate in [a] material aspect'' from Tennessee's pro forma FT–A Agreement.

Tennessee states that copies of the filing have been mailed to all of Tennessee's customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–21603 Filed 8–19–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER99–3475–000, et al.]**

## Allegheny Power Service Corporation, et al., Electric Rate and Corporate Regulation Filings

August 13, 1999.

Take notice that the following filings have been made with the Commission:

### 1. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99–3475–000]

Take notice that on August 6, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Amendment No. 1 to Supplement No. 24 to complete filing requirements for two (2) new Customers of the Market Rate Tariff under which

Allegheny Power offers generation services.

Allegheny Power requests a waiver of notice requirements to make service available as of June 7, 1999, to Entergy Power Marketing Corporation and Williams Energy Marketing & Trading Company.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

*Comment date:* August 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

**2. Louisville Gas and Electric Company Kentucky Utilities Company**

[Docket No. ER99–4009–000]

Take notice that on August 6, 1999, Louisville Gas and Electric Company/ Kentucky Utilities (LG&E/KU), tendered for filing an unexecuted Service Agreement between LG&E/KU and LG&E Energy Marketing, Inc., under LG&E/KU's MBSS Rate Schedule.

*Comment date:* August 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

**3. The Dayton Power and Light Company**

[Docket No. ER99–4010–000]

Take notice that on August 6, 1999, The Dayton Power and Light Company (DP&L), tendered for filing an Amendment to DP&L's Interconnection Agreement with the City of Piqua, designated as DP&L's FERC Electric Rate Schedule No. 41, and an Amendment to the Power Services Agreements between DP&L and each of the following customers: Village of Arcanum (DP&L's FERC Electric Rate Schedule No. 42), Village of Eldorado (DP&L's FERC Electric Rate Schedule No. 49), Village of Jackson Center (DP&L's FERC Electric Rate Schedule No. 43), Village of Lakeview (DP&L's FERC Electric Rate Schedule No. 44), Village of Mendon (DP&L's FERC Electric Rate Schedule No. 45), Village of Minster (DP&L's FERC Electric Rate Schedule No. 50), Village of New Bremen (DP&L's FERC Electric Rate Schedule No. 46), City of Tipp City (DP&L's FERC Electric Rate Schedule No. 51), Village of Versailles (DP&L's FERC Electric Rate Schedule No. 52), Village of Waynesfield (DP&L's FERC Electric Rate Schedule No. 47), and Village of Yellow Spring (DP&L's FERC Electric Rate Schedule No. 53).

DP&L states that the Amendments are intended to clarify certain of the agreements' terms and conditions, such as those pertaining to Firm Power Reservation, Firm Power Load Factor, scheduling procedures and other matters.

DP&L states that it has served a copy of the filing upon each of the affected customers and the Public Utilities Commission of Ohio.

*Comment date:* August 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

**4. California Independent System Operator Corporation**

[Docket No. ER99–4011–000]

Take notice that on August 6, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Participating Generator Agreement between the ISO and The Regents of the University of California on behalf of its Davis Campus Medical Center for acceptance by the Commission.

The ISO states that this filing has been served on The Regents of the University of California on behalf of its Davis Campus Medical Center and the California Public Utilities Commission.

*Comment date:* August 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

**5. California Independent System Operator Corporation**

[Docket No. ER99–4012–000]

Take notice that on August 6, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for ISO Metered Entities (Meter Service Agreement) between the ISO and The Regents of the University of California on behalf of its Davis Campus Medical Center for acceptance by the Commission.

The ISO states that this filing has been served on The Regents of the University of California on behalf of its Davis Campus Medical Center and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement to be made effective as of July 26, 1999.

*Comment date:* August 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

**6. Puget Sound Energy, Inc.**

[Docket No. ER99–4013–000]

Take notice that on August 26, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Notice of Cancellation of a Service Agreement filed under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Cinergy Capital and Trading, Inc., (Cinergy).

PSE states that a copy of the filing was served upon Cinergy.

*Comment date:* August 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

**7. Puget Sound Energy, Inc.**

[Docket No. ER99–4014–000]

Take notice that on August 6, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Cinergy Services, Inc. (as agent for and on behalf of The Cincinnati Gas & Electric Company and PSI Energy, Inc.) (Cinergy).

A copy of the filing was served upon Cinergy.

*Comment date:* August 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

**8. Florida Power & Light Company**

[Docket No. ER99–4015–000]

Take notice that on August 6, 1999, Florida Power & Light Company (FPL), tendered for filing a Service Agreement with Cargill-Alliant, LLC for service pursuant to FPL's Market Based Rates Tariff.

FPL requests that the Service Agreement be made effective on July 12, 1999.

*Comment date:* August 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

**9. Ameren Services Company**

[Docket No. ER99–4016–000]

Take notice that on August 6, 1999, Ameren Services Company (ASC), tendered for filing a Network Operating Agreement and a Service Agreement for Network Integration Transmission Service between ASC and the City of Newton, Illinois (the City). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to the City pursuant to Ameren's Open Access Tariff.

*Comment date:* August 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

**10. Ameren Services Company**

[Docket No. ER99–4017–000]

Take notice that on August 6, 1999, Ameren Services Company (ASC) as Agent for Union Electric Company (UE) and Central Illinois Public Service Company (CIPS) tendered for filing a Service Agreement for Market Based Rate Power Sales between CIPS and the

City of Newton (the City), Illinois. ASC asserts that the purpose of the Agreement is to permit ASC to make sales of capacity and energy at market based rates to the City pursuant to ASC's Market Based Rate Power Sales Tariff filed in Docket No. ER98–3285–000.

*Comment date:* August 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

**11. Harbor Cogeneration Company**

[Docket No. ER99–4018–000]

Take notice that on August 6, 1999, Harbor Cogeneration Company (Harbor Cogeneration), tendered for filing an Energy Sales and Fuel Sales Agreement for wholesale power sales transactions under Harbor Cogeneration's market-based wholesale power sales tariff, FERC Electric Tariff Original Volume No. 1, between Harbor Cogeneration and Edison Mission Marketing and Trading Co. (EMMT), dated as of June 14, 1999.

*Comment date:* August 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

**12. ISO New England Inc.**

[Docket No. ER99–4019–000]

Take notice that on August 6, 1999 ISO New England Inc. (the ISO), tendered for filing, pursuant to Section 205 of the Federal Power Act, a request for expedited acceptance of an Emergency Rule implementing a Load Response Program.

Copies of said filing have been served upon the Participants in the New England Power Pool, non-Participant transmission customers and to the New England State Governors and Regulatory Commissions.

*Comment date:* May 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

**13. Allegheny Energy Supply Company**

[Docket No. ER99–4020–000]

Take notice that on August 6, 1999, Allegheny Energy Supply Company tendered for filing a market rate tariff of general applicability under which it proposes to sell capacity and energy at market-based rates, including sales to its franchised utility affiliates under an index-based cap.

Allegheny Energy Supply Company requests an August 15, 1999, effective date.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

*Comment date:* August 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

**14. Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company, West Penn Power Company (Allegheny Power)**

[Docket No. ER99–4021–000]

Take notice that on August 6, 1999, Allegheny Power, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company, tendered for filing Supplement No. 30 to its market-based rate schedule on file with the Commission in Docket No. ER98–1466–000. Supplement No. 30 would permit the Allegheny Power companies to make power sales among the franchised affiliates capped at a regional index price all as more fully described in the application.

Allegheny Power requests an August 15, 1999 effective date.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

*Comment date:* August 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

**15. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)**

[Docket No. ER99–4022–000]

Take notice that on August 6, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 29 to add two (2) new Customers to the Market Rate Tariff under which Allegheny Power offers generation services.

Allegheny Power requests a waiver of notice requirements to make service available as of August 5, 1999, to PP&L, Inc., and Cleco Marketing & Trading LLC.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

*Comment date:* August 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–21598 Filed 8–19–99; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER99–3992–000, et al.]**

## Illinois Power Company, et al.; Electric Rate and Corporate Regulation Filings

August 12, 1999.

Take notice that the following filings have been made with the Commission:

**1. Illinois Power Company**

[Docket No. ER99–3992–000]

Take notice that on August 5, 1999, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which American Municipal Power—Ohio, Inc., will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of July 7, 1999.

*Comment date:* August 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

**2. Duquesne Light Company**

[Docket No. ER99–4006–000]

Take notice that on August 5, 1999, Duquesne Light Company (DLC), tendered for filing a Service Agreement dated August 4, 1999 with Florida Power & Light Company under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Florida Power & Light Company as a customer under the Tariff.

DLC requests an effective date of August 4, 1999, for the Service Agreement.

*Comment date:* August 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

**3. Duquesne Light Company**

[Docket No. ER99–4007–000]

Take notice that on August 5, 1999, Duquesne Light Company (DLC), tendered for filing a Service Agreement dated August 4, 1999 with DTE Energy Trading, Inc. under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds DTE Energy Trading, Inc. as a customer under the Tariff.

DLC requests an effective date of August 4, 1999 for the Service Agreement.

*Comment date:* August 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

**4. Public Service Company of New Mexico**

[Docket No. ER99–3995–000]

Take notice that on August 5, 1999, Public Service Company of New Mexico (PNM), tendered for filing Amendment Two to the Palo Verde to Westwing Firm Point-to-Point Transmission Service Agreement (PNM Service Agreement No. 69); Amendment Two to the San Juan to Greenlee Firm Point-to-Point Transmission Service Agreement (PNM Service Agreement No.70); and Amendment Two to the San Juan to Coronado Firm Point-to-Point Transmission Service Agreement (PNM Service Agreement No. 71); all dated July 5, 1999. The Service Agreements are between PNM Transmission Development and Contracts (Transmission Provider) and PNM Wholesale Power Marketing (Transmission Customer), and the purpose of the Amendments is to conform the Service Agreements with PNM's Settlement Rates for mandatory ancillary services accepted for filing by the Commission by Letter Order dated April 6, 1999.

PNM requests waiver of the Commissions notice requirements in order that the three Amendments are effective retroactive to August 1, 1998.

Copies of this filing have been provided to PNM Transmission Development and Contracts, PNM Wholesale Power Marketing, and the New Mexico Public Regulation Commission. PNM's filing is available for inspection at its offices in Albuquerque, New Mexico.

*Comment date:* August 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

**5. Energy Services, Inc., American Energy Trading, Inc., H.Q. Energy Services (U.S.) Inc., EnerZ Corporation, Sempra Energy Trading Corp., Conoco Power Marketing Inc., LG&E Energy Marketing Inc., Enron Power Marketing, Inc., and Tenaska Power Services Co.**

[Docket No. ER95–1021–016, ER97–360–011, ER97–851–009, ER96–3064–013, ER94–1691–025, ER95–1441–016, ER95–1441–018, ER94–1188–029, ER94–24–031, and ER94–389–020]

Take notice that on August 2, 1999, the above-mentioned power marketers/or public utilities tendered for filing quarterly reports with the Commission in above-referenced proceedings for information only. These filing are available for public inspection and copying in the Public Referenced Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

**6. Columbia Power Marketing, Commonwealth Energy Corporation, Astra Power, LLC, Astra Power, LLC, Enerserve, L.C., Enron Energy Services, Inc., Reliant Energy Services, Inc., Energy Resource Marketing Inc., People's Electric Corporation, Clinton Energy Management Services, In., and Calpine Power Services Company**

[Docket No. ER97–3667–007, ER97–4253–000, ER98–3378–004, ER98–3378–005, ER96–182–015, ER98–13–011, ER94–1247–022, ER94–1580–019, ER98–3719–004, ER98–3934–004, and ER94–1545–018]

Take notice that on August 4, 1999, the above-mentioned power marketers/or public utilities tendered for filing quarterly reports with the Commission in above-referenced proceedings for information only. These filing are available for public inspection and copying in the Public Referenced Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

**7. Reliant Energy Ormond Beach, LLC, Reliant Energy Coolwater, LLC, Reliant Energy Mandalay, LLC, Dighton Power Associates Limited Partnership, UAE Lowell Power LLC, Reliant Energy Etiwanda, LLC, StratErgy, Inc., South Carolina Electric & Gas Company, Cabrillo Power II LLC, El Dorado Energy, LLC, and Reliant Energy Ellwood, LLC,**

[Docket No. ER99–3990–000, ER99–3989–000, ER99–3988–000, ER99–4025–000, ER99–3993–000, ER99–3991–000, ER99–1410–002, ER99–3984–000, ER99–3986–000, ER99–3985–000, and ER99–3987–000]

Take notice that on August 4, 1999, the above-mentioned power marketers/or public utilities tendered for filing quarterly reports with the Commission in above-referenced proceedings for information only. These filing are available for public inspection and copying in the Public Referenced Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

*Comment date:* August 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

**8. Southern Company Services, Inc.**

[Docket No. ER91–150–013, and ER91–326–005]

Take notice that on August 5, 1999, Southern Company Services, Inc. (SCS), as agent for Alabama Power Company, Georgia Power Company (GPC), Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively Southern Companies), tendered for filing a refund report.

*Comment date:* August 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

**9. Duquesne Light Company**

[Docket No. ER99–4008–000]

Take notice that on August 5, 1999, Duquesne Light Company (DLC) tendered for filing a Service Agreement dated August 4, 1999 with Florida Power & Light Company under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Florida Power & Light Company as a customer under the Tariff.

DLC requests an effective date of August 4, 1999, for the Service Agreement.

*Comment date:* August 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

**10. Ameren Services Company**

[Docket No. ER99–3994–000]

Take notice that on August 5, 1999, Ameren Services Company (Ameren),

tendered for filing Service Agreements for Market Based Rate Power Sales between Ameren and ProLiance Energy, LLC, Public Service Electric & Gas Company and Southwestern Electric Cooperative, Inc. (the parties). Ameren asserts that the purpose of the Agreements is to permit Ameren to make sales of capacity and energy at market based rates to the parties pursuant to Ameren's Market Based Rate Power Sales Tariff filed in Docket No. ER98–3285–000.

*Comment date:* August 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

**11. AES Eastern Energy, L.P.**

[Docket No. ER99–3280–000]

Take notice that on August 5, 1999, AES Eastern Energy, L.P., 1001 North 19th Street, Suite 2000, Arlington, VA 22209 (AES Eastern), tendered for filing an Amendment to Notice of Succession in Ownership and Operation to certain contracts, rate schedules, and supplements heretofore filed with the Commission by New York State Electric & Gas Corporation, NGE Generation, Inc., and AES Eastern's affiliate, AES NY, L.L.C.

*Comment date:* August 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

**12. Western Systems Power Pool**

[Docket No. ER99–2763–001]

Take notice that on August 5, 1999, the Western Systems Power Pool (WSPP), tendered for filing certain changes to its Open Access Transmission Tariff in compliance with the Federal Energy Regulatory Commission's June 21, 1999, order in the proceeding captioned above.

*Comment date:* August 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

**13. New England Power Company**

[Docket No. ER99–4000–000]

Take notice that on August 5, 1999, New England Power Company (NEP), tendered for filing a service agreements under NEP's Open Access Transmission Tariff, FERC Electric Tariff, Original Volume No. 9 between NEP and (i) New Hampshire Electric Cooperative, Inc. (NHEC); and (ii) Paxton Municipal Light Department (Paxton). Under the service agreements, NEP will provide ''Network Integration Transmission Service'' to NHEC and Paxton.

*Comment date:* August 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

**14. PECO Energy Company**

[Docket No. ER99–4001–000]

Take notice that on August 5, 1999, PECO Energy Company (PECO), tendered for filing a Service Agreement dated July 20, 1999 with TransAlta Energy Marketing (U.S.) Inc. (TEMUS), under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds TEMUS as a customer under the Tariff.

PECO requests an effective date of July 20, 1999, for the Service Agreement.

PECO states that copies of this filing have been supplied to TEMUS and to the Pennsylvania Public Utility Commission.

*Comment date:* August 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

**15. ISO New England Inc.**

[Docket No. ER99–4002–000]

Take notice that on August 5, 1999, ISO New England Inc. (the ISO), tendered for filing pursuant to Section 205 of the Federal Power Act, a Request for Expedited Approval of Revisions to NEPOOL Market Rules 1 and 10.

Copies of said filing have been served upon the Participants in the New England Power Pool, non-Participant transmission customers and to the New England State Governors and Regulatory Commissions.

*Comment date:* August 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

**16. Tampa Electric Company**

[Docket No. ER99–4003–000]

Take notice that on August 5, 1999, Tampa Electric Company (Tampa Electric), tendered for filing a service agreement with The Energy Authority, Inc. (TEA), under Tampa Electric's market-based sales tariff.

Tampa Electric proposes that the service agreement be made effective on July 26, 1999.

Copies of the filing have been served on TEA and the Florida Public Service Commission.

*Comment date:* August 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

**17. Central Vermont Public Service Corporation**

[Docket No. ER99–4004–000]

Take notice that on August 5, 1999, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a service agreement with Reliant Energy Services, Inc., under its market based rates sales tariff.

Central Vermont requests waiver of the notice requirement to allow the service agreement to become effective July 31, 1999. If waiver is denied, Central Vermont requests an effective date of October 4, 1999.

*Comment date:* August 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

**18. Duquesne Light Company**

[Docket No. ER99–4005–000]

Take notice that on August 5, 1999, Duquesne Light Company (DLC), tendered for filing a Service Agreement dated August 4, 1999 with Merrill Lynch Capital Services, Inc. under DLC's Open Access Transmission Tariff (Tariff).

The Service Agreement adds Merrill Lynch Capital Services, Inc. as a customer under the Tariff. DLC requests an effective date of August 4, 1999, for the Service Agreement.

*Comment date:* August 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–21645 Filed 8–19–99; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EG99–181–000, et al.]**

## PanEnergy Lake Charles Generation, Inc., et al.; Electric Rate and Corporate Regulation Filings

August 11, 1999.

Take notice that the following filings have been made with the Commission:

### 1. PanEnergy Lake Charles Generation, Inc.

[Docket No. EG99–181–000]

Take notice that on August 4, 1999, PanEnergy Lake Charles Generation, Inc. (PanEnergy Lake Charles Generation), of 5444 Westheimer Road, Houston, Texas 77056, tendered for filing with the Federal Energy Regulatory Commission an amendment to its application for determination of Exempt Wholesale Generator (EWG) status pursuant to Part 365 of the Commission's Regulations.

The amendment includes the verification in accordance with 18 CFR 365.3 and 18 CFR 385.2005(b)(2).

*Comment date:* August 24, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration its consideration of comments to those that concern the adequacy or accuracy of the application.

### 2. Aquila Energy Marketing Corporation v. Niagara Mohawk Power Corporation, Niagara Mohawk Energy Marketing Corporation

[Docket No. EL99–62–003]

Take notice that on August 4, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing its Third Compliance Report in the above-referenced docket. Niagara Mohawk states that this filing was submitted to comply with the Commission's June 18, 1999 Order, 87 FERC ¶ 61,328 (1999), in the above-referenced docket.

Niagara Mohawk states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

*Comment date:* August 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

### 3. Sithe Power Marketing, Inc., Howell Power Systems, Inc., NUI Corp.-NUI Energy Brokers Inc., SCANA Energy Marketing, Inc., Philadelphia Gas Works, Alpena Power Marketing, L.L.C., Entergy Power Marketing Corp., OGE Energy Resources, Inc., El Paso Energy Marketing, and Exact Power Co.

[Docket Nos. ER98–107–008, ER94–178–018, ER96–2580–012, ER96–1086–013, ER98–124–002, ER97–4745–007, ER95–1615–019, ER97–4345–010, ER95–428–021, and ER97–382–010]

Take notice that on August 2, 1999, the above-mentioned power marketers/or public utilities tendered for filing quarterly reports with the Commission in above-referenced proceedings for information only. These filing are available for public inspection and copying in the Public Referenced Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

### 4. Business Discount Plan, Inc., USGen New England, Inc., Consolidated Water Power Company, Pittsfield Generating Company, L.P., SCC–L1, L.L.C., SCC–L2, L.L.C., SCC–L3, L.L.C., Fibertek Energy, LLC, Canadian Niagara Power Company, Foote Creek III, Ltd., Tenaska Gateway Partners, Ltd., Pacific Northwest Generating Cooperative, GEN'SYS Energy, and Cadillac Renewable Energy LLC

[Docket Nos. ER99–581–001, ER99–3934–000, ER99–3933–000, ER99–3948–000, ER99–3936–000, ER99–3937–000, ER99–3938–000, ER99–3949–000, ER99–3940–000, ER99–3939–000, ER99–2992–000, ER99–3943–000, ER99–3945–000, and ER99–3944–000]

Take notice that on August 2, 1999, the above-mentioned power marketers/or public utilities tendered for filing quarterly reports with the Commission in above-referenced proceedings for information only. These filing are available for public inspection and copying in the Public Referenced Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

*Comment date:* August 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

### 5. American Electric Power Company

[Docket No. ER99–3040–000 and ER99–3958–000]

Take notice that on August 3, 1999, American Electric Power Company (AEP), tendered for filing an amended notice of termination of wholesale electric service under the Municipal Resale service agreement and also filed a new service agreement for electric service to the City of Sturgis, Michigan dated July 14, 1999.

*Comment date:* August 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

### 6. Astoria Generating Company, L.P.

[Docket No. ER99–3168–001]

Take notice that on August 4, 1999, Astoria Generating Company, L.P. (Applicant), with its principal office at c/o Orion Power Holdings, Inc., 111 Market Place, Suite 520, Baltimore, Maryland 21202, tendered for filing with the Federal Energy Regulatory Commission (Commission) a compliance filing in the referenced docket.

*Comment date:* August 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

### 7. Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)

[Docket No. ER99–3969–000]

Take notice that on August 4, 1999, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing a Non-Firm and a Short-Term Firm Point-to-Point Transmission Service Agreement between NSP and Los Angeles Department of Water & Power Wholesale Marketing.

NSP requests that the Commission accept both the agreements effective July 9, 1999, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

*Comment date:* August 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

### 8. Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)

[Docket No. ER99–3970–000]

Take notice that on August 4, 1999, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing a Non-Firm and a Short-Term Firm Point-to-Point Transmission Service Agreement between NSP and Omaha Public Power District.

NSP requests that the Commission accept both the agreements effective July 9, 1999, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

*Comment date:* August 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

**9. Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)**

[Docket No. ER99–3971–000]

Take notice that on August 4, 1999, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing a Non-Firm and a Short-Term Firm Point-to-Point Transmission Service Agreement between NSP and New Energy Ventures, Inc.

NSP requests that the Commission accept both the agreements effective July 6, 1999, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

*Comment date:* August 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

**10. Ameren Services Company**

[Docket No. ER99–3972–000]

Take notice that on August 4, 1999, Ameren Services Company (AMS), tendered for filing an Interconnection Agreement between AMS and Union Electric Development Corporation (UEDC). AMS asserts that the purpose of the Agreement is to, among other things, establish the rights and obligations of UEDC, the point of interconnection and Corporate Guaranty.

*Comment date:* August 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

**11. Virginia Electric and Power Company**

[Docket No. ER99–3973–000]

Take notice that on August 4, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing the Service Agreement between Virginia Electric and Power Company and Cleco Corporation. Under the Service Agreement, Virginia Power will provide services to Cleco Corporation under the terms of the Company's Revised Market-Based Rate Tariff designated as FERC Electric Tariff (Second Revised Volume No. 4), which was accepted by order of the Commission dated August 13, 1998 in Docket No. ER98–3771–000.

Virginia Power requests an effective date of August 4, 1999.

Copies of the filing were served upon Cleco Corporation, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

*Comment date:* August 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

**12. Minnesota Power, Inc.**

[Docket No. ER99–3974–000]

Take notice that on August 4, 1999, Minnesota Power, Inc. and Superior Water, Light and Power tendered for filing signed Service Agreements for Non-Firm and Short-Term Point-to-Point Transmission Service with Consumers Energy Company under its Transmission Service Agreement to satisfy its filing requirements under this tariff.

*Comment date:* August 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

**13. ISO New England Inc.**

[Docket No. ER99–3975–000]

Take notice that on August 4, 1999, ISO New England Inc. (the ISO), tendered for filing revisions and corrections to the ISO Tariff previously filed with the Commission.

Copies of said filing have been served upon the Participants in the New England Power Pool, non-Participant transmission customers and to the New England State Governors and Regulatory Commissions.

*Comment date:* August 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

**14. Deseret Generation & Transmission Co-operative**

[Docket No. ER99–3976–000]

Take notice that Deseret Generation & Transmission Co-operative on August 4, 1999, tendered for filing an executed umbrella non-firm point-to-point service agreement with The Montana Power Trading and Marketing Company under its open access transmission tariff. Deseret's open access transmission tariff is currently on file with the Commission in Docket No. OA97–487–000.

Deseret requests a waiver of the Commission's notice requirements for an effective date of August 4, 1999.

The Montana Power Trading and Marketing Company has been provided a copy of this filing.

*Comment date:* August 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

**15. Deseret Generation & Transmission Co-operative**

[Docket No. ER99–3977–000]

Take notice that Deseret Generation & Transmission Co-operative on August 4, 1999, tendered for filing an executed umbrella short-term firm point-to-point service agreement with British Columbia Power Exchange Corporation under its open access transmission tariff. Deseret requests a waiver of the Commission's notice requirements for an effective date of August 4, 1999. Deseret's open access transmission tariff is currently on file with the Commission in Docket No. OA97–487–000. British Columbia Power Exchange Corporation has been provided a copy of this filing.

*Comment date:* August 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

**16. Deseret Generation & Transmission Co-operative**

[Docket No. ER99–3978–000]

Take notice that Deseret Generation & Transmission Co-operative on August 4, 1999, tendered for filing an executed umbrella short-term firm point-to-point service agreement with The Montana Power Trading and Marketing Company under its open access transmission tariff. Deseret's open access transmission tariff is currently on file with the Commission in Docket No. OA97–487–000.

Deseret requests a waiver of the Commission's notice requirements for an effective date of August 4, 1999.

The Montana Power Trading and Marketing Company has been provided a copy of this filing.

*Comment date:* August 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

**17. Central Illinois Public Service Company**

[Docket No. ER99–3979–000]

Take notice that on August 4, 1999, Central Illinois Public Service Company (CIPS), tendered for filing the First Amendment to the Transmission Services Agreement, dated February 11, 1986, with Soyland Power Cooperative, Inc., (Soyland).

CIPS seeks an effective date of January 1, 1999, for the First Amendment and, accordingly, seeks waiver of the Commission's notice requirements.

Copies of the filing were served on Soyland and the Illinois Commerce Commission.

*Comment date:* August 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

**18. Wisconsin Public Service Corporation**

[Docket No. ER99–3980–000]

Take notice that on August 4, 1999, Wisconsin Public Service Corporation (WPSC), tendered for filing a notice of cancellation for UPPCO's service agreement under WPSC's cost-based coordination sales tariff, FERC Electric Tariff, Original Volume No. 5.

WPSC requests an effective date for the notice of cancellation of August 4, 1999, the date of this filing.

WPSC has served this filing on the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

*Comment date:* August 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

**19. Wisconsin Public Service Corporation and Upper Peninsula Power Company**

[Docket No. ER99–3981–000]

Take notice that on August 4, 1999, Wisconsin Public Service Corporation (WPSC), tendered for filing a Power Sales Agreement (PSA) between WPSC and Upper Peninsula Power Company (UPPCO) that enables WPSC and UPPCO to sell energy to one another at cost-based rates as system conditions warrant.

WPSC requests waiver of the Commission's notice of filing requirements so that the PSA may become effective on June 10, 1999.

WPSC has served this filing on the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

*Comment date:* August 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

**20. Deseret Generation & Transmission Co-operative**

[Docket No. ER99–3982–000]

Take notice that on August 4, 1999, Deseret Generation & Transmission Co-operative tendered for filing an executed umbrella non-firm point-to-point service agreement with Cargill-Alliant, LLC, under its open access transmission tariff. Deseret's open access transmission tariff is currently on file with the Commission in Docket No. OA97–487–000.

Deseret requests a waiver of the Commission's notice requirements for an effective date of August 4, 1999.

Cargill-Alliant, LLC has been provided a copy of this filing.

*Comment date:* August 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

**21. Deseret Generation & Transmission Co-operative**

[Docket No. ER99–3983–000]

Take notice that on August 4, 1999, Deseret Generation & Transmission Co-operative tendered for filing an executed umbrella short-term firm point-to-point service agreement with Cargill-Alliant, LLC under its open access transmission tariff. Deseret's open access transmission tariff is currently on file with the Commission in Docket No. OA97–487–000.

Deseret requests a waiver of the Commission's notice requirements for an effective date of August 4, 1999.

Cargill-Alliant, LLC has been provided a copy of this filing.

*Comment date:* August 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

**22. Gregory L. Nesbitt, David M. Eppler, Thomas J. Howlin, and Darrell J. Dubroc**

[Docket Nos. ID–3150–002, ID–3151–002, ID–3152–002, and ID–3397–001]

Take notice that on August 4, 1999, Cleco Marketing & Trading LLC, tendered for filing abbreviated applications for Mr. Gregory L. Nesbitt, Mr. David M. Eppler, Mr. Thomas J. Howlin and Mr. Darrell Dubroc now holding or may hold interlocking positions involving Cleco Marketing & Trading LLC.

*Comment date:* September 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

**23. Bubolo, George V., Caliendo, G.D., Del Giudice, Michael J., Finnegan, John T., Haney, R. Lee, Hanson, Jon F., Jacobs, Nancy M., Lois, Carla Meyer, McBennett, Robert J., Mckenna, Edward M., McPherson, Kenneth D., Peoples, D. Louis, and Taliaferro, Linda T.**

[Docket Nos. ID–3244–001, ID–2871–001, ID–3241–001, ID–2870–001, ID–2853–001, ID–2917–001, ID–2906–001, ID–2905–000, ID–1774–003, ID–2965–000, ID–2951–001, ID–2846–001, and ID–2952–001]

Take notice that on August 2, 1999, Orange and Rockland Utilities, Inc., tendered for filing notification that the above referenced officers and directors no longer serve in their interlocking positions with Orange and Rockland Utilities, Inc., Pike County Light & Power Company and Rockland Electric Company.

*Comment date:* September 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

**24. Illinois Power Company**

[Docket No. ES99–57–000]

Take notice that on August 3, 1999, Illinois Power Company submitted an application under Section 204 of the Federal Power Act seeking authorization to issue not more than $500 million of short-term notes on or before December 31, 2000.

*Comment date:* September 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–21646 Filed 8–19–99; 8:45 am]

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 597–003–Utah]**

## PacifiCorp Power Company; Notice of Availability of Draft Environmental Assessment

August 16, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new license for the Stairs Hydroelectric Project, and has prepared a Draft Environmental Assessment (DEA). The project is located on the Big Cottonwood Creek in Big Cottonwood Canyon, Salt Lake County, near the town of Sandy, about 15 miles southeast of Salt Lake City, Utah. The project occupies about 8.7 acres of land within the Wasatch-Cache National Forest, administered by the U.S. Forest Service. The DEA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Room, Room 2A, of the Commission's offices at

888 First Street, NE, Washington, DC 20426.

Any comments should be filed on or before August 31, 1999, and should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. For further information, contact Gaylord Hoisington, Project Coordinator, at (202) 219–2756.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–21602 Filed 8–19–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application Accepted for Filing and Soliciting Motions to Intervene and Protests

August 16, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2566–010.

c. *Date filed:* March 30, 1999.

d. *Applicant:* Consumers Energy Company.

e. *Name of Project:* Webber Hydroelectric Project.

f. *Location:* On the Grand River, in Lyons and Portland Townships, near the City of Portland, Ionia County, Michigan. The project would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* David Battige, Consumers Energy Company, Hydro Operations, 330 Chestnut Street, Cadillac, MI 49601, (616) 779–5506.

i. *FERC Contact:* Tom Dean, *thomas.dean@ferc.fed.us,* (202) 219–2778.

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application is not ready for environmental analysis at this time.

l. *Description of the Project:* The project consists of the following existing facilities: (1) A 32-foot-high, 1,200-foot-long dam comprising: (a) A 157-foot-long concrete powerhouse section, (b) a 313-foot-high concrete spillway with 10 Taintor gates and one hydraulic flap gate, and (c) two earth embankment sections having a combined total length of 730 feet; (2) a 7-mile-long reservoir having a 660-acre surface area at a normal pool elevation of 684.4 feet USGS; (3) a powerhouse containing two generating units with a total installed capacity of 3,250 kW; and (4) other appurtenances.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20246, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call(202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h. above.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–21612 Filed 8–19–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

August 16, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11758–000.

c. *Date Filed:* June 11, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Mississippi L&D #25.

f. *Location:* On the Mississippi River, in Lincoln County, Missouri, utilizing federal lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Charles T. Raabe, E-mail address, Charles.Raabe@ferc.fed.us, or telephone (202) 219–2811.

j. *Deadline Date:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The proposed project would utilize the existing U.S. Army Corps of Engineers' Mississippi L&D #25 and would consist of: (1) 18 new 80-foot-long, 114-inch-diameter steel penstocks; (2) a new 604-foot-long, 30-foot-wide, 30-foot-high powerhouse containing 9 generating units having a total installed capacity of 50,000-kW; (3) a new exhaust apron; (4) a new 500-foot-long 14.7-kV transmission line; and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 307 GWh and that the cost of the studies to be performed under the terms of the permit would be $5,000,000. Project energy would be sold to utility companies, corporations, municipalities, aggregators, or similar entities.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a purposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file a competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–21613 Filed 8–19–99; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application Accepted for Filing and Soliciting Motions to Intervene and Protests

August 16, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11791–000.

c. *Date Filed:* July 15, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Kentucky L&D #12.

f. *Location:* On the Kentucky River, near the town of Ravenna, Estill County, Kentucky, utilizing federal lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Gregory S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Charles T. Raabe, E-mail address, Charles.Raabe@ferc.fed.us, or telephone (202) 219–2811.

j. *Deadline Date:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The proposed project would utilize the existing U.S. Army Corps of Engineers' Kentucky River L&D #12 and would consist of: (1) 4 new 50-foot-long, 96-inch-diameter steel penstocks; (2) a new 80-foot-long, 30-foot-wide, 30-foot-high powerhouse containing 4 generating units having a total installed capacity of 5,500-kW; (3), a new exhaust apron; (4) a new 400-foot-long, 14.7-kV transmission line; and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 33 GWh and that the cost of the studies to be performed under the terms of the permit would be $1,300,000. Project energy would be sold to utility companies, corporations, municipalities, aggregators, or similar entities.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the applicant's representatives.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–21614 Filed 8–19–99; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

August 16, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11793–000.

c. *Date Filed:* July 15, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Kentucky L&D #11.

f. *Location:* On the Kentucky River, near the town of Ford, Estill County, Kentucky, utilizing federal lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gregory S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Charles T. Raabe, E-mail address, Charles.Raabe@ferc.fed.us, or telephone (202) 219–2811.

j. *Deadline Date:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The proposed project would utilize the existing U.S. Army Corps of Engineers' Kentucky River L&D #11 and would consist of: (1) 6 new 50-foot-long, 96-inch-diameter steel penstocks; (2) a new 120-foot-long, 30-foot-wide, 30-foot-high powerhouse containing 6 generating units having a total installed capacity of 8,000-kW; (3) a new exhaust apron; (4) a new 300-foot-long, 14.7–kV transmission line; and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 49 GWh and that the cost of the studies to be performed under the terms of the permit would be $1,800,000. Project energy would be sold to utility companies, corporations, municipalities, aggregators, or similar entities.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–21615 Filed 8–19–99; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

August 16, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11798–000.

c. *Date Filed:* August 2, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Kentucky River L&D #1.

f. *Location:* On the Kentucky River, near the town of Carrollton, Carroll County, Kentucky, utilizing federal lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gregory S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Charles T. Raabe, E-mail address, Charles.Raabe@ferc.fed.us, or telephone (202) 219–2811.

j. *Deadline Date:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boegers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The proposed project would utilize the existing U.S. Army Corps of Engineers' Kentucky River L&D #1 and would consist of: (1) 3 new 50-foot-long, 96-inch-diameter steel penstocks; (2) a new 60-foot-long, 30-foot-wide, 30-foot-high powerhouse containing 3 generating units having a total installed capacity of 3,000-kw; (3) a new exhaust apron; (4) a new 200-foot-long, 14.7kV transmission line; and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 18 GWh and that the cost of the studies to be performed under the terms of the permit would be $1,000,000. Project energy would be sold to utility companies, corporations, municipalities, aggregators, or similar entities

1. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–21616 Filed 8–19–99; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application Accepted for Filing and Soliciting Motions to Intervene and Protests

August 16, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11799–000.

c. *Date Filed:* August 2, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Barren River L&D #1.

f. *Location:* On the Barren River, near the town of Woodbury, Barren County, Kentucky, utilizing federal lands administered by the U.S. Army Corp of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gregory S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Charles T. Raabe, E-mail address, Charles.Raabe@ferc.fed.us, or telephone (202) 219–2811.

j. *Deadline Date:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The proposed project would utilize the existing U.S. Army Corps of Engineers' Barren River L&D #1 and would consist of: (1) 5 new 50-foot-long, 96-inch-diameter steel penstocks; (2) a new 100-foot-long, 30-foot-wide, 30-foot-high powerhouse containing 5 generating units having a total installed capacity of 5,000-kW; (3) a new exhaust apron; (4) a new ½-mile-long, 14.7kV transmission line; and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 31 GWh and that the cost of the studies to be performed under the terms of the permit would be $1,250,000. Project energy would be sold to utility companies, corporations, municipalities, aggregators, or similar entities.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'' ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–21617 Filed 8–19–99; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application Accepted for Filing and Soliciting Motions to Intervene and Protests

August 16, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11800–000.

c. *Date filed:* August 2, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Francis E. Walter Dam.

f. *Location:* On the Lehigh River, near the town of White Haven, Luzerne County, Pennsylvania, utilizing federal lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gregory S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Charles T. Raabe, E-mail address, Charles.Raabe@ferc.fed.us, or telephone (202) 219–2811.

j. *Deadline Date:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The proposed project would utilize the existing U.S. Army Corps of Engineers' Francis E. Walter Dam and would consist of: (1) 5 new 50-foot-long, 108-inch-diameter steel penstocks; (2) a new 100-foot-long, 30-foot-wide, 30-foot-high powerhouse containing 5 generating units having a total installed capacity of 10,300–kW; (3) a new exhaust apron; (4) a new 300-foot-long, 14.7–kV transmission line; and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 63 GWh and that the cost of the studies to be performed under the terms of the permit would be $2,000,000. Project energy would be sold to utility companies, corporations, municipalities, aggregators, or similar entities.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–21618 Filed 8–19–99; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application Accepted for Filing and Soliciting Motions to Intervene and Protests

August 16, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11801–000.

c. *Date Filed:* August 2, 1999.

d. *Applicant:* Universal Electronic Power Corporation.

e. *Name of Project:* Kentucky River L&D #3.

f. *Location:* On the Kentucky River, near the town of Gest, Henry County, Kentucky, utilizing federal lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gregory S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Charles t. Raabe, E-mail address, Charles.Raabe@ferc.fed.us, or telephone (202) 219–2811.

j. *Deadline Date:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The proposed project would utilize the existing U.S. Army Corps of Engineers' Kentucky River L&D #3 and would consist of: (1) 6 new 50-foot-long, 96-inch-diameter steel penstocks; (2) a new 120-foot-long, 30-foot-wide, 30-foot-high powerhouse containing 6 generating units having a total installed capacity of 6,000-kW; (3) a new exhaust apron; (4) a new 15-mile-long, 14.7-kV transmission line; and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 37 GWh and that the cost of the studies to be performed under the terms of the permit would be $1,500,000. Project energy would be sold to utility companies, corporations, municipalities, aggregators, or similar entities.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does to authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–21619 Filed 8–19–99; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

August 16, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11802–000.

c. *Date Filed:* August 2, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Coralville Dam.

f. *Location:* On the Iowa River, near the town of Iowa City, Johnson County, Iowa, utilizing federal lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gregory S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Charles T. Raabe, E-mail address, Charles.Raabe@ferc.fed.us, or telephone (202) 219–2811.

j. *Deadline Date:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The proposed project would utilize the existing U.S. Army Corps of Engineers' Coralville Dam and would consist of: (1) 2 new 80-foot-long, 108-inch-diameter steel penstocks; (2) a new 50-foot-long, 30-foot-wide, 30-foot-high powerhouse containing 2 generating units having a total installed capacity of 1,500-kW; (3) a new exhaust apron; (4) a new 400-foot-long, 14.7-kV transmission line; and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 9.3 GWh and that the cost of the studies to be performed under the terms of the permit would be $750,000. Project energy would be sold to utility companies, corporations, municipalities, aggregators, or similar entities.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–21620 Filed 8–19–99; 8:45 am]

BILLING CODE 6717–01–M

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–6245–5]**

## Environmental Impact Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed August 09, 1999 Through August 13, 1999 Pursuant to 40 CFR 1506.9.

*EIS No. 990283,* DRAFT EIS, NPS, PA, NJ, Delaware Water Gap National Recreational Area (DWGNRA) Trail Plan, General Management Plan, Implementation, Delaware River, PA and NJ, Due: October 04, 1999, Contact: J. Robert Kirby (570) 588–2418.

*EIS No. 990284,* DRAFT EIS, BLM, NV, Red Rock Canyon National Conservation Area (RRCNCA), General Management Plan (GMP), Amendment to the Las Vegas Resource Managment Plan, Las Vegas, NV, Due: October 04, 1999, Contact: Gene Arnesen (702) 647–5068.

*EIS No. 990285,* DRAFT SUPPLEMENT, NPS, FL, Big Cypress National Preserve, General Management Plan, Implementation, New Information on

the Special Alternative for the Off-Road Vehicle Management Plan, Collier, Dade and Monroe Counties, FL, Due: November 13, 1999, Contact: Wally Hibbard (941) 695–2000.

*EIS No. 990286*, DRAFT EIS, DOE, CA, MT, UT, WY, ID, OR, WA, Transmission System Vegetation Management Program, Implementation, Managing Vegetation, Site Specific, Right-of-Way Grant, CA, ID, MT, OR, UT, WA and WY, Due: October 09, 1999, Contact: Stacey Mason (503) 230–5455.

*EIS No. 990287*, DRAFT EIS, NPS, NJ, Great Egg Harbor National Scenic and Recreation River, Comprehensive Management Plan, Implementation, Atlantic Gloucester, Camden and Cape May Counties, NJ, Due: October 04, 1999, Contact: Mary Vavra (215) 597–9175.

*EIS No. 990288*, DRAFT EIS, FTA, NY, Manhattan East Side Transit Alternatives Study, (MESA), Improved Transit Access Lower Manhattan, Lower East Side, East Midtown, Upper East Side and East Harlem, Major Investment Study, New York, NY, Due: October 08, 1999, Contact: Steven F. Faust (212) 668–2170.

*EIS No. 990289*, DRAFT EIS, FHW, HI, Kihei-Upcounty Maui Highway, Transportation Improvements, Funding and COE Section 404 Permit, County of Maui, HI, Due: October 04, 1999, Contact: Abraham Wong (808) 541–2700.

*EIS No. 990290*, DRAFT EIS, FHW, CO, Southeast Corridor Multi-Modal Project, To Improve Travel between Central and Southeast Corridors, Light Rail Transit (LRT), Colorado Metropolitan Area, Denver, CO, Due: October 04, 1999, Contact: Vincent P. Barone (303) 969–6730.

*EIS No. 990291*, FINAL EIS, NOA, FL, Spiny Dogfish (Squalus Acanthras) Fishery Management Plan, Implementation, Northwest Atlantic Ocean, Labrador to Florida, Due: September 10, 1999, Contact: Hannah Goodale (978) 281–9315.

*EIS No. 990292*, DRAFT EIS, BIA, AZ, NM, Programmatic EIS–Navajo Ten Year Forest Managment Plan Alternatives, Implementation, AZ and NM, Due: October 04, 1999, Contact: Harold d. Russell (520) 729–7228.

*EIS No. 990293*, DRAFT EIS, AFS, MT, Flathead National Forest, Swan Lake Ranger District, Meadow Smith Project, Vegetative Treatments and Other Activities to Maintain and Restore Large-Tree Old Grow Forest Characteristics, Lake and Missoula Counties, MT, Due: Octber 08, 1999, Contact: Keith Soderstrom (406) 837–7510.

Dated: August 17, 1999.

**William D. Dickerson,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 99–21719 Filed 8–19–99; 8:45 am]

BILLING CODE 6560–50–M

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## ENVIRONMENTAL PROTECTION AGENCY

**[OPPTS–51932; FRL–6098–4]**

## Certain New Chemicals; Receipt and Status Information

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from July 5, 1999, to July 30, 1999, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

**FOR FURTHER INFORMATION CONTACT:** Christine Augustyniak, Associate Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460; telephone numbers: 202–554–1404 and TDD: 202–554–0551; e-mail address: TSCA-Hotline@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

### II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

A. *Electronically*. You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''Federal Register - Environmental Documents.'' You can also go directly to the ''Federal Register'' listings at http://www.epa.gov/homepage/fedrgstr/.

B. *In person*. The Agency has established an official record for this action under docket control number OPPTS–51932. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is 202–260–7099.

C. *By phone*. If you need additional information about this action, you may also contact the person identified in the ''FOR FURTHER INFORMATION CONTACT '' section.

### III. Why is EPA taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME, and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those

chemicals. This status report, which covers the period from July 5, 1999, to July 30, 1999, consists of the PMNs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

## IV. Receipt and Status Report for PMNs

This status report identifies the PMNs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II above to access additional non-CBI information that may be available.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 144.—PREMANUFACTURE NOTICES RECEIVED FROM: 07/05/99 TO 07/30/99

| Case No. | Received Date | Projected Notice End Date | Manufacturer/Importer | Use | Chemical |
|---|---|---|---|---|---|
| P–99–0994 | 07/06/99 | 10/04/99 | Condea Servo LLC | (G) Reactive monomer | (G) Dimerdiol diacrylate |
| P–99–1009 | 07/06/99 | 10/04/99 | CBI | (G) Thermoplastic elastomer for industrial use | (G) Crosslinked polyolefin elastomer |
| P–99–1021 | 07/06/99 | 10/04/99 | CBI | (G) Emulsifier | (G) Polyamide |
| P–99–1022 | 07/06/99 | 10/04/99 | Eastman Kodak Company | (G) Chemical intermediate, destructive use | (G) Triazolo thiadiazinyl substituted acetamide |
| P–99–1023 | 07/06/99 | 10/04/99 | CBI | (G) Destructive use | (G) Calcium salts of alkyl salicylate and alkyl phenate sulfide |
| P–99–1024 | 07/06/99 | 10/04/99 | Ashland Inc. | (G) Open, dispersive-used in molding operations | (G) Unsaturated polyester |
| P–99–1025 | 07/06/99 | 10/04/99 | Eastman Kodak Company | (G) Chemical intermediate, destructive use | (G) Substituted butanoic acid, heterocyclic hydrazide |
| P–99–1026 | 07/06/99 | 10/04/99 | CBI | (G) Destructive use | (G) Calcium salts of alkyl salicylate and aklyl phenate |
| P–99–1027 | 07/08/99 | 10/06/99 | CBI | (G) Open, non-dispersive: dispersant for inorganic materials | (G) Sodium salt of methacrylic acid copolymer |
| P–99–1028 | 07/06/99 | 10/04/99 | CBI | (G) Component of coating with open use | (G) Acid functional polyester |
| P–99–1029 | 07/06/99 | 10/04/99 | CBI | (G) Component of coating with open use | (G) Acid functional polyester |
| P–99–1030 | 07/06/99 | 10/04/99 | CBI | (G) Component of coating with open use | (G) Acid functional polyester |
| P–99–1031 | 07/06/99 | 10/04/99 | CBI | (G) Component of coating with open use | (G) Acid functional polyester |
| P–99–1032 | 07/06/99 | 10/04/99 | CBI | (G) Household cleaning products | (G) Aloe |
| P–99–1033 | 07/08/99 | 10/06/99 | 3M Company | (G) Adhesive | (G) Acrylate copolymer with 2-ethylhexylacrylate |
| P–99–1034 | 07/12/99 | 10/10/99 | CBI | (S) Resin for printing ink | (G) Hydrocarbon modified rosin resin |
| P–99–1035 | 07/06/99 | 10/04/99 | Tcusa Inc. | (S) Raw material for organic synthesis; flotation aid for mineral processing | (S) Carbonodithioic acid 0-(2 methyl propyl) ester potassium salt* |
| P–99–1036 | 07/09/99 | 10/07/99 | CBI | (G) Component of adhesives, inks, and clear varnishes | (G) Epoxy acrylate |
| P–99–1037 | 07/09/99 | 10/07/99 | CBI | (G) Destructive | (G) Alkylphenol mannich |
| P–99–1038 | 07/09/99 | 10/07/99 | CBI | (G) Additive for coatings | (G) Acrylate ester |
| P–99–1039 | 07/09/99 | 10/07/99 | CBI | (G) Additive for coatings and inks formulations | (G) Silicone bifunctional acrylate |
| P–99–1040 | 07/08/99 | 10/06/99 | Eastman Kodak Company | (G) Chemical intermediate, destructive use | (G) Triazolo thiadiazinyl substituted acetamide |
| P–99–1041 | 07/08/99 | 10/06/99 | Eastman Kodak Company | (G) Contained use in imaging products | (G) Pyrazolotriazolyl substituted acetamide |
| P–99–1042 | 07/12/99 | 10/10/99 | Callaway Chemical Company | (S) Defoaming agent in paper; emulsifier | (G) Alkoxylated dimer fatty acid, tall oil fatty acid ester |
| P–99–1043 | 07/12/99 | 10/10/99 | Ciba Specialty Chemicals Corp. | (S) Light stabilizer for polyolefins | (G) Triazine derivative |
| P–99–1044 | 07/09/99 | 10/07/99 | CBI | (G) Open, non-dispersive (resin) | (G) Urethane bisoxazolidine |
| P–99–1045 | 07/09/99 | 10/07/99 | Finetex, Inc. | (S) Textile fiber lubricant with high thermal stability; dispersant for titanium dioxide, zinc oxide, pigments, etc; plasticizer for selected polymer systems requiring high thermal stability | (S) Castor oil, benzoate* |

I. 144 Premanufacture Notices Received From: 07/05/99 to 07/30/99—Continued

| Case No. | Received Date | Projected Notice End Date | Manufacturer/Importer | Use | Chemical |
|---|---|---|---|---|---|
| P–99–1046 | 07/09/99 | 10/07/99 | Finetex, Inc. | (S) Textile fiber lubricant with high thermal stability; dispersant for titanium dioxide, zinc oxide, pigments etc.; plasticizer for select polymer systems requiring high thermal stability | (S) Octadecanoic acid, 12-(benzoyloxy)-, 2-ethylhexyl ester (9ci)* |
| P–99–1047 | 07/12/99 | 10/10/99 | CBI | (G) Industrial catalyst | (G) Chlorinated phosphine |
| P–99–1048 | 07/13/99 | 10/11/99 | CBI | (G) Uv curable polyurethane acrylate resin for coating | (G) Polycarbonate polyol |
| P–99–1049 | 07/14/99 | 10/12/99 | CBI | (G) Chemical intermediate | (G) Alkyl amine |
| P–99–1050 | 07/14/99 | 10/12/99 | Dystar L. P. | (S) Dyestuff for the coloration of cellulose | (G) 1,7-naphthalenedisulfonic acid, 2-[[substituted-1,3,5-triazin-2-yl]amino]-5-hydroxy-6-substituted-, salt |
| P–99–1051 | 07/14/99 | 10/12/99 | CBI | (G) Open, non dispersive (resin) | (G) Blocked polyurethane dispersion |
| P–99–1052 | 07/13/99 | 10/11/99 | Eastman Chemical Company | (S) Rheology modifier for water-borne coatings (additive); rheology modifier for solvent-borne coatings; pigment dispersant for coatings | (S) Cellulose, acetate butanoate, carboxymethyl ether* |
| P–99–1053 | 07/14/99 | 10/12/99 | CBI | (G) Resin coating | (G) Polyester methacrylate |
| P–99–1054 | 07/15/99 | 10/13/99 | CBI | (G) Colorant | (G) Polyoxyalkylene, alkylene succinate polyester |
| P–99–1055 | 07/15/99 | 10/13/99 | CBI | (G) Colorant | (G) Polyoxyalkylene, alkylene succinate polyester |
| P–99–1056 | 07/15/99 | 10/13/99 | CBI | (G) Colorant | (G) Polyoxyalkylene, alkylene succinate polyester |
| P–99–1057 | 07/15/99 | 10/13/99 | CBI | (G) Colorant | (G) Polyoxyalkylene, alkylene succinate polyester |
| P–99–1058 | 07/15/99 | 10/13/99 | CBI | (G) Colorant | (G) Polyoxyalkylene, alkylene succinate polyester |
| P–99–1059 | 07/15/99 | 10/13/99 | CBI | (G) Colorant | (G) Polyoxyalkylene, alkylene succinate polyester |
| P–99–1060 | 07/15/99 | 10/13/99 | CBI | (G) Intermediate | (G) Polyoxyalkylene ether |
| P–99–1061 | 07/13/99 | 10/11/99 | Eastman Chemical Company | (S) Chemical intermediate for herbicide | (S) Ethanone, 1-cyclopropyl* |
| P–99–1062 | 07/16/99 | 10/14/99 | Autoliv ASP | (G) Open destructive use as a gas generant for automotive inflator | (G) Metal ethylene diammine nitrate complex |
| P–99–1063 | 07/16/99 | 10/14/99 | CBI | (G) Polymer additives and coatings | (G) Aliphatic acrylic urethane oligomer |
| P–99–1064 | 07/16/99 | 10/14/99 | Eastman Chemical Company | (S) Film former for coating applications | (S) Cellulose, acetate hydrogen (2*z*)-2-butenedioate propanoate* |
| P–99–1065 | 07/16/99 | 10/14/99 | CBI | (G) Structural material | (G) Organic silicon polymer |
| P–99–1066 | 07/16/99 | 10/14/99 | CBI | (G) Structural material | (G) Organic silicon polymer |
| P–99–1067 | 07/19/99 | 10/17/99 | CBI | (S) Spin-on dielectric film; spin-on passivation layer; characterization of thin films; matrix material | (G) Poly (arylene ether) |
| P–99–1068 | 07/19/99 | 10/17/99 | CBI | (G) Open, non-dispersive use | (G) Phosphated acrylic polymer |
| P–99–1069 | 07/19/99 | 10/17/99 | CBI | (G) Colorant for water-based formulations | (G) Polyalkoxylated aromatic amine tint |
| P–99–1070 | 07/19/99 | 10/17/99 | Rohm America Inc. | (G) Raw material for inks and varnishes | (G) Acrylic polymer on the basis of methyl methacrylate and *n*-butyl methacrylate |
| P–99–1071 | 07/19/99 | 10/17/99 | CBI | (G) Interior wall paint | (G) Styrenated alkyd |
| P–99–1072 | 07/19/99 | 10/17/99 | CBI | (G) Interior wall paint | (G) Styrenated alkyd |
| P–99–1073 | 07/19/99 | 10/17/99 | CBI | (G) Interior wall paint | (G) Styrenated alkyd |
| P–99–1074 | 07/19/99 | 10/17/99 | CBI | (G) Destructive use | (G) Condensation product of an alkyl phenol, an alkylamine and formaldehyde, calcium salt |
| P–99–1075 | 07/19/99 | 10/17/99 | CBI | (G) Coating agent | (G) Cyclodecane ester |
| P–99–1076 | 07/19/99 | 10/17/99 | CBI | (G) Destructive use | (G) Mixed calcuim salts of a mannich base and a longchain alkaryl calcium phenate sulfide |
| P–99–1077 | 07/19/99 | 10/17/99 | Dystar L. P. | (S) Dyestuff for the coloration of cellulose | (G) [1,1′ biphenyl]-2,2′ disulfonic acid, 4,4′-bis[[substituted[-4-[[2-(sulfooxy)ethyl]sulfonyl]phenyl]-substituted]azo]-salt |
| P–99–1078 | 07/19/99 | 10/17/99 | CBI | (G) Destructive use | (G) Condensation product of an alkyl phenol, an alkylamine and formaldehyde |

I. 144 Premanufacture Notices Received From: 07/05/99 to 07/30/99—Continued

| Case No. | Received Date | Projected Notice End Date | Manufacturer/Importer | Use | Chemical |
|---|---|---|---|---|---|
| P–99–1079 | 07/20/99 | 10/18/99 | CBI | (G) Colorant for thermoplastic resins and solvent-based inks | (G) Phenylmethyl-bis(arylazo pyrazolone) |
| P–99–1080 | 07/20/99 | 10/18/99 | CBI | (S) Raw material used in the manufacture of photoresist | (G) Naphthaquinone diazide sulfonyl ester mixture of a polynuclear polyhydroxy phenol |
| P–99–1081 | 07/20/99 | 10/18/99 | CBI | (S) An auxiliary finishing aid for leather | (G) Saturated dicarboxylic acid, polymer with polyester, polyamide and substituted carboxylic acids |
| P–99–1082 | 07/20/99 | 10/18/99 | CBI | (G) Component of coating with open use | (G) Inorganic salt |
| P–99–1083 | 07/20/99 | 10/18/99 | CBI | (G) Component of coating with open use | (G) Inorganic salt |
| P–99–1084 | 07/20/99 | 10/18/99 | CBI | (G) Component of coating with open use | (G) Inorganic salt |
| P–99–1085 | 07/20/99 | 10/18/99 | CBI | (G) Component of coating with open use | (G) Inorganic salt |
| P–99–1086 | 07/20/99 | 10/18/99 | CBI | (G) Component of coating with open use | (G) Inorganic salt |
| P–99–1087 | 07/20/99 | 10/18/99 | Lyondell Chemical Worldwide, Inc. | (S) Chemical intermediate for dispersant polymers | (G) Polyether acrylate |
| P–99–1088 | 07/20/99 | 10/18/99 | Lyondell Chemical Worldwide, Inc. | (S) Chemical intermediate for dispersant polymers | (G) Polyether acrylate |
| P–99–1089 | 07/21/99 | 10/19/99 | Lyondell Chemical Worldwide, Inc. | (G) Dispersant | (G) Polyether carboxylate |
| P–99–1090 | 07/21/99 | 10/19/99 | Lyondell Chemical Worldwide, Inc. | (G) Dispersant | (G) Polyether carboxylate |
| P–99–1091 | 07/21/99 | 10/19/99 | Lyondell Chemical Worldwide, Inc. | (G) Dispersant | (G) Polyether carboxylate |
| P–99–1092 | 07/21/99 | 10/19/99 | Lyondell Chemical Worldwide, Inc. | (G) Dispersant | (G) Polyether carboxylate |
| P–99–1093 | 07/21/99 | 10/19/99 | Lyondell Chemical Worldwide, Inc. | (G) Dispersant | (G) Polyether carboxylate |
| P–99–1094 | 07/21/99 | 10/19/99 | Lyondell Chemical Worldwide, Inc. | (G) Dispersant | (G) Polyether carboxylate |
| P–99–1095 | 07/21/99 | 10/19/99 | CBI | (G) Emulsifying agent, surface active agent, chemical substance precursor | (G) Perfluoropolyether derivative |
| P–99–1096 | 07/22/99 | 10/20/99 | Gem Urethane Corp. | (S) Finishing of leather; textile treatment; paper treatment | (G) Aqueous polyurethane dispersion |
| P–99–1097 | 07/22/99 | 10/20/99 | Bedoukian Research, Inc. | (S) Floral blends & fruits flavors (ffdca); fragrance use: (soaps, detergents, air fresheners, scented papers) | (S) Benzoic acid, 2-amino-, cyclohexyl ester* |
| P–99–1098 | 07/23/99 | 10/21/99 | Vianova Resins Incorporated | (S) Additive for industrial coatings | (G) Hydroxyfunctional acrylic copolymer with ethanol, 2-(dimethylamino)- |
| P–99–1099 | 07/23/99 | 10/21/99 | CBI | (G) Coatings appications | (G) Silicone epoxy copolymer |
| P–99–1100 | 07/23/99 | 10/21/99 | Vianova Resins Incorporated | (G) Resin for coatings | (G) *N,N*-dimethylethanolamine salt of an oilfree, saturated polyester containing urethane groups |
| P–99–1101 | 07/23/99 | 10/21/99 | CBI | (S) Pre-polymer endcapper | (G) Organo silane ester |
| P–99–1102 | 07/22/99 | 10/20/99 | Cook Composites & Polymers Co. | (S) Polymer base for metal finish topcoat | (G) Acrylic copolymer resin |
| P–99–1103 | 07/22/99 | 10/20/99 | Cook Composites & Polymers Co. | (S) Polymer base for metal finish topcoat | (G) Acrylic copolymer resin |
| P–99–1104 | 07/22/99 | 10/20/99 | Cook Composites & Polymers Co. | (S) Polymer base for metal finish topcoat | (G) Acrylic copolymer resin |
| P–99–1105 | 07/23/99 | 10/21/99 | CBI | (G) Coating binder component | (G) Blocked isocyanate polymer |
| P–99–1106 | 07/26/99 | 10/24/99 | CBI | (S) Reductive afterclear agent for polyester fiber and blends | (G) Sulfinic acid derivative |
| P–99–1107 | 07/22/99 | 10/20/99 | 3M Company | (S) Coating component for release liner | (S) 3,8,13-trioxa-4,7,9,12-tetrasilapentdecane, 4,12-diethoxy-4,7,7,9,9,12-hexamethyl-* |
| P–99–1108 | 07/22/99 | 10/20/99 | 3M Company | (S) Coating component for release liner | (G) Fluorosilicone polymer |
| P–99–1109 | 07/27/99 | 10/25/99 | Henkel Corp., Chemicals group | (G) Industrial surfactant | (S) Alcohols, $C_{12-18}$, ethers with polyethylene glycol mono-bu ether* |
| P–99–1110 | 07/27/99 | 10/25/99 | Henkel Corp., Chemicals group | (G) Industrial surfactant | (S) Alcohols, $C_{12-14}$, ethers with polyethylene glycol mono-bu ether* |

I. 144 Premanufacture Notices Received From: 07/05/99 to 07/30/99—Continued

| Case No. | Received Date | Projected Notice End Date | Manufacturer/Importer | Use | Chemical |
|---|---|---|---|---|---|
| P–99–1111 | 07/27/99 | 10/25/99 | Henkel Corp., Chemicals group | (G) Industrial surfactant | (S) Alcohols, $C_{12–14}$, ethers with polyethylene-polypropylene glycol mono-me ether* |
| P–99–1112 | 07/27/99 | 10/25/99 | Henkel Corp., Chemicals group | (G) Industrial surfactant | (S) Alcohols, $C_{8–10}$ dimers, ethers with polyethylene glycol mono-bu ether* |
| P–99–1113 | 07/27/99 | 10/25/99 | Henkel Corp., Chemicals group | (G) Industrial surfactant | (S) Poly(oxy-1,2-ethanediyl), α-butyl-omega-(octyloxy)-* |
| P–99–1114 | 07/27/99 | 10/25/99 | CBI | (G) Rheological component | (G) Polyester resin |
| P–99–1115 | 07/27/99 | 10/25/99 | CBI | (G) Rheological component | (G) Polyester resin |
| P–99–1116 | 07/27/99 | 10/25/99 | CBI | (G) Rheological component | (G) Polyester resin |
| P–99–1117 | 07/27/99 | 10/25/99 | CBI | (G) Rheological component | (G) Polyester resin |
| P–99–1118 | 07/27/99 | 10/25/99 | CBI | (G) Rheological component | (G) Polyester resin |
| P–99–1119 | 07/27/99 | 10/25/99 | CBI | (G) Rheological component | (G) Polyester resin |
| P–99–1120 | 07/27/99 | 10/25/99 | CBI | (G) Rheological component | (G) Amide resin |
| P–99–1121 | 07/27/99 | 10/25/99 | CBI | (G) Rheological component | (G) Amide resin |
| P–99–1122 | 07/27/99 | 10/25/99 | CBI | (G) Rheological component | (G) Amide resin |
| P–99–1123 | 07/27/99 | 10/25/99 | CBI | (G) Rheological component | (G) Amide resin |
| P–99–1124 | 07/27/99 | 10/25/99 | CBI | (G) Rheological component | (G) Amide resin |
| P–99–1125 | 07/27/99 | 10/25/99 | CBI | (G) Rheological component | (G) Amide resin |
| P–99–1126 | 07/27/99 | 10/25/99 | CBI | (G) Monomer | (G) Modified vegetable fatty acid |
| P–99–1127 | 07/27/99 | 10/25/99 | CBI | (G) Monomer | (G) Modified vegetable oil |
| P–99–1128 | 07/27/99 | 10/25/99 | CBI | (G) Polymeric binder | (G) Styrene-methacrylate copolymer |
| P–99–1129 | 07/27/99 | 10/25/99 | CBI | (S) Prepolymer; elastomer | (G) Alkoxylated polyol |
| P–99–1130 | 07/27/99 | 10/25/99 | CBI | (G) Destructive | (G) Alkylphenolic resin |
| P–99–1131 | 07/27/99 | 10/25/99 | Choisy-tek (USA) Ltd. | (S) Raw material surfactat for formulators | (S) Glycine, *n*-(carboxymethyl)-*n*-[3-(1-methylethoxy)propyl]-, monosodium salt* |
| P–99–1132 | 07/27/99 | 10/25/99 | Choisy-tek (USA) Ltd. | (S) Raw material surfactant for formulators | (S) *B*-alanine, *n*-(2-carboxyethyl)-*n*-[3-(hexyloxy)propyl]-, disodium salt, branched* |
| P–99–1133 | 07/27/99 | 10/25/99 | Choisy-tek (USA) Ltd. | (S) Raw material surfactant for formulators | (S) *B*-alanine, *n*-(2-carboxyethyl)-*n*-[3-(hexyloxy)propyl]-, monosodium salt, branched* |
| P–99–1134 | 07/27/99 | 10/25/99 | Choisy-tek (USA) Ltd. | (S) Raw material surfactant for formulators | (S) Glycine, *n*-(carboxymethyl)-*n*-[3-(dimethylamino)propyl]-, monosodium salt* |
| P–99–1135 | 07/27/99 | 10/25/99 | Choisy-tek (USA) Ltd. | (S) Raw material surfactant for formulators | (S) *B*-alanine, *n*-(2-carboxyethyl)-*n*-[3-(dimethylamino)propyl]-, disodium salt* |
| P–99–1136 | 07/27/99 | 10/25/99 | Choisy-tek (USA) Ltd. | (S) Raw material surfactant for formulators | (S) Glycine, *n*-(carboxymethyl)-*n*-[3-[(carboxymethyl)amino]propyl]-, *n*-coco alkyl derivs., monosodium salts* |
| P–99–1137 | 07/27/99 | 10/25/99 | Choisy-tek (USA) Ltd. | (S) Raw material surfactant for formulators | (S) Glycine, *n*-(carboxymethyl)-*n*-[3-[(carboxymethyl)amino]propyl]-, *n*-coco alkyl derivs., disodium salts* |
| P–99–1138 | 07/27/99 | 10/25/99 | Choisy-tek (USA) Ltd. | (S) Raw material surfactant for formulators | (S) Glycine, *n*-(carboxymethyl)-*n*-[3-(hexyloxy)propyl]-, branched* |
| P–99–1139 | 07/27/99 | 10/25/99 | Choisy-tek (USA) Ltd. | (S) Raw material surfactant for formulators | (S) Glycine, *n*-(carboxymethyl)-*n*-[3-(octyloxy)propyl]-, monosodium salt* |
| P–99–1140 | 07/27/99 | 10/25/99 | Choisy-tek (USA) Ltd. | (S) Raw material surfactant for formulators | (S) Glycine, *n*-(carboxymethyl)-*n*-[3-(decyloxy)propyl]-, monosodium salt* |
| P–99–1141 | 07/27/99 | 10/25/99 | Choisy-tek (USA) Ltd. | (S) Raw material surfactant for formulators | (S) Glycine, *n*-(carboxymethyl)-*n*-[3-(octyloxy)propyl]-* |
| P–99–1142 | 07/27/99 | 10/25/99 | Choisy-tek (USA) Ltd. | (S) Raw material surfactant for formulators | (S) Glycine, *n*-(carboxymethyl)-*n*-[3-(decyloxy)propyl]-* |
| P–99–1143 | 07/27/99 | 10/25/99 | Choisy-tek (USA) Ltd. | (S) Raw material surfactant for formulators | (S) *B*-alanine, *n*-(2-carboxyethyl)-*n*-[3-(octyloxy)propyl]-, disodium salt* |
| P–99–1144 | 07/27/99 | 10/25/99 | Choisy-tek (USA) Ltd. | (S) Raw material surfactant for formulators | (S) *B*-alanine, *n*-(2-carboxyethyl)-4-[3-(decyloxy)propyl]-, disodium salt* |
| P–99–1145 | 07/28/99 | 10/26/99 | Eastman Kodak Company | (G) Chemical intermediate, destructive use | (G) Substituted benzenesulfinic acid salt |
| P–99–1146 | 07/28/99 | 10/26/99 | Eastman Kodak Company | (G) Chemical intermediate, destructive use | (G) Substituted benzoic acid ester |
| P–99–1147 | 07/28/99 | 10/26/99 | Eastman Kodak Company | (G) Chemical intermediate, destructive use | (G) Substituted butanoic acid |

I. 144.—PREMANUFACTURE NOTICES RECEIVED FROM: 07/05/99 TO 07/30/99—Continued

| Case No. | Received Date | Projected Notice End Date | Manufacturer/Importer | Use | Chemical |
|---|---|---|---|---|---|
| P–99–1148 | 07/28/99 | 10/26/99 | Eastman Kodak Company | (G) Chemical intermediate, destructive use | (G) Substituted alkanoyl chloride |
| P–99–1149 | 07/27/99 | 10/25/99 | CBI | (G) Destructive use | (G) Calcium long chain alkyl phenate sulfide |
| P–99–1150 | 07/29/99 | 10/27/99 | CBI | (G) Component of manufactured consumer article | (G) Cuprate (3)[3-hydroxy xo)4-[[2-(hydroxy-xo) carbomonocycle azo xn′] carbopolycycle |
| P–99–1151 | 07/29/99 | 10/27/99 | Dainippon Ink and Chemicals, Inc. | (S) Uv curable resin for uv inks | (G) Polyurethane resin |
| P–99–1152 | 07/29/99 | 10/27/99 | Eastman Chemical Company | (S) Chemical intermediate | (G) Sustituted aminophenol |
| P–99–1153 | 07/29/99 | 10/27/99 | Eastman Chemical Company | (S) Chemical intermediate | (G) Sustituted aminophenol |
| P–99–1154 | 07/29/99 | 10/27/99 | Eastman Chemical Company | (S) Chemical intermediate | (G) Sustituted hexanoic acids esters |
| P–99–1155 | 07/29/99 | 10/27/99 | CBI | (G) Industrial leather softener | (G) Fatty-sulfosuccinate |
| P–99–1156 | 07/29/99 | 10/27/99 | Eastman Chemical Company | (S) Chemical intermediate | (G) Substituted oxazolidinedione |
| P–99–1157 | 07/29/99 | 10/27/99 | Eastman Chemical Company | (G) Photographic chemical | (G) Substituted alkene anilide |
| P–99–1158 | 07/29/99 | 10/27/99 | H. B. Fuller Company | (S) Shoe adhesives; volumes provided are maximum value for each chemical | (G) Polyamide polymer |
| P–99–1159 | 07/29/99 | 10/27/99 | H. B. Fuller Company | (S) Shoe adhesives; volumes provided are maximum value for each chemical | (G) Polyamide polymer |
| P–99–1160 | 07/29/99 | 10/27/99 | H. B. Fuller Company | (S) Shoe adhesives; volumes provided are maximum value for each chemical | (G) Polyamide polymer |
| P–99–1161 | 07/29/99 | 10/27/99 | H. B. Fuller Company | (S) Shoe adhesives; volumes provided are maximum value for each chemical | (G) Polyamide polymer |
| P–99–1162 | 07/29/99 | 10/27/99 | H. B. Fuller Company | (S) Shoe adhesives; volumes provided are maximum value for each chemical | (G) Polyamide polymer |

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 39.—NOTICE OF COMMENCEMENT FROM: 07/05/99 TO 07/30/99

| Case No. | Received Date | Commencement/ Import Date | Chemical |
|---|---|---|---|
| P–92–0364 | 07/26/99 | 08/25/95 | (G) Caprolactone dipentaerythritol polyurethane |
| P–92–1246 | 07/26/99 | 02/05/93 | (S) Polymer of neopentyl glycol; diphenylmethane diisocyanate; polycaprolactone diol; polycaprolactone triol; mercapto succinic acid |
| P–93–0513 | 07/15/99 | 06/16/99 | (G) Propietary modified carboxylated styrene butadiene polymer |
| P–95–1390 | 07/09/99 | 11/09/98 | (G) 9*h*-carbazole-9-ethanol, 3-(substituted)azo- |
| P–96–0953 | 07/27/99 | 11/28/98 | (G) Alkyl phenol |
| P–96–0954 | 07/27/99 | 11/28/98 | (G) Alkyl phenol |
| P–96–0955 | 07/27/99 | 11/28/98 | (G) Alkyl phenol |
| P–96–0956 | 07/27/99 | 11/28/98 | (G) Alkyl phenol |
| P–96–0957 | 07/27/99 | 11/28/98 | (G) Alkyl phenol |
| P–96–0958 | 07/27/99 | 11/28/98 | (G) Alkyl phenol |
| P–97–0102 | 07/26/99 | 07/16/99 | (G) Salt of mixed alkyl phosphate |
| P–97–0445 | 07/29/99 | 02/19/99 | (G) Pentaerythritol ester of tall oil fractions |
| P–97–0718 | 07/09/99 | 12/18/98 | (S) 2-butanone, o,o′,o′′-(phenylsilylidyne) trioxime* |
| P–97–0839 | 07/13/99 | 07/06/99 | (G) Organic peroxide, perester |
| P–98–0046 | 07/06/99 | 06/24/99 | (G) Non-volatile emulsion acrylic polymer |
| P–98–0148 | 07/14/99 | 06/17/99 | (G) Hexanoic acid, trisubstituted methylphenyl ester |
| P–98–0193 | 07/29/99 | 02/02/99 | (G) Tall oil fractions, unsaturated hydrocarbons resins, dieneophile modified polymer with pentaerythritol and polyalkyiene oxide. |
| P–98–0625 | 07/13/99 | 06/17/99 | (G) Metal derivatized tetrasubstituted alkane compound |

II. 39 Notice of Commencement From: 07/05/99 to 07/30/99—Continued

| Case No. | Received Date | Commencement/ Import Date | Chemical |
|---|---|---|---|
| P–98–0640 | 07/15/99 | 12/23/98 | (S) Fatty acids, soya, polymers with benzoic acid, 12-hydroxyoctadecanoic acid, 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane, pentaerythritol, phthalic anhydride, polyethylene glycol mono-me ether and trimethylolpropane* |
| P–98–0754 | 07/27/99 | 12/11/98 | (S) Benzenepentanenitrile, *b*-methyl-* |
| P–99–0022 | 07/29/99 | 01/11/99 | (S) Fatty acids, tall-oil, polymers with benzoic acid, pentaerythritol, phthalic anyhdride, soybean oil and trimethylolpropane |
| P–99–0131 | 07/23/99 | 07/06/99 | (G) Benzenamine, 4,4′-[[4-(alkylimino)-3-alkyl-2,5-cyclohexandien-1-ylidene]methylene]bis[*n,n*-dialkyl-, monoacetate |
| P–99–0132 | 07/23/99 | 07/06/99 | (G) Benzenamine, *n,n*-dialkyl-4-[[4-(alkylamino)-3-alkylphenyl][4-(alkylimino)-3-alkyl-2,5-cyclohexandien-1-ylidene]alkyl]-, monoacetate |
| P–99–0182 | 07/29/99 | 06/18/99 | (G) Polyol ester |
| P–99–0246 | 07/26/99 | 04/14/99 | (G) Carboxylic acid functional polyester |
| P–99–0250 | 07/09/99 | 04/01/99 | (S) Benzene, mono-$C_{20-24}$ - alkyl derives* |
| P–99–0263 | 07/27/99 | 06/30/99 | (G) Poly (aryl ketone) modified acrylate |
| P–99–0302 | 07/21/99 | 06/28/99 | (G) Substituted phenoxy alcohol |
| P–99–0385 | 07/13/99 | 06/18/99 | (G) Fatty alkyl phosphate, alkali metal salt |
| P–99–0404 | 07/06/99 | 06/14/99 | (G) Diadduct(monomaleate/polyoxyethylene (*n*) stearic acid (monoester)/diethyl amine)bishpenol a diglycidylether- bisphenol a, copolymer, acetate, salt) |
| P–99–0450 | 07/09/99 | 07/01/99 | (G) Alkyl glucoside |
| P–99–0458 | 07/09/99 | 06/29/99 | (G) Hydrocarbon resin |
| P–99–0474 | 07/14/99 | 07/06/99 | (G) Styrene-acrylic polymer |
| P–99–0475 | 07/06/99 | 06/29/99 | (G) Substituted alkenoic ester |
| P–99–0525 | 07/27/99 | 07/01/99 | (G) Blocked isocyanate |
| P–99–0617 | 07/27/99 | 07/14/99 | (G) Substituted cyano acrylate |
| P–99–0619 | 07/09/99 | 07/01/99 | (G) Water-reducible methacryl-styrene copolymer |
| P–99–0620 | 07/09/99 | 07/01/99 | (G) Water-reducible acrylic-styrene copolymer |
| P–99–0717 | 07/26/99 | 07/22/99 | (G) Polyester modified polydimethylsiloxane, hydroxy functional |

**List of Subjects**

Environmental protection, Premanufacture notices.

Dated: August 12, 1999.

**Oscar Morales,**

*Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 99–21663 Filed 8–19–99; 8:45 am]

BILLING CODE 6560–50–F

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 17, 1999.

**A. Federal Reserve Bank of New York** (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

*1. Popular Inc., and Popular International Bank, Inc.*, both of Hato Rey, Puerto Rico, and Popular North America, Inc., Mt. Laurel, New Jersey have applied to acquire 100 percent of the voting shares of Banco Popular, National Association, Orlando, Florida.

In connection with this application, Banco Popular, National Association, Orlando, Florida; has applied to establish Popular Insurance, Inc., Culebra, Puerto Rico, as an agreement Corporation, pursuant to § 25A of the Federal Reserve Act, and a wholly owned subsidiary of Banco Popular, National Association, Orlando, Florida.

Board of Governors of the Federal Reserve System, August 16, 1999.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 99–21590 Filed 8–19–99; 8:45 am]

BILLING CODE 6210–01–F

## FEDERAL RESERVE SYSTEM

### Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless

otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 3, 1999.

**A. Federal Reserve Bank of Richmond** (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

*1. Bank of America Corporation*, Charlotte, North Carolina; to acquire up to 11.67 percent of the voting shares of 724 Solutions, Inc., Toronto, Canada, and thereby engage in the development, manufacture, and distribution of software designed to provide electronic banking, brokerage, and other services to consumers, pursuant to § 225.28(b)(14)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, August 16, 1999.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 99–21589 Filed 8–19–99; 8:45 am]

BILLING CODE 6210–01–F

## GENERAL SERVICES ADMINISTRATION

### President's Commission on the Celebration of Women in American History

**AGENCY:** General Services Administration.

**ACTION:** Meeting Notice.

**SUMMARY:** Notice is hereby given that the President's Commission on the Celebration of Women in American History will hold an open meeting from 9:00 a.m. to 12:30 p.m. on Wednesday, September 8, 1999, at the Portland Marriott-Downtown, 1401 South West Naito Parkway, Portland, OR 97201.

**PURPOSE:** To introduce the ''How to Guide'' to Women's Groups and to discuss Y2000 Women's History Month Celebrations.

**FOR FURTHER INFORMATION CONTACT:** Martha Davis (202) 501–0705, Assistant to the Associate Administrator for Communications, General Services Administration. In addition, inquiries may be sent to *martha.davis@gsa.gov*.

Dated: August 13, 1999.

**Beth Newburger,**

*Associate Administrator for Communications.*

[FR Doc. 99–21695 Filed 8–19–99; 8:45 am]

BILLING CODE 6820–34–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30DAY–21–99]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

*Proposed Project*

1. The National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP). The purpose of this request is to obtain OMB clearance to conduct the main data collection studies and the validity/reliability studies. The pilot portion of the data collection was approved in April. Upon the completion of the pilot this package will be submitted for OMB review for the remainder of the survey. The studies involve school health policies and programs in elementary, middle/junior, and senior high schools nationwide. A similar study was conducted in 1994 (OMB No. 0920–0340). SHPPS 2000 will assess the characteristics of eight components of school health programs at the elementary, middle/junior, and senior high school levels: health education, physical education and activity, health services, food service, school policy and environment, mental health and social services, faculty and staff health promotion, and family and community involvement. SHPPS 2000 data will be used to provide end-of-decade measures for 18 national health objectives for 2000 and as a baseline measure for at least 17 draft objectives for 2010. No other national source of data exists for these 2000 and draft 2010 objectives. The data also will have significant implications for policy and program development for school health programs nationwide. The total annual burden hours are 14,551.

ANNUAL BURDEN HOURS FOR SHPPS 2000 MAIN DATA COLLECTION, SPRING 2000

| Questionnaire/Activity | Respondent | Number of respondents | Burden hours per respondent | Total burden hours |
|---|---|---|---|---|
| State Health Education | State officials | 51 | 1.00 | 51.0 |
| State Physical Education and Activity | State officials | 51 | 1.00 | 51.0 |
| State Health Services | State officials | 51 | 1.00 | 51.0 |
| State Food Service | State officials | 51 | 1.00 | 51.0 |
| State Questionnaire on School Policy and Environment | State officials | 51 | 1.25 | 63.8 |
| State Mental Health and Social Services | State officials | 51 | 1.00 | 51.0 |
| State Faculty and Staff Health Promotion | State officials | 51 | 0.50 | 25.5 |
| Assist with identifying state level respondents and with recruiting districts and schools. | State officials | 51 | 1.00 | 51.0 |
| District Health Education | District officials | 1148 | 1.00 | 1148.0 |
| District Physical Education and Activity | District officials | 1148 | 1.00 | 1148.0 |
| District Health Services | District officials | 1148 | 1.00 | 1148.0 |
| District Food Service | District officials | 1148 | 1.00 | 1148.0 |
| District Questionnaire on School Policy and Environment | District officials | 1148 | 1.25 | 1435.0 |
| District Mental Health and Social Services | District officials | 1148 | 1.00 | 1148.0 |
| District Faculty and Staff Health Promotion | District officials | 1148 | 0.50 | 574.0 |

ANNUAL BURDEN HOURS FOR SHPPS 2000 MAIN DATA COLLECTION, SPRING 2000—Continued

| Questionnaire/Activity | Respondent | Number of respondents | Burden hours per respondent | Total burden hours |
|---|---|---|---|---|
| Assist with identifying district and school level respondents and with recruiting schools. | District officials | 350 | 1.00 | 350.0 |
| Assist with identifying and scheduling school level respondents | School officials | 1539 | 1.00 | 1539.0 |
| School Health Education | Health education lead teachers, principals, or designees. | 1539 | 1.00 | 1539.0 |
| School Physical Education and Activity | Physical education lead teachers, principals, or designees. | 1539 | 1.00 | 1539.0 |
| School Health Services | School nurses, principals, or designees. | 1539 | 1.00 | 1539.0 |
| School Food Service | Food service managers, principals, or designees. | 1539 | 1.00 | 1539.0 |
| School Questionnaire on School Policy and Environment | Principals or designees | 1539 | 1.50 | 2308.5 |
| School Mental Health and Social Services | Counselors, principals, or designees. | 1539 | 1.00 | 1539.0 |
| School Faculty and Staff Health Promotion | Principals or designees | 1539 | 0.50 | 769.5 |
| Health Education Classroom Teacher | Health education teachers (Average 1.5 per school). | 2309 | 0.80 | 1847.2 |
| Physical Education and Activity Classroom Teacher | Physical education teachers (Average 2 per school). | 3078 | 0.80 | 2462.4 |
| Total | | 26,493 | | 25,115.9 |

ANNUAL BURDEN HOURS FOR VALIDITY/RELIABILITY STUDY, SPRING 2000

| Questionnaire | Respondent | Number of respondents | Burden hours per respondent | Total burden hours |
|---|---|---|---|---|
| State Health Education | State officials | 32 | 0.25 | 8.0 |
| State Physical Education and Activity | State officials | 32 | 0.25 | 8.0 |
| State Health Services | State officials | 32 | 0.20 | 6.4 |
| State Food Service | State officials | 32 | 0.20 | 6.4 |
| State Questionnaire on School Policy and Environment | State officials | 32 | 0.40 | 12.8 |
| State Mental Health and Social Services | State officials | 32 | 0.25 | 8.0 |
| State Faculty and Staff Health Promotion | State officials | 32 | 0.20 | 6.4 |
| District Health Education | District officials | 82 | 0.25 | 20.5 |
| District Physical Education and Activity | District officials | 82 | 0.25 | 20.5 |
| District Health Services | District officials | 82 | 0.20 | 16.4 |
| District Food Service | District officials | 82 | 0.20 | 16.4 |
| District Questionnaire on School Policy and Environment | District officials | 82 | 0.40 | 32.8 |
| District Mental Health and Social Services | District officials | 82 | 0.25 | 20.5 |
| District Faculty and Staff Health Promotion | District officials | 82 | 0.40 | 32.8 |
| School Health Education | Health education lead teachers, principals, or designees. | 82 | 0.80 | 65.6 |
| School Physical Education and Activity | Physical education lead teachers, principals, or designees. | 82 | 0.80 | 65.6 |
| School Health Services | School nurses, principals, or designees. | 82 | 0.80 | 65.6 |
| School Food Service | Food service managers, principals, or designees. | 82 | 0.80 | 65.6 |
| School Questionnaire on School Policy and Environment | Principals or designees | 82 | 1.25 | 102.5 |
| School Mental Health and Social Services | Counselors, principals, or designees. | 82 | 0.80 | 65.6 |
| School Faculty and Staff Health | Principals or designees | 82 | 0.40 | 32.8 |
| Promotion Health Education Classroom Teacher | Health education teachers (Average 1.5 per school). | 82 | 0.80 | 65.6 |
| Physical Education and Activity Classroom Teacher | Physical education teachers (Average 2 per school). | 82 | 0.80 | 65.6 |
| Total | | 1,536 | | 810.4 |

ANNUAL BURDEN HOURS ACROSS ALL SHPPS 2000 STUDY COMPONENTS

| Study component | Number of respondents | Total burden hours |
|---|---|---|
| Main Study Data Collection, Spring 2000 | 26,493 | 13,913.0 |
| Validity/Reliability Study, Spring 2000 | 1,536 | 638.0 |
| Total | 28,029 | 14,551.0 |

**Nancy Cheal,**

*Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention.*

[FR Doc. 99–21638 Filed 8–19–99; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Board of Scientific Counselors, Agency for Toxic Substances and Disease: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Board of Scientific Counselors, Agency for Toxic Substances and Disease, Centers for Disease Control and Prevention, of the Department of Health and Human Services, has been renewed for a 2-year period extending through July 28, 2001.

For further information, contact Robert Spengler, Sc.D., Executive Secretary, Board of Scientific Counselors, Agency for Toxic Substances and Disease, 1600 Clifton Road, NE, M/S D–23, Atlanta, Georgia 30333, telephone 404/639–7080 or fax 404/639–7181.

The Director, Management and Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 16, 1999.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 99–21637 Filed 8–19–99; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Cancellation of Requirement for Certification of Used Tire Casings from Asia Prior to Entry Into the United States

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

**ACTION:** Notice of cancellation.

**SUMMARY:** This notice announces cancellation of the requirement that all used tire casings imported from Asia must be certified as dry, clean, and free of insects.

**DATES:** August 6, 1999.

**FOR FURTHER INFORMATION CONTACT:** Mr. James E. Barrow (404) 639–8107; E-mail jeb1@cdc.gov), Centers for Disease Control and Prevention, 1600 Clifton Rd., NE, National Center for Infectious Diseases, Division of Quarantine, Mail Stop E–03, Atlanta, Georgia, 30333.

**SUPPLEMENTARY INFORMATION:**

#### Background

Investigations conducted by CDC in 1986 established that Aedes albopictus and other mosquito species were being imported into the United States from Asia in used tire casings. Since these mosquitoes have the potential to transmit certain viral diseases to humans, such as dengue and other arboviruses including several that are native to the Americas, their presence was considered a potential public health threat. As of October 1, 1987, 15 states were known to be infested with Aedes albopictus. Interstate trade in used tires was believed to be a major factor in disseminating the species within the United States. Consequently, effective January 1, 1988, under the authority of section 361 of the Public Health Service Act (42 U.S.C. 264) and 42 CFR 71.32(c), CDC imposed a requirement that all used tire casings originating from Asia must be certified as being dry, clean, and disinsected. Specific measures for disinsection and certification were defined in a **Federal Register** notice dated November 20, 1987 (52 FR 44836). In order to monitor compliance with the requirements, the CDC Division of Quarantine conducted an energetic program of random inspections, which showed large-scale noncompliance, even though penalties were imposed. Despite these enforcement efforts, Aedes albopictus has spread to 28 states, the approximate geographic limits of its potential distribution in the United States. A recent CDC study concluded that further colonization within those limits is inevitable. The study, published in the Journal of the American Mosquito Control Association in March 1998 (14:83–94), found that, because of the vast size and distribution of the existing population, the number of mosquitoes that could be introduced from overseas is insignificant. Because of its exploitation of natural and artificial habitats, Aedes albopictus is extremely difficult to control and should be considered a permanently established species in the United States. In addition, although it is capable of transmitting numerous viruses, there is to date no evidence of any transmission to humans in the United States. The effect of the present requirement is therefore negligible, and the cost of the requirement, both to industry and government, can no longer be justified. A proposal to rescind the requirement for certification of used tire casings from Asia prior to entry into the United States was published on April 12, 1999 (64 FR 17671–17672), and public comments were sought for a thirty-(30) day period. While there is a large number of potential responders who are engaged in public health and mosquito abatement at the State and local level, only seven comments were received. All expressed opposition to canceling the certification requirement.

One commenter expressed a belief that the certification requirement should be continued because it has contributed to success in managing Asian mosquito populations in his location. In considering this comment, we note that there is a large interstate traffic in tires from infested sites that are not directly associated with imported shipments, as well as the potential for interstate movement in any type of conveyance or shipping container. Wherever Aedes

albopictus is present, there is potential for their movement into other areas having a climate that can support them.

Other commenters asked for continuance of the certification requirement while observing that certification efforts came too late to be effective. While Aedes albopictus was well established in many areas long before it was first detected, control efforts were rapidly initiated and energetically pursued once the presence of the species was recognized. Since these measures were not effective in slowing Aedes albopictus' establishment, it is not logical to argue for them to be continued.

Other commenters suggested that continued certification could prevent future importation of other species. We find no evidence in support of this position.

*Determination:* The requirement for certification of used tire casings from Asia prior to entry into the United States is canceled.

Dated: August 16, 1999.

**Joseph R. Carter,**

*Associate Director for Management and Operation, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 99–21636 Filed 8–19–99; 8:45 am]

BILLING CODE 4160–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Ethics Subcommittee of the Advisory Committee to the Director, Centers for Disease Control and Prevention: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following subcommittee meeting.

*Name:* Ethics Subcommittee of the Advisory Committee to the Director, CDC.

*Time and Date:* 8:30 a.m.–5:00 p.m., September 23, 1999.

*Place:* Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Building 16, Room 5126, Atlanta, Georgia 30333.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 25 people.

*Purpose:* This subcommittee will anticipate, identify, and propose solutions to strategic and broad ethical issues facing CDC.

*Matters to be Discussed:* Agenda items will include updates from the Associate Director for Science, Dixie E. Snider, M.D., M.P.H.; a discussion on recommendations for preventing transmission of Hepatitis B virus, Hepatitis C virus, and Human Immunodeficiency Virus to patients in healthcare settings; and anticipating issues involved in future decisions regarding the rotavirus vaccine.

Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:* Kathy Cahill, Executive Secretary, Advisory Committee to the Director, CDC, 1600 Clifton Road, NE, M/S D–24, Atlanta, Georgia 30333. Telephone 404/639–7060.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 12, 1999.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 99–21639 Filed 8–19–99; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Notice of Final List of Child Welfare Outcomes and Measures

**SUMMARY:** Section 203 of the Adoption and Safe Families Act (ASFA), signed into law in November 1997, requires that the Secretary of the Department of Health and Human Services (DHHS), in consultation with Governors, State legislatures, State and local public officials responsible for administering child welfare programs, and child welfare advocates, develop a set of outcome measures (including length of stay in foster care, number of foster care placements, and number of adoptions) that can be used to assess the performance of States in operating child protection and child welfare programs. In addition, the law requires that to the maximum extent possible, the outcome measures should be developed from data available from the Adoption and Foster Care Analysis and Reporting System (AFCARS). Section 203 of ASFA also directs the Secretary to prepare and submit to the Congress an Annual Report on the performance of each State on each outcome measure.

To meet these requirements, the Children's Bureau, the Federal agency charged with the task of implementing ASFA, engaged in a consultation process with State officials, advocates and other experts in the field. As a result of this process, the Children's Bureau published a preliminary list of child welfare outcomes and measures in the **Federal Register** for public comment on February 2, 1999. Comments were received from 31 State child welfare agencies including the District of Columbia, 14 representatives of national organizations, nine members of a congressional coalition, one local child and family services agency, one tribal organization, four child welfare researchers, four Federal staff and one unaffiliated individual. Based on an analysis of the comments, numerous changes were made to the preliminary list of outcomes and measures.

This notice announces the final list of child welfare outcomes and measures and the data elements that will be used to compute each State's performance on each measure. The notice also describes additional data about each State system's characteristics that will be used in the Annual Report to provide context for interpreting State performance on the outcome measures. Finally, the notice provides general information about the steps that will lead to publication of the first Annual Report to the Congress on the performance of each State on each outcome measure.

**FOR FURTHER INFORMATION CONTACT:** Marianne Rufty, Children's Bureau, 330 C Street, SW, Washington, DC 20447.

**SUPPLEMENTARY INFORMATION:** The Nation's child welfare systems are designed to protect children who have suffered maltreatment, who are at risk for maltreatment, or who are under the care and placement responsibility of the State because their families are unable to care for them. These systems also focus on securing permanent living arrangements for children who are unable to return home. The Children's Bureau is the agency within the Federal Government that is responsible for assisting State child welfare systems by promoting continuous improvement in the delivery of child welfare services.

The Adoption and Safe Families Act (ASFA) unequivocally established that our national goals for children in the child welfare system are safety, permanency, and well-being. To help achieve these goals, the ASFA requires the Department of Health and Human Services (DHHS), in consultation with States and experts in the field, to identify outcome measures to gauge State and national progress in reaching these goals, and to report on these outcomes in an annual report to the Congress.

The Children's Bureau formed a consultation group comprised of representatives from State, Tribal and county child welfare agencies; State

Governor's offices; State legislatures; family and juvenile courts; local advocacy organizations; the research community; private nonprofit child and family services agencies; and a public employee organization. Representatives of national organizations such as the American Public Human Services Association, the Child Welfare League of America, and the National Council of Juvenile and Family Court Judges also were asked to participate in the consultation process.

The Children's Bureau wishes to thank these individuals for sharing their time and expertise in the development of the preliminary set of child welfare outcomes and measures, which were published in the **Federal Register** for comment on February 2, 1999. We also would like to thank the many individuals who responded to that notice. Based on the comments received, the Children's Bureau has made a number of changes to the list of outcome measures, as detailed below.

**What Data Sources Will Be Used To Measure State Performance**

To avoid additional reporting by the States, the first Annual Report to the Congress will include outcome measures that are based on data already available through the National Child Abuse and Neglect Data System (NCANDS), and the Adoption and Foster Care Analysis and Reporting System (AFCARS). For the first Annual Report to the Congress, the Children's Bureau will use calendar year 1997 data for NCANDS, and fiscal year 1998 data for AFCARS. The specific data elements that will be used from these databases are listed below under each outcome measure. Please note that one of the consequences of focusing on outcomes that can be measured through AFCARS and NCANDS is that the outcomes to be included in the first Annual Report do not address child-well being measures and procedures for collecting data pertaining to those outcomes in the future.

In addition to displaying data on State performance on the outcome measures, the Annual Report will provide additional data about each State and its child welfare system in order to provide context for interpreting performance on the outcome measures. For the most part, these data also will be derived from the calendar year 1997 NCANDS and fiscal year 1998 AFCARS databases. Some examples include: the number of children under age 18; the number of children found to be victims of child maltreatment; the number of child fatalities due to maltreatment; the number of children entering foster care at the beginning of the reporting year, the number exiting at the end of the same year and their median length of stay in care; the number of children waiting to be adopted; and the number of children adopted. It also will include age and race/ethnicity data for children in these categories.

**Steps Leading to Publication of the Annual Report**

The Children's Bureau will mail a letter to each State Child Welfare Director that will transmit the State's own data pages for review and comment prior to their being published and submitted to the Congress. State agencies will have the opportunity to provide comments that clarify their data or identify factors that may have affected their performance on the outcome measures. Since States' comments will be included in the Annual Report to the Congress, the Children's Bureau will need to require that the comments be limited due to space restrictions. In addition, State Child Welfare Directors will be asked to return their comments to the children's bureau by a specified date. No response by the due date will indicate that the State chooses not to submit comments. The transmittal letter will provide detailed information about the procedures for reviewing and submitting comments on the data.

**Final List of Child Welfare Outcomes and Measures**

The following outcome measures will be used as the basis for the first and subsequent Annual Reports to the Congress on the performance of each State in meeting the goals and objectives of the child welfare system. The data elements that will be used to compute the measures are also listed. Additional outcomes and measures may be added in future years as reporting capacities develop. This is particularly true for outcomes addressing child safety and well-being.

*Child Welfare Outcome 1: Reduce Recurrence of Child Abuse and/or Neglect*

Measure 1.1: Of all children who were victims of substantiated or indicated child abuse and/or neglect during the reporting period, what percentage had another substantiated or indicated report within a 12-month period?

Data Elements: NCANDS, DCDC record

Element 3: Report ID

Element 4: Child ID

Element 8: Report disposition

Element 9: Report disposition date

*Child Welfare Outcome 2: Reduce the Incidence of Child Abuse and/or Neglect in Foster Care*

Measure 2.1: Of all children who were in foster care during the reporting period, what percentage was the subject of substantiated or indicated maltreatment by a foster parent or facility staff?

Data Elements: NCANDS, DCDC record
- Element 80: Perpetrator-1 Relationship
- Element 93: Perpetrator-2 Relationship
- Element 106: Perpetrator-3 Relationship

AFCARS
- Element 21: Date of latest removal
- Element 41: Current placement setting

*Child Welfare Outcome 3: Increase Permanency for Children in Foster Care*

Measure 3.1: For all children who exited the child welfare system, what percentage left either to reunification, adoption, or legal guardianship?

Measure 3.2: For children who exited the system and were identified as having a diagnosed disability, what percentage left either to reunification, adoption, or legal guardianship?

Measure 3.3: For children who exited the system and were age 12 or older at the time of their most recent entry into care, what percentage left either to reunification, adoption, or legal guardianship?

Measure 3.4: For all children who exited the system, what percentage by racial/ethnic category left either to reunification, adoption, or legal guardianship?

Measure 3.5: Of all children exiting the system to emancipation, what percentage was age 12 or younger at the time of entry into care?

Data Elements: AFCARS

Element 6: Date of birth

Element 8: Race

Element 9: Hispanic origin

Element 10: Child diagnosed with disabilities

Element 21: Date of latest removal

Element 56: Date of discharge from foster care

Element 58: Reasons for discharge

*Child Welfare Outcome 4: Reduce Time in Foster Care to Reunification Without Increasing Re-entry*

Measure 4.1: Of all children who were reunified with their parents or caretakers at the time of discharge from foster care, what percentage was reunified in the following time periods?

(1) Less than 12 months from the time of latest removal from home

(2) At least 12 months, but less than 24 months

(3) At least 24 months, but less than 36 months

(4) At least 36 months, but less than 48 months

(5) 48 or more months

Measure 4.2: Of all children who entered foster care during the reporting period, what percentage re-entered care within 12 months of a prior foster care episode?

Data Elements: AFCARS
Element 19: Total number of removals
Element 20: Date of discharge from last episode
Element 21: Date of latest removal
Element 56: Date of discharge from foster care
Element 58: Reason for discharge

*Child Welfare Outcome 5: Reduce Time in Foster Care to Adoption*

Measure 5.1: Of all children who exited care to a finalized adoption, what percentage exited care in the following time periods?

(1) Less than 12 months from the time of latest removal from home

(2) At least 12 months, but less than 24 months

(3) At least 24 months, but less than 36 months

(4) At least 36 months, but less than 48 months

(5) 48 or more months

Measure 5.2: Of all children who exited care to a finalized adoption and who were age 3 or older at the time of entry into care, what percentage exited care during the following time periods?

(1) Less than 12 months from the time of latest removal from home

(2) At least 12 months, but less than 24 months

(3) At least 24 months, but less than 36 months

(4) At least 36 months, but less than 48 months

(5) 48 or more months

Data Elements: AFCARS
Element 6: Date of birth
Element 21: Date of latest removal
Element 56: Date of discharge from foster care
Element 58: Reasons for discharge

*Child Welfare Outcome 6: Increase Placement Stability*

Measure 6.1: Of all children served who had been in care for the time periods listed below, what percentage had no more than two placement settings during that time period?

(1) Less than 12 months from the time of latest removal from home

(2) At least 12 months, but less than 24 months

(3) At least 24 months, but less than 36 months

(4) At least 36 months, but less than 48 months

(5) 48 or more months

Data Elements: AFCARS
Element 21: Date of latest removal
Element 24: Number of previous settings in episode
Element 56: Date of discharge from foster care (needed only if child exited during the year.)

*Child Welfare Outcome 7: Reduce Placements of Young Children in Group Homes or Institutions*

Measure 7.1: For all children who entered care during the reporting period and were age 12 or younger at the time of their most recent placement, what percentage was placed in a group home or an institution?

Data Elements: AFCARS
Element 6: Date of birth
Element 21: Date of latest removal
Element 23: Placement date in current setting
Element 41: Current placement setting

Dated: August 13, 1999.

**Patricia Montoya,**

*Commissioner, Administration on Children, Youth and Families.*

[FR Doc. 99–21657 Filed 8–19–99; 8:45 am]

BILLING CODE 4184–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 99N–1393]**

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; State Petitions for Exemption from Preemption

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Submit written comments on the collection of information by September 20, 1999.

**ADDRESSES:** Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

**FOR FURTHER INFORMATION CONTACT:** Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

### State Petitions for Exemption From Preemption (21 CFR 100.1(d)) (OMB Control Number 0910–0277—Extension)

Under section 403A(b) of the Federal Food, Drug and Cosmetic Act (the act) (21 U.S.C. 343–1(b)), States may petition FDA for exemption from Federal preemption of State food labeling and standard of identity requirements. Section 100.1(d) (21 CFR 100.1(d)) sets forth the information a State is required to submit in such a petition. The information required under § 100.1(d) enables FDA to determine whether the State food labeling or standard of identity requirement comports with the statutory criteria for exemption from Federal preemption.

In the **Federal Register** of June 4, 1999 (64 FR 30037), the agency requested comments on the proposed collections of information. One comment was received that was supportive of the proposal and encouraged FDA to continue this information collection request.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| 21 CFR Section | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| 100.1(d) | 1 | 1 | 1 | 40 | 40 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The reporting burden for § 100.1(d) is insignificant because petitions for exemption from preemption are seldom submitted by States requesting the agency grant an exemption from preemption by labeling requirements based upon certain sections of the act. Over the last 3 years, FDA has not received any preemption petitions. Since the enactment of section 403A(b) of the act as part of the Nutrition Labeling and Education Act of 1990, FDA has received only eight petitions for seeking exemption from preemption. Although FDA believes that the burden will be insignificant, it believes these information collection provisions should be extended to provide for the potential future need of a State or local government to petition for an exemption from preemption under the provisions of section 403A(b) of the act.

Dated: August 16, 1999.

**William K. Hubbard,**

*Senior Associate Commissioner for Policy, Planning and Legislation.*

[FR Doc. 99–21581 Filed 8–19–99; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**ADDRESSES:** Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

**Surface Coating for Hot-Melt Adhesive Films**

John I. Peterson, Tristan Gorrindo (ORS), DHHS Reference No. E–015–99/0 filed 10 May 1999.

Licensing Contact: John Fahner-Vihtelic; 301/496–7735 ext. 270; e-mail: jf36z@nih.gov.

The present application describes a method and apparatus for applying thin-film coatings to poly(ethylene/vinyl acetate, CAS24937–78–8) (EVA) hot-melt layers used in Laser Capture Microdissection (LCM). These methods result in the placement of a hard, non-adhering surface on the EVA layer. The placement of this layer overcomes the problems associated with nonspecific pickup of tissue. Analysis errors in tissue samples captured by laser melting are easily prevented, and using various brush-off or wash-off techniques the removal of undesired tissue material from EVA with thin-film coatings is easily accomplished. Additional advantages include the protection of the hard surface against ambient humidity and temperature variations that adversely affect performance. A desirable coating is one that is a water or water-ethanol solution since it does not deform the EVA surface. Three materials have been tested and are acceptable for this application.

**A Method of Preventing Tumor Metastasis**

S Rong, G Vande Woude, DL Faletto, I Tsarfaty, M Oskarsson (NCI),

Serial No. 09/248,901 filed 12 Feb 1999.

Licensing Contact: Susan S. Rucker; 301/496–7056 ext. 245; e-mail: sr156v@nih.gov

This application generally relates to signal transduction involving hepatocyte growth factor/scatter factor (HGF/SF) and its receptor the *met* proto-oncogene. *In vitro* experiments have indicated that some tumors, such as sarcomas, exhibit metastatic behavior due to inappropriate HGF/SF signaling. The application describes a method whereby this signaling can be inhibited by a substance such as an HGF/SF variant, an HGF/SF mimetic or an antibody or antibody fragment that prevents HGF/SF from binding to *met*.

Several related cases are also available for licensing: U.S. Patent 5,871,959 issued 2/16/1999 entitled ''A Method of Producing HGF/SF and Related Cell Lines'' and U.S. Patent 5,648,273 issued 7/15/1997 entitled ''Hepatic growth factor receptor is the MET proto-oncogene''.

**Expressed Sequence Tags of Genes Expressed in Drosophila Testes**

Brian Oliver, Justen Andrews, Jining Lu (NIDDK)

DHHS Reference No. E–023–99/0.

Licensing Contact: Peter Soukas, 301/496–7056 ext. 268; e-mail: ps193c@nih.gov.

This unpatented invention describes the generation of high quality Expressed Sequence Tags (ESTs) of genes expressed in Drosophila testes obtained through ongoing sequencing. Approximately sixty percent (60%) of the generated ESTs have no significant homology to existing Drosophila EST sets. Thus, this invention represents a valuable addition to the Drosophila unigene set. Additionally, approximately forty-three percent (43%) of these ESTs have no significant similarity to sequences to any other organism in public databases, representing possibly previously unidentified genes.

Approximately 3000 sequence reads have been submitted to dbEST at the present time. The ESTs were prepared from a library derived from poly-$A^+$ RNA isolated from 700 $y^*$ $w^{67c1}$ 1–5 day post-eclosion testis. cDNA was cloned in the Stratagene Uni-Zap XR vector according to the manufacturer's instructions. The primary unamplified library contained $8 \times 10^6$ plaque forming units (pfu). The library was amplified once ($1 \times 10^6$ pfu yielded $1.75 \times 10^{12}$ pfu). There are no NIH patent rights associated with this invention; it is available for commercialization through a Biological Materials License Agreement.

**Fibroblast Growth Factor Receptor Activating Gene 1 (FRAG1), Related Proteins and Methods**

MV Lorenzi (NCI), T Miki (NCI)

Serial No. 09/202,548 filed 15 Dec 98 claiming priority to PCT/US97/10660 filed 18 Jun 97 and 60/020,009 filed 18 Jun 96

Licensing Contact: Susan S. Rucker; 301/496–7056 ext. 245; e-mail: sr156v@nih.gov

These applications describe the identification, isolation and cloning of the human gene named *F*ibroblast Growth Factor *R*eceptor *A*ctivating *G*ene I (FRAG1) as well as its rat homolog. A full length clone of the human FRAG1 was deposited and the partial sequence (about 90%) is disclosed. The complete sequence of the rat homolog is disclosed.

The gene for FRAG1 encodes a protein which activates the known growth factor receptor, Fibroblast Growth Factor Receptor 2 (FGFR2).

FRAG1, when fused to FGFR2, leads to a transformed phenotype when transfected into cells and enhanced levels of phosphorylation/activation of FGFR2. The FGFR2–FRAG1 fusion protein was isolated from an osteosarcoma. Products derived from the FRAG1 cDNA, protein or antibodies which recognize the FRAG1 antigen are likely to be useful as diagnostics, therapeutics and research reagents.

This work has appeared, in part, in Lorenzi, MV, et al. ''FRAG1, a gene that potently activates fibroblast growth factor receptor by C-terminal fusion through chromosomal rearrangement'' PNAS, USA 93(17): 8956–61 (Aug. 20, 1996).

**Spontaneous Breathing Apparatus and Method**

Theodor Kolobow (NHLBI)
Serial No. 08/933,003 filed 18 Sep 1997.
Licensing Contact: Girish Barua; 301/496–7056 ext. 263; e-mail: gb18t@nih.gov

A novel assisted breathing system and method has been developed to greatly decrease/eliminate work of breathing, and is under the total control of a patient.

The system includes a minitracheostomy tube, a reverse thrust gas insufflation catheter introduced through a special minitracheostomy tube to deliver well humidified air/oxygen to near the carina, and a threshold valve to limit airway plateau pressure. Inspiration is effected through spontaneous closing of the glottic opening, while expiration follows opening of the glottis. Such breathing is under the exclusive, spontaneous control of a patient to determine respiratory rate and tidal volumes. Lung inflation is hence passive, and accounts for the greatly decreased (even zero) work of breathing. Speech, cough and swallowing remain unimpeded.

Dated: August 16, 1999.

**Jack Spiegel,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 99–21706 Filed 8–19–99; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Neurological Disorders and Stroke Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosures of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Neurological Disorders and Stroke Council.

*Date:* September 23–24, 1999.

*Open:* September 23, 1999, 8:30 AM to 3 PM.

*Agenda:* Report by the Director, NINDS; Report by the Associate Director for Extramural Research; and other administrative and program developments.

*Place:* National Institutes of Health, Building 31, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

*Closed:* September 23, 1999, 3 PM to 5 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Building 31, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

*Closed:* September 24, 1999, 8:30 AM to 12 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Building 31, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

*Contact Person:* Constance W. Atwell, Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892–9531, (301) 496–9248.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: August 13, 1999.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 99–21701 Filed 8–19–99; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel—Vancomycin Resistant S. aureus in Dialysis Patients.

*Date:* August 30, 1999.

*Time:* 9:30 am to 10:30 am.

*Agenda:* To review and evaluate grant applications.

*Place:* NIAID, NIH (Room 2148), 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610 (Telephone Conference Call).

*Contact Person:* Dianne E. Tingley, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2220, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–2550.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 13, 1999.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy, NIH.*

[FR Doc. 99–21702 Filed 8–19–99; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Dental and Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Dental Research Special Emphasis Panel 99–80, Review of R13 grant.

*Date:* August 13, 1999.

*Time:* 1:00 PM to 2:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* H. George Hausch, Chief, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 10892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: August 12, 1999.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 99–21703 Filed 8–19–99; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* August 13, 1999.

*Time:* 12:00 pm to 1:30 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Mary Sue Krause, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7848, Bethesda, MD 20892, (301) 435–6081.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* August 25, 1999.

*Time:* 10:00 am to 12:00 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Jo Pelham, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1–BCE–02.

*Date:* August 25, 1999.

*Time:* 1:00 pm to 2:00 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Michael Knecht, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 MCB–2 (02).

*Date:* August 25, 1999.

*Time:* 1:30 pm to 3:30 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Rona L. Hirschberg, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7808, Bethesda, MD 20892, (301) 435–1150.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* August 25, 1999.

*Time:* 2:00 pm to 3:00 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Daniel F. McDonald, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, (301) 435–1215.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 PBC (01).

*Date:* August 25, 1999.

*Time:* 2:00 pm to 4:00 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Zakir Bengali, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5150, MSC 7842, Bethesda, MD 20892, (301) 435–1742.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* August 25, 1999.

*Time:* 3:00 pm to 4:00 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Sherry L. Dupere, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7840, Bethesda, MD 20892, (301) 435–1021.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* August 26, 1999.

*Time:* 2:00 pm to 4:00 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Leonard Jakubczack, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5172, MSC 7844, Bethesda, MD 20892, (301) 435–1247.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* August 30, 1999.

*Time:* 1:00 pm to 2:30 pm.
*Agenda:* To review and evaluate grant applications.
*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
*Contact Person:* Anthony C. Chung, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7802, Bethesda, MD 20892, (301) 435–1213.

*Name of Committee:* Center or Scientific Review Special Emphasis Panel, MDCN–5.
*Date:* August 30, 1999.
*Time:* 1:00 pm to 4:00 pm.
*Agenda:* To review and evaluate grant applications.
*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
*Contact Person:* Syed Husain, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7850, Bethesda, MD 20892–7850, (301) 435–1224.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* August 31, 1999.
*Time:* 2:00 pm to 3:30 pm.
*Agenda:* To review and evaluate grant applications.
*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
*Contact Person:* Jo Pelham, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 13, 1999.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 99–21705 Filed 8–19–99; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Clinical Center; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Governors of the Warren Grant Magnuson Clinical Center.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* Board of Governors of the Warren Grant Magnuson Clinical Center.
*Date:* September 17, 1999.
*Time:* 9:00 am to 12:00 pm.
*Agenda:* Financial and Planning Updates, Clinical Research—Presentation, Construction Update, and In-Patient Survey Results.
*Place:* National Institutes of Health, Clinical Center Medical Board Room, 2C116, 9000 Rockville Pike, Bethesda, MD 20892.
*Contact Person:* Maureen E. Gormley, Executive Secretary, Warren Grant Magnuson Clinical Center, National Institutes of Health, Building 10, Room 2C146, Bethesda, MD 20892, 301/496–2897.

Dated: August 13, 1999.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 99–21704 Filed 8–19–99; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Establishment by the National Institutes of Health of Categorical Exclusions Under the National Environmental Policy Act

**AGENCY:** National Institutes of Health, DHHS.

**ACTION:** Notice of establishment by the NIH of categorical exclusions under the National Environmental Policy Act.

**SUMMARY:** This notice lists the categories of actions by the NIH that normally do not require the preparation of either an environmental impact statement or an environmental assessment under the National Environmental Policy Act. This list has been prepared in accordance with the Council On Environmental Quality's (CEQ) regulations and with Chapter 30 of the DHHS General Administration Manual. These exclusions apply to all NIH organizations and activities.

**DATES:** Written comments must be received on or before October 19, 1999.

**ADDRESSES:** Address all comments concerning this notice to Joseph G. Hugo, P.E., Chief, Pollution Control Section, Division of Safety, Office of Research Services, National Institutes of Health, Building 13, Room 2W64, Bethesda, Maryland 20892.

**FOR FURTHER INFORMATION CONTACT:** Joseph G. Hugo, P.E., Chief, Pollution Control Section, Division of Safety, Office of Research Services, National Institutes of Health, Building 13, Room 2W64, Bethesda, Maryland 20892; telephone 301–496–7775; FAX 301–480–8056; E-mail Address: jhg@helix.nih.gov.

**SUPPLEMENTARY INFORMATION:** The National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 4321 *et seq.*, mandates that agencies perform environmental reviews of their actions. NEPA specifically requires that agencies prepare detailed environmental statements for major Federal actions that have a significant effect on the quality of the human environment, 42 U.S.C. 4332(2)(C). CEQ's regulations implementing NEPA require that Federal agencies revise their policies, procedures, and regulations to ensure full compliance with NEPA's purposes and provisions, 40 CFR 1500.6, 1507.3. CEQ's regulations also require agencies to establish procedures governing categories of actions normally excluded from NEPA review because they do not individually or cumulatively have a significant effect on the human environment, 40 CFR 1508.4.

DHHS adopted such procedures after giving notice in the **Federal Register** (45 FR 76519). These procedures were approved by CEQ on October 2, 1980, and they have been included in DHHS General Administration Manual (GAM) Chapter 30. These procedures require DHHS agencies to evaluate their actions in order to determine the potential environmental effects of the actions. DHHS agencies can exclude from further NEPA review the categories of actions they take that normally do not have a significant effect on the quality of the human environment. Under these procedures, the categories of an agency's actions excluded from NEPA environmental review must be approved by the head of the DHHS agency and receive the concurrence of the DHHS Assistant Secretary for Management and Budget. On January 11, 1999, DHHS published notice of proposed revisions to DHHS GAM Chapter 30 (64 FR 1656).

The NIH's statutory mission is to conduct and support biomedical and behavioral research, training, the preparation and dissemination of health information, and related programs. In order to fulfill this mission, the NIH both performs research in its own facilities and supports research by other institutions through the awarding of grants and contracts.

The NIH has reviewed the types of actions taken by the agency that could have a foreseeable effect on the quality of the human environment. The NIH is providing notice of the actions taken by the agency that will normally be categorically excluded from further environmental review because individually and cumulatively they will not have a significant effect on the human environment. The categorical exclusions listed below are in addition to those listed in DHHS GAM Chapter 30. Additional, if a proposed action is

included in one of the categories but extraordinary circumstances as described in section D of this notice apply, an environmental review will be performed.

**Contents**

A. General exclusions.
B. Functional exclusions.
C. Program exclusions.
D. Extraordinary circumstances.

## A. General exclusions

Subject to a review for extraordinary circumstances, NIH will not perform an environmental review of actions excluded by regulation from NEPA review.

## B. Functional Exclusions

The following actions are normally excluded from NEPA review, subject to a review for extraordinary circumstances.

1. Routine administrative and management support, including budget and finance, planning, procurement of supplies and services, management and oversight of grants and other funding instruments, legal counsel, public affairs, program evaluation, travel, and human resources management.
2. Maintenance, including repairs necessary to ensure the operation of existing facilities, grounds maintenance, and the decontamination of laboratory or other space and equipment.
3. Acquisition of space by lease and modifications of leases, when the use of the space will comply with all applicable Federal, State, and local laws, including all environmental protection and zoning laws, and lease extensions and terminations.
4. Relocation of employees into existing Government-owned or Government-leased space.
5. Facility planning and design.
6. Construction, or construction pursuant to a lease, of 12,000 square feet or less of occupiable space.
7. Interior construction and renovation of NIH facilities.
8. The acquisition, sale, release, disposal, abandonment, closure, or transfer of real or personal property, provided that the action does not violate applicable Federal, State, or local laws, including historical preservation laws.
9. Acquisition of equipment and the repair or replacement of NIH-owned equipment.
10. Acquisition, installation, maintenance, and operation of utility and communications systems, data processing cables, and similar electronic equipment.
11. Packaging, storage, and disposal of hazardous substances, including low-level radioactive, medical, and chemical waste materials generated by intramural research activities, provided that the waste is packed, stored, and disposed of in compliance with all applicable Federal, State, and local laws.
12. The identification, collection, testing, and distribution of substances and living organisms for research purposes.
13. Research and training activities that are conducted in DHHS facilities by or under the supervision of DHHS employees, conducted under the Stevenson-Wydler Technology Innovation Act of 1980, as amended, 15 U.S.C. 3701 *et seq.*, conducted in accordance with 45 CFR part 9.
14. The issuance of revocable licenses, use permits, and easements allowing outside parties to use NIH facilities.
15. Filing for, obtaining, licensing, enforcing, and protecting intellectual property rights arising from NIH-conducted or NIH-supported research or other activities.
16. Actions taken to comply with requirements of applicable legislation or regulations (e.g., meet emissions requirements established pursuant to Clean Air Act).
17. The preparation and submission of proposals for legislation, or major recommendations or reports to Congress on proposals for legislation, that, based on reasonable judgment, will not establish or modify programs that will have a significant effect on the quality of the human environment.
18. The awarding, renewal, suspension, termination, or discontinuance of collaborative research agreements, including Cooperative Research and Development Agreements (CRADA) established under the Stevenson-Wydler Technology Innovation Act of 1980, as amended, 15 U.S.C. 3701 *et.seq.*, contracts, cooperative agreements, grants, and interagency agreements entered into by the NIH pursuant to the Economy Act, 31 U.S.C. 1535. For those contracts, cooperative agreements, grants, and interagency agreements that involve construction of more than 12,000 square feet of occupiable space, recipients of NIH funds must certify that they are in compliance with all Federal, State, and local environmental laws and must, as prescribed by NIH, perform all environmental reviews required by NEPA, including preparing environmental assessments and, if necessary, environmental impact statements, and submit these documents to the NIH for review, approval and adoption.
19. All actions undertaken in preparing for and conducting litigation.
20. The collection, processing, retention, evaluation and dissemination, including publication, of data and other information, including the acquisition and management of resources necessary to carry out those functions.
21. Proposing and adopting guidelines.
22. Traffic management measures, including the installation and operation of traffic control and safety devices and actions designed to control or reduce the number of motor vehicles coming onto the NIH Bethesda campus.
23. Actions taken to respond to public health emergencies.

## C. Program Exclusions

The DHHS procedures on environmental review of agency actions authorize the establishment of a categorical exclusion for programs within an agency that will not have a significant effect on the human environment. Actions taken by the following NIH organizations and their components are normally excluded from NEPA review, subject to a review for extraordinary circumstances. Actions taken by any successor organizations to those listed will also be categorically excluded. Actions taken by organizations of NIH not listed in this category may be included in other categories of excluded actions.

1. Center for Information Technology
2. Center for Scientific Review
3. Fogarty International Center
4. Office of Administration
5. Office of Communications
6. Office of Equal Opportunity
7. Office of Education
8. Office of Community Liaison
9. Office of Loan Repayment and Scholarship
10. Office of Human Resources Management
11. Office of Financial Management
12. Office of Technology Transfer
13. Office of Program Coordination
14. National Library of Medicine

## D. Extraordinary Circumstances

Consistent with CEQ's regulations, environmental review is required for all NIH actions involving extraordinary circumstances. Following are examples of extraordinary circumstances that may apply to specific NIH actions.

1. Greater scope of size than other actions included within a category.
2. A threatened violation of a Federal, State, or local law established for protection of the environment or for public health and safety.
3. Potential effects of the action are unique or highly uncertain.
4. Potential effect on a protected or ecologically sensitive area of land, like a wetland or floodplain.

5. Possible impact on property that is listed or eligible for listing on the National Register of Historic Places or that is otherwise of scientific, cultural, or historic importance or interest.

6. Possible impact on an endangered or threatened species.

7. Use of especially hazardous substances or processes for which adequate and accepted controls and safeguards and unknown or not available.

8. Substantial and reasonable controversy exists about the environmental effects of the action.

Dated: August 11, 1999.

**Ruth L. Kirschstein,**

*Acting Director, National Institutes of Health.*

[FR Doc. 99–21700 Filed 8–19–99; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4446–C–05]**

### Notice of Proposed Information Collection: Comment Request Welfare to Work: A Comprehensive Guide of Welfare to Work Resources and Services; Correction

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice; correction.

**SUMMARY:** On August 12, 1999, HUD published a paperwork notice requiring employers in ''eight cities'' to provide helpful information on securing and training welfare recipients as workers instead of ''six cities''. This notice corrects the error.

**FOR FURTHER INFORMATION CONTACT:** Maxine Wallace, Department of Housing and Urban Development, 451 7th St., Washington DC 20410, telephone (202) 708–2186, ext. 4385. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** Accordingly, FR Doc. 98–20800, Notice of Proposed Information Collection: Comment Request; Welfare to Work: A Comprehensive Guide of Welfare to Work Resources and Services (FR–4446–N–04), published in the **Federal Register** on August 12, 1999 (64 FR 44038), is corrected as follows:

On page 44039, first column, under the heading ''*Description of the need for the information and proposed use:*'' the sentence is revised to read as follows: Information collection is required to provide employers in six (6) cities (Baltimore, Miami, Cleveland, East Texas, Philadelphia, and San Francisco) with helpful information on securing and training welfare recipients as workers.

Dated: August 16, 1999.

**Camille E. Acevedo,**

*Assistant General Counsel for Regulations.*

[FR Doc. 99–21579 Filed 8–19–99; 8:45 am]

BILLING CODE 4210–29–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4298–N–06]**

### Notice of Proposed Information Collection: Comment Request

**AGENCY:** Office of Multifamily Housing Assistance Restructuring, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** Comments due date: October 19, 1999.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, Room 4176, Washington, DC 20410.

**FOR FURTHER INFORMATION CONTACT:** Ira G. Peppercorn, Director, Office of Multifamily Housing Assistance and Restructuring, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone (202) 708–3000 (this is not a toll free number) for copies of the proposed forms and other available information.

**SUPPLEMENTARY INFORMATION:** The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Multifamily Housing Mortgage and Housing Assistance Restructuring Program (Mark to Market) Interim Program Regulations.

*OMB Control Number, if applicable:* 2502–0533.

*Description of the need for the information and proposed use:* Permanent program to analyze and reduce rents and mortgages on multifamily properties with FHA insurance and Section 8 project-based assistance, whose Section 8 rents exceed market rents. The program reduces Section 8 rents to market and restructures debt as necessary.

*Agency form numbers, if applicable:* N/A.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The estimated number of respondents is 1595, frequency of responses is 1, and the hours of response is 420.25 hours per response.

*Status of the proposed information collection:* Ongoing for the next 3 years.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 8, 1999.

**Ira G. Peppercorn,**

*Director, Office of Multifamily Housing Assistance and Restructuring.*

[FR Doc. 99–21654 Filed 8–19–99; 8:45 am]

BILLING CODE 4210–01–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4441–N–46]**

### Submission for OMB Review: Hispanic-serving Institutions Assisting Communities Program

**AGENCY:** Office of the Assistant Secretary for Administration, HUD.

**ACTION:** Notice.

**SUMMARY:** Provides for competitive grants to Hispanic-serving colleges and universities to undertake CDBG-eligible activities to expand their role and effectiveness in helping their communities with neighborhood

revitalization, housing, and economic development.

**DATES:** Comments Due Date: September 20, 1999.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2528–0198) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 12, 1999.

**Debra Stouffer,**

*Acting Director, Investment Strategies, Policy and Management.*

### Notice of Submission of Proposed Information Collection to OMB

*Title of Proposal:* Hispanic-serving Institutions Assisting Communities Program.

*Office:* Policy Development and Research.

*OMB Approval Number:* 2528–0198.

*Description of the Need for the Information and its Proposed Use:* The data are essential to select grantees for this statutorily-created competitive program. The data are also needed to monitor grantees to ensure that they are spending their funds in accordance with program goals and statutory requirements.

*Form Number:* HUD–424, SF–424, SF–424B, SF–LLL, HUD–50070, HUD–50071, HUD–2880, and HUD–30004.

*Respondents:* Not-for-profit institutions.

*Frequency of Submission:* Semi-annually.

*Reporting Burden:*

| | Number of respondents | x | Frequency of response | x | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Information Collection | 60 | | 2 | | 49 | | 5,824 |

*Total Estimated Burden Hours:* 5,824.

*Status:* Reinstatement with change.

*Contact:* Jane Karadbil, HUD, (202) 708–1537. Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 99–21580 Filed 8–19–99; 8:45 am]

BILLING CODE 4210–01–M

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[NV–020–1220–00; Special Recreation Permit #NV–020–99–06]**

## Nevada: Closure of Certain Public Land in the Winnemucca District for the Management of Lands Located In and Around the Burning Man Event Site

**AGENCY:** Bureau of Land Management (Interior).

**ACTION:** Closure and restriction of public lands in Washoe and Pershing Counties.

**SUPPLEMENTARY INFORMATION:** Certain lands in the Winnemucca District, Pershing and Washoe Counties, Nevada would be temporarily closed or restricted to camping, vehicle use, fire use, fireworks use, firearms use and aircraft landing from 6 a.m. August 30 to 12:00 pm September 6, 1999. This closure is being made in the interest of public safety at the location of an event known as the Burning Man Festival. This event is expected to attract at least 20,000 visitors this year.

The following areas in and around the Burning Man event site are *Temporarily Closed to Discharge or Display of Firearms, Use or Possession of Fireworks*, with the exception of those fireworks that have been approved by the Burning Man or Black Rock City, LLC as part of an official art burn event:

T33N, R23E, Sec. 23; Sec. 24; Sec. 25; Sec. 26; Sec. 35; Sec. 36.
T33N, R24E, Sec. 17; Sec. 18 Sec 19; Sec. 20; Sec. 29; Sec. 30; Sec. 31; Sec. 32.
T32N, R23E, Sec. 1; Sec. 2; Sec. 11; Sec. 12.
T32N, R23E, Sec. 5; Sec. 6.

With the exception of defined camping areas designated and provided by the Burning Man Organization, the following public lands on the open playa, northwest of the Union Pacific Railroad and southeast of County Road 34, are *Temporarily Closed to Camping:*

T33N, R23E, Sec. 23; Sec. 24; Sec. 25; Sec. 26; Sec. 35; Sec. 36.
T33N, R24E, Sec. 17; Sec. 18 Sec 19; Sec. 20; Sec. 29; Sec. 30; Sec. 31; Sec. 32.
T32N, R23E, Sec. 1; Sec. 2; Sec. 11; Sec. 12.
T32N, R23E, Sec. 5; Sec. 6.

With the exception of the authorized Burning Man Airstrip at the Burning Man event site, the following public lands are *Temporarily Closed to Aircraft Landing, Taking Off, and Taxiing, Except for Authorized (by Burning Man/ Black Rock City LLC) and Emergency Aircraft:*

T34N, R25E, Sec. 25; Sec. 26; Sec. 27; Sec 28; Sec. 33; Sec. 34; Sec. 35; Sec. 36.
T33N, R23E, Sec. 23; Sec. 24; Sec. 25; Sec. 26; Sec. 35; Sec. 36.
T33N, R24E, Sec. 1; Sec. 2; Sec. 3; Sec. 4; Sec. 5; Sec. 8; Sec. 9; Sec. 10; Sec. 11; Sec.12; Sec. 14; Sec. 15; Sec. 16; Sec. 17; Sec. 18; Sec 19; Sec. 20; Sec. 21; Sec. 22; Sec. 29; Sec. 30; Sec. 31; Sec. 32.
T33N, R25E, Sec. 1; Sec. 2; Sec. 3; Sec. 4 Sec. 11; Sec. 12;.
T33½N, R24E, Sec. 25; Sec. 26; Sec. 27; Sec. 28; Sec. 33; Sec. 34; Sec. 35; Sec. 36.
T32N, R23E, Sec. 1; Sec. 2; Sec. 5; Sec. 6; Sec. 11; Sec. 12.

With the exception the authorized vehicles, emergency vehicles and ''Art Cars'' the following public lands are *Temporarily Closed to Vehicle Travel:*

T33N, R23E, Sec. 36, E½ E½.

T33N, R24E, Sec. 19, S½; Sec. 30; Sec. 31 N½.
T32N, R23E, Sec. 1, NE¼.

The lands involved are located in the Mount Diablo Meridian and located north of Gerlach, Nevada. A map showing the temporary closure area is available from the following BLM office: Winnemucca Field Office, 5100 East Winnemucca Blvd., Winnemucca, Nevada 89445, (775) 623–1500. BLM contact person is Michael Bilbo at above address and phone. Any person who fails to comply with this closure notice issued under 43 CFR, Part 8364, may be subject to the penalties provided for in 43 CFR 8360.0–7.

Dated: August 13, 1999.

**Don Tienhaara,**

*Acting Field Office Manager, Winnemucca.*

[FR Doc. 99–21676 Filed 8–19–99; 8:45 am]

BILLING CODE 4310–HC–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[OR 125–6334 06; GP 9–0293; OR 1170 and 6840]**

### Revised Closure Notice for Public Lands on the North Spit of Coos Bay

**AGENCY:** Bureau of Land Management, U.S. Department of Interior.

**ACTION:** Notice.

**SUMMARY:** Pursuant to 43 CFR 3864.1, the emergency closure of access to public lands and roads administered by the Bureau of Land Management on North Spit is being rescinded for all of the area except the following snowy plover habitat areas: the inland snowy plover habitat areas (approx. 70 acres) in T. 25 S., R. 14 W. Sections 23, 24 and 26 and the habitat areas on the ocean beach (approx. 78 acres) in T. 25 S., R. 14 W. Sections 12, 13, 23, 24 and 26 and T. 25 S., R. 13 W. Sections 6 and 7.

*Penalties:* Under 43 CFR 8360.0–7 any person who fails to comply with the provisions of this order may be subject to a fine not to exceed $1,000.00 and/or imprisonment not to exceed 12 months.

**SUPPLEMENTAL INFORMATION:** The lands reopened by this notice are open to access by foot, horse and licensed street legal vehicles only. Access to the lands that remain closed is restricted to authorized personnel only. Some personnel authorized by the Bureau of Land Management, Coos Bay District are exempt from the restrictions.

This restriction is needed for protection of western Snowy Plover nesting habitat for the duration of the nesting season.

This closure order is in accordance with provisions of the Federal Land Policy and Management Act of 1976 (Pub. L. 94–579, 90 stat. 2743, 43 U.S.C. 1701) and 43 CFR, Subpart 8364. Because of immediate potential dangers to the western Snowy Plover, a 30 day comment period is inappropriate and the closure is in effect as of the published date.

**EFFECTIVE DATE:** August 12, 1999. The closure remains in effect until September 16, 1999.

**FOR FURTHER INFORMATION CONTACT:** Alan Hoffmeister, Bureau of Land Management, Coos Bay District, 1300 Airport Lane, North Bend, Oregon 97459. Telephone: (541) 756–0100.

**Gary Johnson,**

*Umpqua Field Manager.*

[FR Doc. 99–21678 Filed 8–19–99; 8:45 am]

BILLING CODE 4310–33–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CA–360–1150–00; 9–00160-FILM]**

### Notice of Resource Advisory Council Meeting

**AGENCY:** Bureau of Land Management, Northwest California Resource Advisory Council Arcata, California.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and the Federal Land Policy and Management Act (Pub. L. 94–579), the U. S. Bureau of Land Management's Northwest California Resource Advisory Council will hold a field tour and business meeting Thursday and Friday, Sept. 23 and 24, 1999, at the Bureau of Land Management's Arcata Field Office, 1695 Heindon Rd., Arcata, CA. The meeting and tour are open to the public.

**SUPPLEMENTARY INFORMATION:** The meeting begins at 10 a.m. Thursday, Sept. 23, in the Arcata Field Office. Discussion items include a status report on recovery from the Lowden Fire, a planning status report on the Payne Ranch acquisition, a status report on a Lake Berryessa management, and reports from the managers of the Ukiah, Redding and Arcata field offices. Time will be set aside at 11 a.m. for public comments. On Friday, Sept. 24, council members will convene at 8 a.m. in the Arcata Field Office and depart for an overview tour at the northern portion of the Headwaters Forest Reserve. Members of the public are welcome on the tour, but they must provide their own transportation. The tour and meeting will conclude at about noon.

**FOR ADDITIONAL INFORMATION CONTACT:** BLM Ukiah Field Manager Richard Burns at (707) 468–4000.

**Joseph J. Fontana,**

*Public Affairs Officer.*

[FR Doc. 99–21694 Filed 8–19–99; 8:45 am]

BILLING CODE 4310–40–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WY–921–41–5700; WYW138643]**

### Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

August 12, 1999.

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW138643 for lands in Carbon County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Registration** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW138643 effective April 1, 1999, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

**Pamela J. Lewis,**

*Chief, Leasable Minerals Section.*

[FR Doc. 99–21677 Filed 8–19–99; 8:45 am]

BILLING CODE 4310–22–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NV–930–4210–05; N–57230]**

### Notice of Realty Action: Segregation Terminated, Lease for Public Airport

**AGENCY:** Bureau of Land Management.

**ACTION:** Segregation terminated, public airport lease.

**SUMMARY:** The following described public land in Las Vegas, Clark County,

Nevada was segregated on July 23, 1997 for exchange purposes under serial number N–61855. The exchange segregation on the subject lands will be terminated upon publication of this notice in the **Federal Register**. The land has been examined and found suitable for public airport lease purposes under the provisions of the Act of May 24, 1928, as amended (49 U.S.C. Appendix, 211–213). The lands have been segregated from mineral entry under the Southern Nevada Public Lands Management Act of 1998 (P.L. 105–263). Clark County proposes to use the lands for a public airport.

**Mount Diablo Meridian, Nevada**

T. 23 S., R. 61 E.,
Sec. 10, N½SE¼NE¼SE¼, N½NE¼NE¼SE¼, SE¼SE¼NE¼, S½NE¼SE¼NE¼, S½SE¼NE¼NE¼,
Sec. 11, W½NW¼, NW¼NW¼SW¼, NE¼NW¼SW¼, N½SW¼NW¼SW¼, N½SE¼NW¼SW¼.

Containing approximately 140 acres.

The land is not required for any federal purpose. The lease is consistent with applicable Federal and county land use plans and will help meet the needs of Clark County residents for air transportation. The lease, when issued, will be subject to the provisions of the Airport Lease Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe and will be subject to:

1. Easements in accordance with the Clark County Transportation Plan.

2. Those rights for road purposes which have been granted to Del Webb Corporation by serial number N–62099 under the Act of October 21, 1976 (43 U.S.C. 1761).

3. Those rights for a placer claim granted to Del Webb Conservation Corp., Brandon C. Prychodnik, Brent S. Tolman, Jason D. Tolman, Ronald L. Tolman by serial number NMC–680996 under the Act of October 21, 1976 (43 U.S.C. 1744).

4. Those rights for a placer claim granted to William R. Butler, Bonnie G. Canter, Eddie G. Lindsey, Shirley B. Lindsey, Jessica D. Miller, Jason S. Smith, Debbie White, Eileen D. Zillman by serial number NMC–705885 under the Act of October 21, 1976 (43 U.S.C. 1744).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease for classification of the lands to the Las Vegas Field Manager, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108.

**Classification Comments**

Interested parties may submit comments involving the suitability of the land for a public airport. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

**Application Comments**

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a public airport.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease until after the classification becomes effective. A public informational meeting will be held on September 9, 1999 between 4 p.m. and 8 p.m. at the Silverton Hotel, Chaparral Room; 3333 Blue Diamond Road, Las Vegas, NV.

Dated: August 16, 1999.

**Cheryl A. Ruffridge,**

*Acting Assistant Field Manager, Las Vegas, NV.*

[FR Doc. 99–21640 Filed 8–19–99; 8:45 am]

BILLING CODE 4310–HC–P

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[OR–125–08–1430–00; GP9.–0283; OR 53838]**

## Coos Bay District; Notice of Realty Action: Direct Sale of Public Land in Coos County, OR

**AGENCY:** Bureau of Land Management.

**ACTION:** Notice of realty action.

**SUMMARY:** The following land is suitable for direct sales under Section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713, at no less than the appraised fair market value. The land will not be offered for sale until at least 60 days after publication of this notice:

**Willamette Meridian, Oregon**

T. 27 S., R. 12 W.,
Sec. 13 Lot 2, containing 0.97 acres.

The above described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statute, for 270 days or until title transfer is completed or the segregation is terminated by publication in the **Federal Register,** whichever occurs first.

This land is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal agency. No significant resource values will be affected by this disposal. The sale is consistent with BLM's planning for the land involved and the public interest will be served by the sale.

Purchasers must be U.S. citizens, 18 years of age or older, a state or a state instrumentally authorized to hold property, or a corporation authorized to own real estate in the state in which the land is located.

The land is being offered in Coos County, Oregon using the direct sale procedures authorized under 43 CFR 2711.3–3. The parcel will be offered to Enos A. Ralph, who holds a lease on the subject parcel.

The terms, conditions, and reservations applicable to the sale are as follows:

1. A right-of-way for ditches and canals will be reserved to the United States under 43 U.S.C. 945.

2. Patents will be issued subject to all valid existing rights and reservations of record.

3. The mineral interests being offered for conveyance have no known mineral values and may be conveyed simultaneously, in accordance with Section 209 of the Federal Land Policy and Management Act. Acceptance of the

direct sale offer will qualify the purchaser to make application for conveyance of those mineral interests. Purchasers must submit a non refundable $50.00 filing fee for the conveyance of the mineral estate upon request by the Bureau of Land Management.

Detailed information concerning the sale, including the reservations, sale procedures and conditions, and planning and environmental documents, is available at the Coos Bay District Office, 1300 Airport Lane, North Bend, OR 97459.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, at the above address. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In absence of any objections, this realty action will become the final determination of the Department of the Interior.

**FOR FURTHER INFORMATION CONTACT:** Linda Petterson, Realty Specialist, Umpqua Field Office, at 1300 Airport Lane, North Bend, Oregon 97459, (Telephone 541 756–0100).

Dated: August 12, 1999.

**Neal Middlebrook,**

*Associate District Manager.*

[FR Doc. 99–21679 Filed 8–19–99; 8:45 am]

BILLING CODE 4710–33–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[OR–125–08–1430–00; GP9.–0284; OR 53839]**

### Coos Bay District; Notice of Realty Action: Direct Sale of Public Land in Coos County, OR

**AGENCY:** Bureau of Land Management.

**SUMMARY:** The following land is suitable for direct sales under Section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713, at no less than the appraised fair market value. The land will not be offered for sale until at least 60 days after publication of this notice:

**Willamette Meridian, Oregon**

T. 27 S., R. 11 W.,
Sec. 5 Lot 6 containing 1.82 acres.

The above described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statute, for 270 days or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

This land is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal agency. No significant resource values will be affected by this disposal. The sale is consistent with BLM's planning for the land involved and the public interest will be served by the sale.

Purchasers must be U.S. citizens, 18 years of age or older, a state or a state instrumentally authorized to Purchasers must be U.S. citizens, 18 years of age or older, a state or a state instrumentally authorized to hold property, or a corporation authorized to own real estate in the state in which the land is located.

The land is being offered in Coos County, Oregon using the direct sale procedures authorized under 43 CFR 2713.3–3. The parcel will be offered to Leslie N. Crum, who holds a homesite lease on the subject parcel.

The terms, conditions and reservations applicable to the sale are as follows;

1. A right-of-way for ditches and canals will be reserved to the United States under 43 U.S.C. 945.

2. Patents will be issued subject to all valid existing rights and reservations of record.

3. The mineral interest being offered for conveyance have no known mineral values and may be conveyed simultaneously, in accordance with Section 209 of the Federal Land Policy and Management Act. Acceptance of the direct sale offer will qualify the purchaser to make application for conveyance of those mineral interests. Purchasers must submit a non refundable $50.00 filing fee for the conveyance of the mineral estate upon request by the Bureau of Land Management.

Detailed information concerning the sale, including the reservations, sale procedures and conditions, and planning and environmental documents, is available at the Coos Bay District Office, 1300 Airport Lane, North Bend, OR 97459.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, at the above address. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In absence of any objections, this realty action will become the final determination of the Department of the Interior.

**FOR FURTHER INFORMATION CONTACT:** Linda Petterson, Realty Specialist, Umpqua Field Office, at 1300 Airport Lane, North Bend, Oregon 97459, (Telephone 541 756–0100).

Dated: August 12, 1999.

**Neal Middlebrook,**

*Associate District Manager.*

[FR Doc. 99–21680 Filed 8–19–99; 8:45 am]

BILLING CODE 4310–33–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 4, 1999, Guilford Pharmaceuticals, Inc., 6611 Tributary Street, Baltimore, Maryland 21224, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of cocaine (9014), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture methyl-3-beta-(4-trimethylstannylphenyl)-tropane-2-carboxylate as a final intermediate for the production of dopascan injection.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than October 19, 1999.

Dated: August 6, 1999.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 99–21586 Filed 8–19–99; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 17,

1999, ISP Freetown Acquisition, Corp., 238 South Main Street, Freetown, Massachusetts 02702, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of 2,5-Dimethoxyamphetamine (7396), a basic class of controlled substance listed in Schedule I.

The firm plans to manufacture bulk 2,5-Dimethoxyamphetamine for conversion into a noncontrolled substance.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistance Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than October 19, 1999.

Dated: August 5, 1999.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 99–21587 Filed 8–19–99; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Registration

By Notice dated February 5, 1999, and published in the **Federal Register** on February 26, 1999, (64 FR 9541), Medeva Pharmaceuticals CA, Inc., 3501 West Garry Avenue, Santa Ana, California 92704, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Methylphenidate (1724) | II |
| Diphenoxylate (9170) | II |

The firm plans to manufacture the listed controlled substances to make finished dosage forms for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Medeva Pharmaceuticals CA, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Medeva Pharmaceuticals CA, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: August 5, 1999.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 99–21584 Filed 8–19–99; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(I)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on April 5, 1999, Morton Grove Pharmaceuticals, Inc., 6451 W. Main Street, Morton Grove, Illinois 60053, made application to the Drug Enforcement Administration to be registered as an importer of codeine (9050), a basic class of controlled substance listed in Schedule II.

The firm plans to import the codeine to produce controlled substances in Schedule III through V.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than September 20, 1999.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: August 5, 1999.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 99–21588 Filed 8–19–99; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Importation of Controlled Substances; Notice of Registration

By Notice dated May 14, 1999, and published in the **Federal Register** on May 25, 1999 (64 FR 28214), Research Biochemicals, Limited Partnership, 1–3 Strathmore Road, Natick, Massachusetts 01760, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Cathinone (1235) | I |
| Methcathinone (1237) | I |
| Aminorex (1585) | I |
| Methaqualone (2565) | I |
| Alpha-Ethyltryptamine (7249) | I |
| Ibogaine (7260) | I |

| Drug | Schedule |
|---|---|
| Lysergic acid diethylamide (7315). | I |
| Marihuana (7360) | I |
| Tetrahydrocannabinols (7370) | I |
| Mescaline (7381) | I |
| Bufotenine (7433) | I |
| Etonitazene (9624) | I |
| Methylphenidate (1724) | II |
| Secobarbital (2315) | II |
| Glutethimide (2550) | II |
| Diprenorphine (9058) | II |
| Oxycodone (9143) | II |
| Hydromorphone (9150) | II |
| Diphenoxylate (9170) | II |
| Hydrocodone (9193) | II |
| Levomethorphan (9210) | II |
| Levorphanol (9220) | II |
| Meperidine (9230) | II |
| Metazocine (9240) | II |
| Methadone (9250) | II |
| Dextropropoxyphene, bulk (non-dosage forms) (9273). | II |
| Thebaine (9333) | II |
| Levo-alphacetylmethadol (LAAM) (9648). | II |
| Oxymorphone (9652) | II |

The firm plans to import small quantities of the listed controlled substances to manufacture laboratory reference standards and neurochemicals.

No comments or objections have been received. DEA has considered the factors in title 21, United States Code, Section 823(a) and determined that the registration of Research Biochemicals to import the listed controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Research Biochemicals on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1301.34, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: August 5, 1999.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 99–21585 Filed 8–19–99; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[DEA #179S2]**

### Controlled Substances: 1999 Aggregate Production Quota

**AGENCY:** Drug Enforcement Administration, (DEA), Justice.

**ACTION:** Final interim notice establishing a revised 1999 aggregate production quota.

**SUMMARY:** The interim notice 64 FR 29358, June 1, 1999, which revised the 1999 aggregate production quota for secobarbital, a Schedule II controlled substance in the Controlled Substances Act (CSA), is adopted without change.

**DATES:** This is effective on August 20, 1999.

**FOR FURTHER INFORMATION CONTACT:** Frank L. Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, D.C. 20537, Telephone: (202) 307–7183.

**SUPPLEMENTARY INFORMATION:** Section 306 of the CSA (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basic class of controlled substance listed in Schedules I and II each year. This responsibility has been delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelagated this function to the Deputy Administrator of the DEA pursuant to Section 0.104 of Title 28 of the Code of Federal Regulations.

On June 1, 1999, an interim notice establishing a revised 1999 aggregate production quota for secobarbital was published in the **Federal Register** (64 FR 29358). All interested persons were invited to comment on or before July 1, 1999. No comments or objections were received and the interim notice is adopted without change.

Therefore, under the authority vested in the Attorney General by Section 306 of the CSA (21 U.S.C. 826), delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator, pursuant to § 0.104 of Title 28 of the Code of Federal Regulations, the Deputy Administration hereby establishes the following revised 1999 aggregate production quota for the listed controlled substances, expressed in grams of anhydrous acid:

| Basic class | Revised 1999 quota |
|---|---|
| Secobarbital | 1,011,000 |

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The establishment of aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. The quotas are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and the establishment and maintenance of reserve stocks. While aggregate production quotas are of primarily importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Further, this action involves only one basic class of controlled substance. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

Dated: August 11, 1999.

**Donnie R. Marshall,**

*Deputy Administrator.*

[FR Doc. 99–21582 Filed 8–19–99; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[DEA #179R]**

### Controlled Substances: Proposed Revised Aggregate Production Quotas for 1999

**AGENCY:** Drug Enforcement Administration (DEA), Justice.

**ACTION:** Notice of proposed revised 1999 aggregate production quotas.

**SUMMARY:** This notice proposes revised 1999 aggregate production quotas for controlled substances in Schedule I and II of the Controlled Substances Act (CSA).

**DATES:** Comments or objections must be received on or before September 20, 1999.

**ADDRESSES:** Send comments or objections to the Deputy Administrator,

Drug Enforcement Administration, Washington, D.C. 20537, Attn.: DEA Federal Register Representative (CCR).

**FOR FURTHER INFORMATION CONTACT:** Frank L. Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, D.C. 20537, Telephone: (202) 307–7183.

**SUPPLEMENTARY INFORMATION:**

## Background

Section 306 of the CSA (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basic class of controlled substance listed in Schedule I and II. This responsibility has been delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelegated this function to the Deputy Administrator of the DEA pursuant to Section 0.104 of Title 28 of the Code of Federal Regulations.

On December 23, 1998 DEA published a notice of established initial 1999 aggregate production quotas for certain controlled substances in Schedules I and II (63 FR 71160). This notice stipulated that the Deputy Administrator of the DEA would adjust the quotas in early 1999 as provided for in Section 1303 of Title 21 of the Code of Federal Regulations.

The proposed revised 1999 aggregate production quotas represent those quantities of controlled substances in Schedules I and II that may be produced in the United States in 1999 to provide adequate supplies of each substance for: the estimated medical, scientific, research, and industrial needs of the United States; lawful export requirements; and the establishment and maintenance of reserve stocks. These quotas do not include imports of controlled substances for use in industrial processes.

The proposed revisions are based on a review of 1998 year-end inventories, 1998 disposition data submitted by quota applicants, estimates of the medical needs of the United States, and other information available to the DEA. In light of potential Y2K concerns, the DEA has included 50 percent inventories for each basic class of controlled substance manufactured for legitimate medical use. Therefore, the aggregate production quotas proposed in this notice may be significantly higher than usual.

## Proposed Aggregate Production Quotas

Under the authority vested in the Attorney General by Section 306 of the CSA of 1970 (21 U.S.C. 826), delegated to the Administrator of the DEA by § 0.100 of Title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator pursuant to Section 0.104 of Title 28 of the Code of Federal Regulations, the Deputy Administrator hereby proposes the following revised 1999 aggregate production quotas for the following controlled substances, expressed in grams of anhydrous acid or base:

| Basic class | Previously established initial 1999 quotas | Proposed revised 1999 quotas |
|---|---|---|
| **SCHEDULE I** | | |
| 2,5-Dimethoxyamphetamine | 10,501,000 | 10,501,000 |
| 2,5-Dimethoxy-4-ethylamphetamine (DOET) | 2 | 2 |
| 3-Methylfentanyl | 14 | 14 |
| 3-Methylthiofentanyl | 2 | 2 |
| 3,4-Methylenedioxyamphetamine (MDA) | 20 | 20 |
| 3,4-Methylenedioxy-N-ethylamphetamine (MDEA | 30 | 30 |
| 3,4-Methylenedioxymethamphetamine (MDMA) | 20 | 20 |
| 3,4,5-Trimethoxyamphetamine | 2 | 2 |
| 4-Bromo-2,5-Dimethoxyamphetamine (DOB) | 2 | 2 |
| 4-Bromo-2,5-Dimethoxyphenethylamine (2-CB) | 2 | 2 |
| 4-Methoxyamphetamine | 101,000 | 101,000 |
| 4-Methylaminorex | 3 | 3 |
| 4-Methyl-2,5-Dimethoxyamphetamine (DOM) | 2 | 2 |
| 5-Methoxy-3,4-Methylenedioxyamphetamine | 2 | 2 |
| Acetyl-alpha-methylfentanyl | 2 | 2 |
| Acetyldihydrocodeine | 2 | 2 |
| Acetylmethadol | 7 | 7 |
| Allylprodine | 2 | 2 |
| Alpha-acetylmethadol | 7 | 7 |
| Alpha-ethyltryptamine | 2 | 2 |
| Alphameprodine | 2 | 2 |
| Alpha-methadol | 2 | 2 |
| Alpha-methylfentanyl | 2 | 2 |
| Alpha-methylthiofentanyl | 2 | 2 |
| Alphaprodine | 2 | 2 |
| Aminorex | 7 | 8 |
| Benzylmorphine | 2 | 2 |
| Beta-acetylmethadol | 2 | 2 |
| Beta-hydroxy-3-methylfentanyl | 2 | 2 |
| Beta-hydroxyfentanyl | 2 | 2 |
| Betameprodine | 2 | 2 |
| Beta-methadol | 2 | 2 |
| Betaprodine | 2 | 2 |
| Bufotenine | 2 | 2 |
| Cathinone | 9 | 9 |
| Codeine-N-oxide | 2 | 2 |
| Diethyltryptamine | 3 | 3 |
| Difenoxin | 9,000 | 9,000 |
| Dihydromorphine | 7 | 8 |

| Basic class | Previously established initial 1999 quotas | Proposed revised 1999 quotas |
|---|---|---|
| Dimethyltryptamine | 3 | 4 |
| Heroin | 2 | 2 |
| Hydroxypethidine | 2 | 2 |
| Lysergic acid diethylamide (LSD) | 57 | 57 |
| Mescaline | 8 | 8 |
| Methaqualone | 17 | 17 |
| Methcathinone | 11 | 11 |
| Morphine-N-oxide | 2 | 2 |
| N,N-Dimethylamphetamine | 7 | 7 |
| N-Ethyl-1-Phenylcyclohexylamine (PCE) | 5 | 5 |
| N-Ethylamphetamine | 7 | 7 |
| N-Hydroxy-3,4-Methylenedioxyamphetamine | 4 | 4 |
| Noracymethadol | 2 | 2 |
| Norlevorphanol | 2 | 2 |
| Normethadone | 7 | 7 |
| Normorphine | 7 | 7 |
| Para-fluorofentanyl | 2 | 2 |
| Pholcodine | 2 | 2 |
| Propiram | 415,000 | 415,000 |
| Psilocin | 2 | 2 |
| Psilocybin | 2 | 2 |
| Tetrahydrocannabinols | 52,000 | 76,000 |
| Thiofentanyl | 2 | 2 |
| Trimeperidine | 2 | 2 |
| **SCHEDULE II** | | |
| 1-Phenylcyclohexylamine | 12 | 12 |
| 1-Piperidinocyclohexanecarbonitrile (PCC) | 12 | 12 |
| Alfentanil | 3,800 | 3,800 |
| Amobarbital | 12 | 12 |
| Amphetamine | 5,740,000 | 9,007,000 |
| Cocaine | 251,000 | 251,000 |
| Codeine (for sale) | 67,332,000 | 58,248,000 |
| Codeine (for conversion) | 22,950,000 | 45,780,000 |
| Desoxyephedrine—942,000 grams of levo-desoxyephedrine for use in a non-controlled, non-prescription product and 113,000 grams for methamphetamine | 697,000 | 1,055,000 |
| Dextropropoxyphene | 109,500,000 | 112,985,000 |
| Dihydrocodeine | 121,000 | 268,000 |
| Diphenoxylate | 846,000 | 846,000 |
| Ecgonine | 151,000 | 151,000 |
| Ethylmorphine | 13 | 13 |
| Fentanyl | 234,000 | 269,000 |
| Glutethimide | 2 | 2 |
| Hydrocodone (for sale) | 16,314,000 | 20,208,000 |
| Hydrocodone (for conversion) | 6,000,000 | 12,100,000 |
| Hydromorphone | 856,000 | 856,000 |
| Isomethadone | 12 | 12 |
| Levo-alphacetylmethadol (LAAM) | 201,000 | 201,000 |
| Levomethorphan | 2 | 2 |
| Levorphanol | 15,000 | 15,000 |
| Meperidine | 10,294,000 | 11,207,000 |
| Metazocine | 0 | 1 |
| Methadone (for sale) | 4,992,000 | 8,347,000 |
| Methadone (for conversion) | 267,000 | 267,000 |
| Methadone Intermediate | 7,223,000 | 9,503,000 |
| Methamphetamine (for conversion) | 723,000 | 1,522,000 |
| Methylphenidate | 14,442,000 | 14,957,000 |
| Morphine (for sale) | 12,445,000 | 12,445,000 |
| Morphine (for conversion) | 82,300,000 | 94,900,000 |
| Nabilone | 2 | 2 |
| Noroxymorphone (for sale) | 25,000 | 25,000 |
| Noroxymorphone (for conversion) | 2,067,000 | 2,067,000 |
| Opium | 640,000 | 640,000 |
| Oxycodone (for sale) | 15,120,000 | 18,517,000 |
| Oxycodone (for conversion) | 106,000 | 106,000 |
| Oxymorphone | 166,000 | 166,000 |
| Pentobarbital | 18,039,000 | 22,037,000 |
| Phencyclidine | 40 | 40 |
| Phenmetrazine | 2 | 2 |
| Phenylacetone | 10 | 10 |

| Basic class | Previously established initial 1999 quotas | Proposed revised 1999 quotas |
|---|---|---|
| Secobarbital | *1,011,000 | 1,155,000 |
| Sufentanil | 852 | 952 |
| Thebaine | 22,880,000 | 31,117,000 |

*The aggregate production quota for secobarbital was revised from 25 grams to 1,011,000 grams in an interim notice 64 FR 29358 (June 1, 1999).

The Deputy Administrator further proposes that aggregate production quotas for all other Schedules I and II controlled substances included in Sections 1308.11 and 1308.12 of Title 21 of the Code of Federal Regulations remain at zero.

### Comments and Y2K Issues

All interested persons are invited to submit their comments and objections in writing regarding this proposal. A person may object to or comment on the proposal relating to any of the above-mentioned substances without filing comments or objections regarding the others. If a person believes that one or more of these issues warrant a hearing, the individual should so state and summarize the reasons for this belief.

The DEA is aware of concerns regarding a potential increase in sales due to customer stockpiling for Y2K. In response to this issue, the DEA has adjusted the aggregate production quotas to include the allowable maximum of 50 percent inventory for those controlled substances manufactured for medical use. Additional Y2K concerns should be included when commenting or objecting to this proposal.

In the event that comments or objections to this proposal raise one or more issues which the Deputy Administrator finds warrant a hearing, the Deputy Administrator shall order a public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing.

The Office of Management and Budget has determined that the notices of aggregate production quotas are not subject to centralized review under Executive Order 12866. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must by considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The establishment of aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. Aggregate production quotas apply to approximately 200 DEA registered bulk and dosage form manufacturers of Schedules I and II controlled substances. The quotas are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and the establishment and maintenance of reserve stocks. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

Dated: August 11, 1999.

**Donnie R. Marshall,**

*Deputy Administrator.*

[FR Doc. 99–21583 Filed 8–19–99; 8:45 am]

BILLING CODE 4410–09–M

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## DEPARTMENT OF JUSTICE

### National Institute of Justice

**[OJP (NIJ)–1241]**

**RIN 1121–ZB75**

### Deadline Extension for the National Institute of Justice Solicitation for Forensic DNA Research and Development

**AGENCY:** Office of Justice Programs, National Institute of Justice, Justice.

**ACTION:** Notice of deadline extension.

**SUMMARY:** Announcement of the extension of the deadline for the National Institute of Justice Solicitation for Forensic DNA Research and Development.

**DATES:** The revised due date for receipt of proposals is 4 p.m. (EST), September 15, 1999. (The previous deadline was August 30, 1999 as noted in the **Federal Register** announcement at 64 FR 41138.) NIJ has extended the deadline to allow additional time for proposals to be developed.

**ADDRESSES:** National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

**FOR FURTHER INFORMATION CONTACT:** For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421–6770.

**SUPPLEMENTARY INFORMATION:**

### Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, sections 201–203, as amended, 42 U.S.C. 3721–23 (1994).

### Background

The intent of this solicitation is to stimulate all areas of research or development that can enhance or increase the capacity, capability, applicability, and/or reliability of DNA for forensic uses. Proposals that build or improve upon existing technologies, methods, or approaches as well as proposals based on new or novel technologies, methods, or approaches are encouraged to meet the goal of maximizing the value of DNA evidence to the criminal justice system.

In order to most effectively and efficiently use DNA to its maximum value for the criminal justice system, the forensic DNA community, now comprised of more than 150 public and private crime laboratories, will need faster, less costly, and fundamentally reliable technical tools and innovations that can be appropriately validated, quality-controlled, and quality-assured for forensic use. Research demonstrating the reliability of existing or future methods is also encouraged. Emphasis is placed on developing methods or technologies that address the needs of databasing for CODIS application and/or methods that can be used for the analysis of crime scene samples, which are often limited in quality and quantity.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of the Solicitation for Forensic DNA Research & Development

(refer to document no. SL000369). For World Wide Web access, connect to either NIJ at http://www.ojp.usdoj.gov/nij/funding.htm, or the Justice Information Center at http://www.ncjrs.org/fedgrant.htm#nij.

Dated: August 16, 1999.

**Jeremy Travis,**

*Director, National Institute of Justice.*

[FR Doc. 99–21631 Filed 8–19–99; 8:45 am]

BILLING CODE 4410–18–P

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## DEPARTMENT OF JUSTICE

## National Institute of Justice

**[OJP(NIJ)–1244]**

**RIN 1121–ZB78**

## Announcement of the Availability of the National Institute of Justice Solicitation to Municipalities to Become an Arrestee Drug Abuse Monitoring (ADAM) Site

**AGENCY:** Office of Justice Programs, National Institute of Justice (NIJ), Justice.

**ACTION:** Notice of solicitation.

**SUMMARY:** Announcement of the availability of the National Institute of Justice ''Solicitation to Municipalities to Become an Arrestee Drug Abuse Monitoring (ADAM) Site.''

**DATES:** Proposals must be received by close of business September 29, 1999.

**ADDRESSES:** National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

**FOR FURTHER INFORMATION CONTACT:** For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421–6770.

**SUPPLEMENTARY INFORMATION:**

### Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, sections 201–203, as amended, 42 U.S.C. 3721–23 (1994).

### Background

The National Institute of Justice (NIJ) is expanding its Arrestee Drug Abuse Monitoring (ADAM) program by enrolling 15 new sites in Fiscal Year 2000. The ADAM system consists of 35 sites with an expected total of 75 sites by FY 2001. Under this solicitation municipalities can apply to be added to the ADAM network. Eligible municipalities have been determined based on population size, or include the largest city in States with smaller populations. NIJ will select 15 new sites with an expectation that these municipalities will begin operating as ADAM sites during FY 2000, subject to the upcoming Congressional budget appropriations. Sites not selected in FY 2000 will continue to be eligible for enrollment in the subsequent year until the anticipated total of 75 ADAM sites has been reached. This solicitation is applicable only to the eligible municipalities who wish to apply for one of the 15 new ADAM sites to be added during FY 2000.

After new sites have been selected, NIJ will issue a separate solicitation for parties interested in receiving funds to manage and operate ADAM in the selected municipalities. Through this to-be-released solicitation, local data collection teams will compete against each other for the funding to manage data collection in the 15 new ADAM sites.

Eligible sites include Mobile, Mobile County, AL; Little Rock, Grant County, AK; Anaheim, Orange County, CA; Bakersfield, Kern County, CA; Fremont, Alameda County, CA; Fresno, Fresno County, CA; Oakland, Alameda County, CA; Riverside, Riverside County, CA; San Francisco, San Francisco County (S. San Fran in San Mateo Co.), CA; Santa Ana, Orange County, CA; Stockton, San Joaquin County, CA; Aurora, Arapahoe County, CO; Colorado Springs, El Paso County, CO; Bridgeport, Fairfield County, CT; Wilmington, New Castle County, DE; Jacksonville, Clay County (Jacksonville Beach in Duval Co.), FL; St Petersburg, Pinellas County, FL; Tampa, Hillsborough County, FL; Boise, Ada County, ID; Wichita, Sedgwick County, KS; Lexington-Fayette, Fayette County, KY; Louisville, Jefferson County, KY; Baton Rouge, Baton Rouge County (Parish), LA; Portland, Cumberland County (North Portland in Penobscot Co.), ME; Baltimore City, Baltimore County, MD; Boston, Suffolk County, MS; St Paul, Ramsey County (South & West St. Paul in Dakota Co.), MN; Jackson, Hinds County, MS; Kansas City, Jackson County, MO; Billings, Yellowstone County, MT; Lincoln, Lancaster County, NE; Manchester, Hillsborough County, NH; Jersey City, Hudson County, NJ; Newark, Wayne County (East Newark in Hudson Co.), NJ; Albany, Albany County, NY; Buffalo, Erie County, NY; Rochester, Monroe County, NY; Charlotte, Mecklenburg County, NC; Raleigh, Durham County, NC; Fargo, Cass County, ND; Akron, Summit County, OH; Cincinnati, Hamilton County, OH; Columbus, Franklin County, OH; Toledo, Lucas County, OH; Tulsa, Creek County, OK; Pittsburgh, Allegheny County, PA; San Juan, municipality also includes Santurce, Hato Rey, and Río Piedras; Puerto Rico ; Providence, Providence County, RI; Columbia, Richland County (West Columbia in Lexington Co.), SC; Sioux Falls, Minnehaha; Memphis, Shelby County, TN; Nashville-Davidson, Davidson County, TN; Arlington, Tarrant County, TX; Austin, Travis County, TX; Corpus Christi, Nueces County, TX; El Paso, El Paso County, TX; Fort Worth, Tarrant County, TX; Plano, Collin County, TX; Burlington, Chittenden County, VT; Norfolk, Norfolk County, VA; Virginia Beach, Virginia Beach County, VA ; Charleston, Kanawha County, WV; Madison, Dane County, WI; Milwaukee, Milwaukee County, WI; Cheyenne, Laramie County, WY;

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of ''Solicitation to Municipalities to Become an Arrestee Drug Abuse Monitoring (ADAM) Site'' (refer to document no. SL000375). For World Wide Web access, connect to either NIJ at http://www.ojp.usdoj.gov/nij/funding.htm, or the NCJRS Justice Information Center at http://www.ncjrs.org/fedgrant.htm#nij.

To learn more about the ADAM program, visit the website at http://www.adam-nij.net or contact Nora Fitzgerald at 202–305–1547 or Christine Crossland at 202–616–5166.

Dated: August 16, 1999.

**Jeremy Travis,**

*Director, National Institute of Justice.*

[FR Doc. 99–21632 Filed 8–19–99; 8:45 am]

BILLING CODE 4410–18–P

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## DEPARTMENT OF JUSTICE

## National Institute of Justice

**[OJP (NIJ)–1245]**

**RIN 1121–ZB79**

## Announcement of the Availability of the National Institute of Justice ''NIJ Science and Technology Solicitation''

**AGENCY:** Office of Justice Programs, National Institute of Justice, Justice.

**ACTION:** Notice of NIJ Science and Technology Solicitation.

**SUMMARY:** Announcement of the availability of the National Institute of Justice ''NIJ Science and Technology Solicitation.''

**DATES:** Proposals must be received by 4:00 p.m. EST on October 7, 1999.

**ADDRESSES:** National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

**FOR FURTHER INFORMATION CONTACT:** For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421–6770.

**SUPPLEMENTARY INFORMATION:**

## Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, sections 201–203, as amended, 42 U.S.C. 3721–23 (1994).

## Background

For fiscal year 2000, NIJ will accept proposals for technology-related awards under this solicitation, and several months later it will accept behavioral and social science-related awards under a separate solicitation. Therefore, it is important that you should determine whether your proposals should be reviewed by a peer review panel composed of technologists and criminal justice practitioners under this solicitation or by a peer review panel composed of social scientists and criminal justice practitioners under the social science open solicitation.

This solicitation is open to a wide variety of proposals in order to achieve a balanced portfolio of product development, implementation, and evaluation projects. This solicitation focuses on near-term (one to three years) development and implementation projects.

To assist in obtaining information that may be helpful in submitting a proposal, you are encouraged to use the resources and expertise of the NIJ National Law Enforcement and Corrections Technology Center (NLECTC) located in Rockville, Maryland; and the regional NLECTCs located in Rome, New York; Charleston, South Carolina; Denver, Colorado; El Segundo, California; and the Border Research and Technology Center (BRTC) located in San Diego, California. More information about the NLECTC system is available on the Internet at <http://www.nlectc.org>.

Keep in mind that cost considerations of resulting technology development products are a major concern. Most law enforcement and corrections agencies have limited financial resources to apply to the evaluation, development, implementation, or purchase of technology. This is especially true for State and local agencies. These and related factors all influence the timeliness and the degree to which new technologies are accepted by administrators. Please consider the questions below when determining the usefulness of your proposal. In your proposal, you should incorporate information that addresses the general themes posed by these questions; however, it is not necessary to answer explicitly each question. How important is the new technology to law enforcement and corrections officers? What will be its impact on policing or correctional organizational structure and personnel requirements? How many units will be needed? What are the hidden costs (for example, new computers may require additional data input personnel, or highly specialized and complex equipment may incur expensive maintenance costs)? What, if any, are the net savings in labor or other costs? How much training is required to use and maintain the technology? How will the courts view the technology—in terms of liability or interference with personal freedom? What constitutional or other legal issues may arise from utilization of the technology? What is the breakdown of tasks with resource expenditures for each task?

To learn more about projects currently funded by NIJ, on the Internet go to http://www.nlectc.org/techproj/ or call NIJ's Office of Science and Technology at 202–307–0645.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of ''NIJ Science and Technology Solicitation'' (refer to document no. SL000374). For World Wide Web access, connect to either NIJ at http://www.ojp.usdoj.gov/nij/funding.htm, or the NCJRS Justice Information Center at http://www.ncjrs.org/fedgrant.htm#nij.

Dated: August 16, 1999.

**Jeremy Travis,**

*Director, National Institute of Justice.*

[FR Doc. 99–21633 Filed 8–19–99; 8:45 am]

BILLING CODE 4410–18–P

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## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review; Comment Request

August 16, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills (202–219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* Employment Standards Administration.

*Title:* Representative Payee Report (CM–623); Representative Payee Report (CM–623S); Physician's/Medical Officer's Report (CM–787).

*OMB Number:* 1215–0173.

*Frequency:* On occasion.

*Affected Public:* Individuals or households; business or other for-profit; not-for-profit institutions.

*Number of Respondents:* 3,098.

| Form | Respondents | Frequency | Per response (minutes) | Burden hours |
|---|---|---|---|---|
| CM–623 | 2,275 | Annually | 90 min. | 3,413 |
| CM–623S | 600 | Annually | 10 min. | 100 |
| CM–787 | 223 | Once | 15 min. | 56 |

*Total Burden Hours:* 3,569.

*Total Annualized capital/startup costs:* $0.

*Total annual costs (operating/maintaining systems or purchasing services):* $0.

*Description:* The Representative Payee Report (CM–623) and the Representative Payee Report, Short Form (CM–623S) are used to ensure that benefits paid to a representative are being used for the beneficiary's well-being. The Physician's/Medical Officer's Report (CM–787) is used to determine the beneficiary's capability to manage monthly Black Lung benefits.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 99–21697 Filed 8–19–99; 8:45 am]

BILLING CODE 4510–22–M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review; Comment Request

August 16, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C., Chapter 35). A copy of each individual ICR, with applicable supporting documentations, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills (202) 219–5096, ext. 143), or by e-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* Employment Standards Administration.

*Title:* FECA Medical Report Forms.

*OMB Number:* 1215–0103.

*Frequency:* As needed.

*Affected Public:* Federal Government; Individuals or households; business or other for-profit.

*Number of Respondents:* 302,628.

| Forms | Respondents | Per response | Burden hours |
|---|---|---|---|
| CA–7 | 400 | 13 | 87 |
| CA–16b | 130,000 | 5 | 10,833 |
| CA–17b | 60,000 | 5 | 5,000 |
| CA–20 | 80,000 | 5 | 6,667 |
| CA–1090 | 325 | 5 | 27 |
| CA–1303 | 3,000 | 20 | 1,000 |
| CA–1305 | 10 | 20 | 3 |
| CA–1306 | 3 | 10 | .5 |
| CA–1314 | 125 | 20 | 42 |
| CA–1316 | 15 | 10 | 2.5 |
| CA–1331 | 250 | 5 | 21 |
| CA–1332 | 500 | 30 | 250 |
| CA–1336 | 1,000 | 5 | 83 |
| OWCP–5a | 7,000 | 15 | 1,750 |
| OWCP–5b | 5,000 | 15 | 1,250 |
| OWCP–5c | 15,000 | 15 | 3,750 |

*Total annualized capital/startup costs:* 0.

*Total annual costs (operating/maintaining systems or purchasing services):* $109.

*Description:* These forms are used filing claims for wage loss or permanent impairment due to a Federal employment related injury, and to obtain necessary medical documentation to determine whether a claimant is entitled to benefits under the Federal Employees Compensation Act (FECA), 5 U.S.C. 8101 *et seq.*

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 99–21698 Filed 8–19–99; 8:45 am]

BILLING CODE 4510–22–M

## DEPARTMENT OF LABOR

### Employment Standards Administration

### Wage and Hour Division

### Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276(a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW, Room S–3014, Washington, DC 20210.

### Withdrawn General Wage Determinations Decisions

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, the following General Wage Determinations:

NJ990006—See NJ990001
NJ990010—See NJ990001
NJ990011—See NJ990005
NJ990012—See NJ990005
NJ990013—See NJ990005
NJ990014—See NJ990001
NJ990015—See NJ990005
NJ990016—See NJ990005

Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented time notify bidders of the change and the finding is documented in the contract file.

### Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled '' General Wage Determinations Issued Under the Davis—Bacon and Related Acts'' modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

*Volume I*

Maine:
ME990022 (Mar. 12, 1999)
ME990037 (Mar. 12, 1999)

New Jersey:
NJ990001 (Mar. 12, 1999)
NJ990002 (Mar. 12, 1999)
NJ990003 (Mar. 12, 1999)
NJ990004 (Mar. 12, 1999)
NJ990005 (Mar. 12, 1999)
NJ990007 (Mar. 12, 1999)

New York:
NY990002 (Mar. 12, 1999)
NY990003 (Mar. 12, 1999)
NY990004 (Mar. 12, 1999)
NY990005 (Mar. 12, 1999)
NY990008 (Mar. 12, 1999)
NY990010 (Mar. 12, 1999)
NY990013 (Mar. 12, 1999)
NY990014 (Mar. 12, 1999)
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NY990045 (Mar. 12, 1999)
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NY990074 (Mar. 12, 1999)

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Pennsylvania:
PA990005 (Mar. 12, 1999)
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West Virginia:
WV990002 (Mar. 12, 1999)
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IL990009 (Mar. 12, 1999)
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IL990049 (Mar. 12, 1999)
Wisconsin:
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WI990018 (Mar. 12, 1999)
WI990032 (Mar. 12, 1999)

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MO990007 (Mar. 12, 1999)
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MO990009 (Mar. 12, 1999)
MO990010 (Mar. 12, 1999)
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MO990013 (Mar. 12, 1999)
MO990041 (Mar. 12, 1999)
MO990043 (Mar. 12, 1999)
MO990047 (Mar. 12, 1999)
MO990048 (Mar. 12, 1999)
MO990049 (Mar. 12, 1999)
MO990050 (Mar. 12, 1999)
MO990051 (Mar. 12, 1999)
MO990052 (Mar. 12, 1999)
MO990056 (Mar. 12, 1999)
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MO990058 (Mar. 12, 1999)
MO990060 (Mar. 12, 1999)
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MO990065 (Mar. 12, 1999)
MO990067 (Mar. 12, 1999)
MO990068 (Mar. 12, 1999)
MO990069 (Mar. 12, 1999)
MO990070 (Mar. 12, 1999)
MO990071 (Mar. 12, 1999)
MO990072 (Mar. 12, 1999)
Texas:
TX990007 (Mar. 12, 1999)
TX990033 (Mar. 12, 1999)
TX990034 (Mar. 12, 1999)
TX990037 (Mar. 12, 1999)
TX990060 (Mar. 12, 1999)

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CO990005 (Mar. 12, 1999)
CO990006 (Mar. 12, 1999)
CO990007 (Mar. 12, 1999)
CO990008 (Mar. 12, 1999)
CO990009 (Mar. 12, 1999)
CO990010 (Mar. 12, 1999)
CO990011 (Mar. 12, 1999)
CO990016 (Mar. 12, 1999)
CO990018 (Mar. 12, 1999)
CO990020 (Mar. 12, 1999)
CO990021 (Mar. 12, 1999)
CO990023 (Mar. 12, 1999)
CO990024 (Mar. 12, 1999)
CO990025 (Mar. 12, 1999)
Idaho:
ID990003 (Mar. 12, 1999)
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OR990017 (Mar. 12, 1999)

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CA990005 (Mar. 12, 1999)
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CA990027 (Mar. 12, 1999)
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CA990029 (Mar. 12, 1999)
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CA990040 (Mar. 12, 1999)
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Hawaii:
HI990001 (Mar. 12, 1999)
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NV990003 (Mar. 12, 1999)
NV990004 (Mar. 12, 1999)
NV990005 (Mar. 12, 1999)
NV990007 (Mar. 12, 1999)
NV990009 (Mar. 12, 1999)

## General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts.'' This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 13th day of August, 1999.

**Carl J. Poleskey,**

*Chief, Branch of Construction Wage Determinations.*

[FR Doc. 99–21403 Filed 8–19–99; 8:45 am]

BILLING CODE 4510–27–M

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## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

### Proposed Information Collection Request Submitted for Public Comment and Recommendations; Mine Operator Dust Data Cards

**ACTION:** Notice.

**SUMMARY:** The Department of labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the Mine Operator Dust Data Cards. MSHA is particularly interested in comments which:

• evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information will have practical utility;

- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

**DATES:** Submit comments on or before October 19, 1999.

**ADDRESSES:** Send comments to Theresa M. O'Malley, Program Analysis Officer, Office of Program Evaluation and Information Resources, 4015 Wilson Boulevard, Room 715, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via Internet E-mail to tomalley@msha.gov, along with an original printed copy.

Ms. O'Malley can be reached at (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

**FOR FURTHER INFORMATION CONTACT:** Theresa M. O'Malley, Program Analysis Officer, Office of Program Evaluation and Information Resources, U.S. Department of Labor, Mine Safety and Health Administration, Room 719, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Mrs. O'Malley can be reached at TOMalley@msha.gov (Internet E-mail), (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

**SUPPLEMENTARY INFORMATION:**

## I. Background

Section 202(a) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 842, and at 30 CFR Parts 70 and 71, and 90 require coal mine operators to continuously maintain an average concentration of respirable coal mine dust in the mine atmosphere during each shift to which each miner in the active workings of each mine is exposed at or below 2.0 milligrams of respirable dust per cubic meter of air on each shift to prevent overexposure by miners. Regulations promulgated under the Mine Act further require the mine operator during each bimonthly period to collect and submit dust samples to MSHA for analysis to determine compliance with the standards, along with reporting certain information to MSHA on a dust data card that accompanies the dust samples. See 30 CFR 70.209, 71.209, and 90.209.

Specific occupations/work positions, areas of the mine, and miners are designated by regulation or by the mine operator's approved ventilation. These sites are designated for sampling because there is a past history of high respirable dust levels or because a miner has already demonstrated evidence of the early stages of coal workers' pneumoconiosis.

## II. Current Actions

This request for a collection of information contains provisions whereby mine operators can continue to verify their compliance with mandatory regulations.

*Type of Review:* Revision.

*Agency:* Mine Safety and Health Administration.

*Title:* Mine Operator Dust Data Card.

*OMB Number:* 1219–0011.

*Affected Public:* Business or other for-profit.

| Cite/reference | Total respondents | Frequency | Total responses | Average time per response (hours) | Burden hours |
|---|---|---|---|---|---|
| 70/.209, 71.209, 90.209, Dust Sampling and Monitoring .... hours | 1,281 | Bi-monthly ... | 54,000 | .7135 | 38,532 |
| 70.201(c), 71.201(c), 90.201(c) MSHA monitored samples | 1,281 | On occasion | 630 | 1.0 | 630 |
| 70.202(b), 71.202(b), 90.202(b), Certification ..... | 1,281 | Annually ..... | 230 | 6.6 | 1,528 |
| 70.220(a), 71.220(a), 90.220(a), Status Change Reports ... | 1,281 | Annually ..... | 3,200 | .50 | 1,600 |
| 71,300 ..... | 1,281 | Annually ..... | 45 | 2.98 | 134 |
| 71.301(d) Posting of Plan ..... | 1,281 | Annually ..... | 6 | .24 | 11 |
| 90.300 ..... | 1,281 | Annually ..... | 6 | 2.67 | 16 |
| 90.301(d) ..... | 1,281 | Annually ..... | 6 | .50 | 3 |
| Total ..... | ..... | ..... | 58,162 | .7299 | 42,454 |

*Total Burden Cost (capital/startup):* $990,887.

*Total Burden Cost (operating/maintaining):* $2,136,598.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 16, 1999.

**Theresa M. O'Malley,**

*Program Analysis Officer.*

[FR Doc. 99–21699 Filed 8–19–99; 8:45 am]

BILLING CODE 4510–43–M

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Records Schedules; Availability and Request for Comments

**AGENCY:** National Archives and Records Administration, Office of Records Services—Washington, DC.

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public

comments on such records schedules, as required by 44 U.S.C. 3303a(a).

**DATES:** Requests for copies must be received in writing on or before October 4, 1999. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

**ADDRESSES:** To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

**FOR FURTHER INFORMATION CONTACT:** Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@arch2.nara.gov.

**SUPPLEMENTARY INFORMATION:** Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too, includes information about the records. Further information about the disposition process is available on request.

### Schedules Pending

1. Department of the Army, Agency-wide (N1–AU–98–6, 5 items, 5 temporary items). Civilian personnel records relating to placement considerations, referrals and selections, physically handicapped appointment applications, announcements of positions, and certification of eligibles. This schedule reduces the retention periods for these records, which were previously approved for disposal.

2. Department of Defense, Defense Contract Audit Agency (N1–372–99–1, 3 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing associated with outgoing correspondence signed by the Director or Deputy Director or signed at lower levels and designated as significant. Recordkeeping copies of these files are proposed for permanent retention.

3. Department of Justice, Federal Bureau of Prisons (N1–129–99–16, 3 items, 3 temporary items). Files relating to internal audits of programs, operations, and procedures. Included are correspondence, reports, memoranda, and supporting working papers. Also included are electronic copies of documents created using electronic mail and word processing.

4. Federal Emergency Management Agency, Agency-wide (N1–311–99–5, 2 items, 2 temporary items). Weekly activity reports maintained in offices other than those of the Director and Regional Directors. Also included are electronic copies of documents created using electronic mail and word processing.

5. Federal Emergency Management Agency, Office of the Inspector General (N1–311–99–6, 9 items, 7 temporary items). Files relating to investigations and audits. Included are correspondence, reports, notes, attachments, drafts, and background papers. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of significant investigative files and final audit reports are proposed for permanent retention.

6. National Imagery and Mapping Agency, Agency-wide (N1–537–98–2), 32 items, 32 temporary items). Paper and electronic records relating to the planning and administration of training programs provided by the agency. Included are records relating to such matters as curriculum development, student selection, class schedules, course evaluations, and student performance. Also included are electronic copies of documents created using electronic mail and word processing.

7. Securities and Exchange Commission, Office of International Affairs (N1–266–99–3, 3 items, 3 temporary items). Financial Issuer Notification System Files documenting notification of the Commission of trading halts or suspensions of certain stocks by both Federal and foreign regulators. Also included are electronic copies of documents created using electronic mail and word processing. This schedule also reduces the retention period for notices in electronic and paper formats issued pursuant to the Securities Act of 1933—Exemption Rule 144, which were previously approved for disposal.

Dated: August 11, 1999.

**Michael J. Kurtz,**

*Assistant Archivist for Record Services—Washington, DC.*

[FR Doc. 99–21644 Filed 8–19–99; 8:45 am]

BILLING CODE 7515–01–P

## NATIONAL SCIENCE FOUNDATION

### Earth Sciences Proposal Review Panel; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

*Name:* Earth Sciences Proposal Review Panel (1569).

*Date:* September 15–17, 1999

*Time:* 8 a.m. to 6 p.m. each day

*Place:* Room 110, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230

*Type of Meeting:* Closed.

*Contact Person:* Dr. Herman B. Zimmerman, Acting Division Director, Division of Earth Sciences, Room 785, National Science Foundation, Arlington, VA, (703) 306–1550.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate earth sciences proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 17, 1999.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 99–21708 Filed 8–19–99; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel; Notice of Meeting.

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

*Name:* Special Emphasis Panel in Physics (1208)

*Date and Time:* September 22–24, 1999 from 8 AM to 5 PM

*Place:* Laboratori Nazionali del Gran Sasso (LNGS) I–67010 Assergi (L'Aquila) Italy

*Type of Meeting:* Closed

*Contact Person:* Dr. Bradley D. Keister, Program Director for Nuclear Physics, Room 1015, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1891

*Purpose of Meeting:* To provide advice and recommendations concerning the development and construction of the Borexino Solar neutrino detector.

*Agenda:* To hear presentations and write recommendations concerning the development and construction of the Borexino Solar neutrino detector.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; information on personnel and proprietary data for present and future subcontracts. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 17, 1999.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 99–21710 Filed 8–19–99; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Advisory Panel for Physiology and Ethology; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting.

*Name:* Advisory Panel for Physiology and Ethology (1160).

*Date and Time:* October 18, 19, 20, 1999, 8:30 a.m.–5 p.m.

*Place:* NSF, Room 380, 4201 Wilson Blvd., Arlington, VA.

*Type of Meeting:* Part-Open.

*Contact Persons:* Dr. Zoe Eppley or Dr. Kim Williams, Program Directors, Ecological & Evolutionary Physiology, Division of Integrative Biology and Neuroscience, Suite 685, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1421.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Minutes:* May be obtained from the contact persons listed above.

*Agenda:*

*Open Session:* October 20th, 1999, 10 a.m. to 11 a.m.—discussion on research trends, opportunities and assessment procedures in Physiology and Ethology.

*Closed Session:* October 18th, 1999, 8:30 a.m.–5 p.m., October 19th, 1999, 8:30 a.m.–6 p.m., October 20th, 1999, 8:30 a.m. to 10 a.m. and 11 a.m. to 5 p.m. To review and evaluate the Ecological & Evolutionary Physiology proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 17, 1999.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 99–21709 Filed 8–19–99; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Polar Programs; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

*Name:* Special Emphasis Panel in Polar Programs (1209)

*Date and Time:* September 22–24, 8 am–5 pm

*Place:* National Science Foundation, 4201 Wilson Boulevard Arlington, VA 22230, Room 330

*Type of Meeting:* Closed

*Contact Person:* Dr. Scott Borg, Program Manager, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 telephone 703–306–1033

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate Antarctic Geology and Geophysics proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 522b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 17, 1999.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 99–21712 Filed 8–19–99; 8:45 am]

BILLING CODE 7555–01–M

## NORTHEAST DAIRY COMPACT COMMISSION

### Notice of Meeting

**AGENCY:** Northeast Dairy Compact Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** The Compact Commission will hold its monthly meeting to consider matters relating to administration and enforcement of the price regulation, including the reports and recommendations of the Commission's standing Committees. The Commission will also hold its deliberative meeting to consider whether to implement a supply management program.

**DATES:** The meeting is scheduled for 10:00 a.m. on Wednesday, September 1, 1999.

**ADDRESSES:** The meeting will be held at the Holiday Inn, Capitol Room, 172 North Main Street, Concord, New Hampshire (Exit 14 off I–93).

**FOR FURTHER INFORMATION CONTACT:** Kenneth M. Becker, Executive Director, Northeast Dairy Compact Commission, 34 Barre Street, Suite 2, Montpelier, VT 05602. Telephone (802) 229–1941.

**Authority:** 7 U.S.C. 7256.

Dated: August 16, 1999.

**Kenneth M. Becker,**

*Executive Director.*

[FR Doc. 99–21642 Filed 8–19–99; 8:45 am]

BILLING CODE 1650–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–41742; File No. SR–CBOE–99–35]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Crossing Index Options Orders

August 13, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 29, 1999, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its rule governing the crossing of index option orders of 500 contracts or more by brokers, to give the firm from which an order originates a participation right in trades that are proposed to be crossed in certain circumstances. The text of the proposed rule change is set forth below. Additions are italicized.

* * * * *

**Chicago Board Options Exchange, Inc.**

**Rules**

* * * * *

**Chapter VI—Doing Business on the Exchange Floor**

**Section D: Floor Brokers**

* * * * *

**''Crossing'' Orders**

RULE 6.74.

(a)–(c)[3] No change.

*(e)(i) Notwithstanding the provisions of paragraphs (a) and (b) of this Rule, when a Floor Broker holds an index option order for 500 or more contracts (''original order''), the Floor Broker is entitled to cross 20% of the order with a facilitation order of the originating firm (as defined in paragraph (d)) after requesting bids and offers for such option series, if the order is traded between the best bid and offer given by the crowd in response to the broker's initial request for a market.*

*(ii) In determining whether an order satisfies the 500 contract requirement, any multi-part or spread order must contain one leg alone which is for 500 contracts or more.*

*(iii) If the originating firm is also the Designated Primary Market-Maker (''DPM'') for the particular class of options to which the order relates, then the DPM is not entitled to the DPM guaranteed participation rate.*

*(iv) The appropriate Floor Procedure Committee may exempt a particular option class from the application of this paragraph.*

* * * Interpretations and Policies

No change.

* * * * *

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The CBOE proposes to add a new paragraph (e) to CBOE Rule 6.74, *''Crossing'' Orders,* to give a firm that is holding an index option order for a public customer the right to participate on the order through a facilitation order in certain circumstances.[4] To take advantage of the new provision, the particular index option order must be for 500 or more contracts. For a multi-part or spread order, at least one leg of the order alone must be for 500 contracts or more.

Paragraph (a) of CBOE Rule 6.74 sets forth the procedures to be followed currently by a floor broker to cross customer orders. Paragraph (b) of CBOE Rule 6.74 sets forth the procedures to be followed by a floor broker to facilitate a customer order. In both cases, market-makers in the trading crowd currently are given the opportunity to accept a floor broker's better bid or offer for orders that he intends to cross or facilitate before the floor broker can cross or facilitate the orders himself. Under current rules, therefore, if the market-makers are willing to take the entire order the floor broker will not be able to cross or facilitate any part of the order.

Generally, new paragraph (e) will provide that, in those circumstances where a floor broker has an index option order for a public customer for 500 contracts or more that he is holding to execute (''original order''), that floor broker will have priority to cross 20% of that original order against a firm proprietary order of the originating firm (*i.e.,* faciliation order), if the cross is done at a price between the best bid and offer quoted by the crowd (*i.e.,* at a price that improves the market provided by the market-makers) in response to the broker's initial request for a market. This is comparable to the 25% participation right given under certain circumstances to a firm bringing a FLEX option order to the floor pursuant to CBOE Rule 24A.5(e)(iii).

In the event that the originating firm is also the Designated Primary Market-Maker (''DPM'') for that option class and the floor broker takes advantage of the participation right provided by proposed new paragraph (e) of CBOE Rule 6.74, then the DPM shall not also be entitled to the guaranteed participation rate provided by paragraph (c)(7) of CBOE Rule 8.80 for that particular trade.

The Rule will also provide that the appropriate Floor Procedure Committee may exempt a particular option class from the application of this paragraph. The Exchange believes that the effect of this liberalization of its crossing rule will be to provide market-makers with an additional incentive to quote tighter markets in response to a request for quotes, and, at the same time, it will encourage member firms to bring their

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Paragraph (d) of Rule 6.74 was proposed to be added in SR–CBOE–99–10, which is currently pending before the Commission. *See* Securities Exchange Act Release No. 41609 (July 8, 1999), 64 FR 38494 (July 16, 1999).

[4] The Exchange has proposed to add a paragraph (d) to Rule 6.74, to provide for a participation right for crossing equity option orders, in SR–CBOE–99–10. That filing is pending before the Commission. *See* Securities Exchange Act Release No. 41609 (July 8, 1999), 64 FR 38494 (July 16, 1999). *See also* Securities Exchange Act Release No. 41610 (July 8, 1999), 64 FR 38495 (July 16, 1999) (SR–CBOR–99–07) (a proposed rule change to permit ''cross-only'' contingency orders).

order flow to the CBOE. The Rule will also provide floor brokers with an incentive to trade at a price between the quoted bid and ask. The benefits of the tighter markets will inure to the customers. In addition, by establishing a minimum participation right, the CBOE expects that the Rule will provide firms with the ability to participate on these trades in a more efficient manner than is available today.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5)[5] of the Act in that it is designed to remove impediments to a free and open market and protects investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The CBOE does not believe that the proposed rule change will impose any burden on competition.

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

No written comments were solicited or received with respect to the proposed rule change.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

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

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the Provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the CBOE. All submissions should refer to File No. SR–CBOE–99–35 and should be submitted by September 10, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99–21656 Filed 8–19–99; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–41737; File No. SR–Phlx–99–25]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. to Allow the Options Committee to Adopt Policies Affecting Location of Members in the Trading Crowd on a Crowd-by-Crowd Basis

August 12, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 21, 1999, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Phlx proposes to adopt Commentary .17 to Phlx Rule 1014, Obligations and Restrictions Applicable to Specialists and Registered Options Traders, allowing the Options Committee to adopt policies affecting the location of members in the trading crowd on a crowd-by-crowd basis in order to ensure fair and orderly markets. The text of the proposed Rule is provided below. The new language is italicized.

Obligations and Restrictions Applicable to Specialists and Registered Options Traders Rule 1014

Commentary .01–.16. No change.

*Commentary .17.*

*In the interest of fair and orderly markets, the Options Committee may adopt policies affecting the location of members in the trading crowd on a crowd-by-crowd basis.*

* * * * *

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

According to the Exchange's By-laws, the Options Committee has the authority to make or recommend the adoption of, and administer such rules as it may deem necessary for the convenient and orderly transaction of business upon the equity and index options trading floor.[3] The proposal will give the Options Committee express authority to adopt policies and implement those policies on an expedient basis to ensure convenient and orderly transaction of business upon the equity and index options trading floor. The Exchange also believes that this proposal provides the Options Committee and the trading crowd with flexibility to change member location policies in trading crowds to adapt to changing technological advances, which may call for locating members in specific areas or rethinking traditional arrangements.

The proposed rule will allow the Options Committee to adopt policies

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Phlx By-law Article 10–19.

regarding member location on a crowd-by-crowd basis, specific to the trading crowd in question. For example, the Options Committee may adopt a policy requiring floor brokers, for a specific series, to stand in the area where the AUTO–X[4] screens for that series are located. Thus, under the proposed rule, the Options Committee may tailor a policy to specific market conditions and readdress the situation, periodically updating the policy where appropriate. The Exchange will give the members of the trading crowd and the options floor one day's notice of the Options Committee's decision prior to implementation of the policy in that particular trading crowd.[5] The decision may be appealed to the Board of Governors pursuant to By-law Section 11–1.

The Exchange believes that such a rule is necessary because changes in technology and space reconfigurations will continue to affect how business is conducted and where members in the trading crowds are situated. The Exchange also believes that adopting policies concerning members' personnel and the area accessing a trading crowd would be covered under the proposed rule.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act and, in particular, with Section 6(b)(5) of the Act[6] in that it promotes just and equitable principles of trade, facilitates transactions in securities, and removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest by granting express authority to the Options Committee to adopt policies to regulate the location of members in the trading crowd to facilitate changes in technology and space reconfigurations occurring on the Options floor.

*B. Self-Regulatory Organization's Statement on Burden of Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

No written comments were either solicited or received.

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

Because the foregoing rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change, or such shorter time as designated by the Commission, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to file number SR–Phlx–99–25, and should be submitted by September 10, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99–21655 Filed 8–19–99; 8:45 am]

BILLING CODE 8010–01–M

[4] AUTO–X is a feature of AUTOM that automatically executes public customer market and marketable limit orders up to the number of contracts permitted by the Exchange for certain strike prices and expiration months in equity options and index options, unless the Options Committee determines otherwise. *See* Phlx Rule 1080.

[5] The Exchange will provide notice in the form of a memorandum to the trading floor, as well as by posting of a memorandum on an electronic bulletin board. Telephone conversation between Nandita Yagnik, Attorney, Phlx, and Joseph Morra, Attorney, Division of Market Regulation (''Division''), SEC, August 6, 1999. The Exchange notes that a specific policy adopted pursuant to this proposed provision would be reasonably and fairly implied by an existing rule, *i.e.*, new Commentary .17 and therefore, would not be deemed to be a proposed rule change pursuant to Securities Exchange Act Rule 19b–4(d).

[6] 15 U.S.C. 78f(b).

[7] 17 CFR 200.30–3(a)(12).

## SOCIAL SECURITY ADMINISTRATION

### Agency Information Collection Activities: Request for Emergency Review by the Office of Management and Budget

The Social Security Administration publishes a list of information collection packages that will require clearance by OMB in compliance with Public Law 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. The information collection listed below has been submitted to OMB for emergency consideration. OMB approval has been requested by August 31, 1999.

0960–0601. Public Law 105–277 authorizes SSA to conduct a Medicare buy-in demonstration project to evaluate means to promote the Medicare buy-in programs targeted to elderly and disabled individuals under titles XVIII and XIX of the Social Security Act. A lack of awareness about the Medicare buy-in programs appears to be one of the major obstacles to enrollments. Other obstacles to enrollment include the confusion of potential eligibles as to how to apply for these programs and a preference for dealing with SSA field offices rather than with local Medicaid offices.

SSA began screening respondents voluntarily on March 1, 1999 for potential Medicare Part B buy-in eligibility using a screening guide developed for this purpose. The screening guide will collect information from SSA beneficiaries regarding income, resources, marital status, and living arrangements and also ask questions about their awareness of Medicare Part B buy-in programs. SSA will gather this information to identify and overcome obstacles to Medicare Part B buy-in enrollments and to determine potential eligibility for Medicare Part B benefits.

In addition, SSA will interview a small, random sample of individuals who did not respond to the buy-in outreach publicity in order to understand the impediments to the buy-in enrollment process. These interviews will attempt to ascertain if beneficiaries chose not to participate in the program and, if so, why.

Also, peer assistance screening will be conducted in States that volunteer to participate in this variant screening model. Using a variant screening model will allow SSA to test a buy-in outreach model in which non-governmental peers of the target group provide assistance. In this model, AARP will provide volunteers to, gather data from beneficiaries to determine potential eligibility for buy-in programs and assist them through the screening and application processes. AARP will share results of its efforts with SSA for use in SSA's report on the demonstration program. This effort will provide a comparison to other SSA and Health Care Finance Administration (HCFA) buy-in outreach efforts and provide information for a cost comparison.

| | SSA screener | SSA non-responders' survey | AARP's peer assistance screening & summary form |
|---|---|---|---|
| Number of Respondents | 24,000 | 500 | 20,000 |
| Number of Responses | 1 | 1 | 1 |
| Frequency of Response | 1 | 1 | 1 |
| Average Burden Per Response (minutes) | 20 | 20 | 20 |
| Estimated Annual Burden (hours) | 8,000 | 167 | 6,667 |

To receive a copy of the screening guides or the clearance packages, call the SSA Reports Clearance Officer on 410) 965–4145 or write to him at the address listed below. Written comments and recommendations regarding the information collection(s) should be directed to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses:

Attn: Lori Schack, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, DC 20503.

(SSA) Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

Dated: August 16, 1999.

**Frederick W. Brickenkamp,**

*Reports Clearance Officer, Social Security Administration.*

[FR Doc. 99–21652 Filed 8–19–99; 8:45 am]

BILLING CODE 4190–29–P

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

**[Docket No. WTO/DS–164]**

## WTO Dispute Settlement Proceeding Regarding Argentina—Measures Affecting Imports of Footwear

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Office of the United States Trade Representative (''USTR'') is providing notice of a request by the United States for the establishment of a dispute settlement panel under the Marrakesh Agreement Establishing the World Trade Organization (''WTO'') to examine Argentina's modification of its safeguard measure affecting imports of footwear. In this dispute, the United States alleges that modification of the safeguard measure is inconsistent with Argentina's obligations under the WTO Agreement on Safeguards. USTR invites written comments from the public concerning the issues raised in this dispute.

**DATES:** Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted by September 30, 1999, to be assured of timely consideration by USTR in preparing its first written submission to the panel.

**ADDRESSES:** Comments may be submitted to Sandy McKinzy, Litigation Assistant, Office of Monitoring and Enforcement, Room 122, Attn: Argentina Footwear Imports, Dispute, Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508.

**FOR FURTHER INFORMATION CONTACT:** Marjorie Florestal, Assistant General Counsel at (202) 395–3581 or Kellie Meiman, Director for Mercosur and the Southern Cone at (202) 395–5190.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 127(b)(1) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)), USTR is providing notice that on May 20, 1999, the United States submitted a request for the establishment of a WTO dispute settlement panel to examine Argentina's modification of its safeguard measure on imports of footwear. The WTO Dispute Settlement Body established a panel for this purpose on July 26, 1999.

### Major Issues Raised and Legal Basis of the Complaint

In November 1998, Argentina adopted Resolution 1506, followed by the issuance of Decision 837/98, dated December 4, 1998, which modified Resolution 987/97 and imposed a tariff-rate quota (TRQ) on footwear imports in addition to the high duty rates previously imposed. Moreover, Resolution 1506 postpones any liberalization of the original safeguard duty until February 25, 2000, and liberalizes the TRQ only once during the life of the measure. Argentina has not notified this measure to the Committee on Safeguards.

On March 1, 1999, the United States requested consultations with Argentina with a view to reaching a mutually satisfactory resolution of the matter. Consultations were held on March 24, 1999, in Geneva, but did not lead to a satisfactory resolution.

Based upon information received to date, the United States considers that Resolution 1506 and Decision 837/98 may be inconsistent with the obligations of Argentina under the WTO Agreement on Safeguards, in particular:

(1) Article 7.4, which mandates that safeguard measures over one year in duration be progressively liberalized at regular intervals; and

(2) Article 12, which directs Members immediately to notify the Committee on Safeguards of all safeguard actions and to provide adequate opportunity for prior consultations with Members having substantial export interest in the product concerned.

### Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning

the issues raised in this dispute. Comments must be in English and provided in fifteen copies to Sandy McKinzy at the address provided above. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitting person. Confidential business information must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may qualify as such, the submitting person—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C. 20508. The public file will include a listing of any comments received by USTR from the public with respect to the proceeding; U.S. submissions to the panel in the proceeding; submissions, or non-confidential summaries of submissions, to the panel received from other parties in the dispute; as well as the report of the dispute settlement panel, and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/DS–164 ''Argentina—Measures Affecting Imports of Footwear'' may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

**Kenneth P. Freiberg,**

*Deputy General Counsel.*

[FR Doc. 99–21720 Filed 8–19–99; 8:45 am]

BILLING CODE 3190–01–P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

**[Order 99–8–12; Docket OST–1999–5616]**

### Application of Jetblue Airways Corporation for Certificate Authority

**AGENCY:** Department of Transportation.

**ACTION:** Notice of Order to Show Cause.

**SUMMARY:** The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding JetBlue Airways Corporation fit, willing, and able, and awarding it a certificate of public convenience and necessity to engage in interstate scheduled air transportation of persons, property, and mail.

**DATES:** Persons wishing to file objections should do so no later than August 30, 1999.

**ADDRESSES:** Objections and answers to objections should be filed in Docket OST–1999–5616 and addressed to Department of Transportation Dockets, U.S. Department of Transportation, 400 Seventh Street, SW., Rm. PL–401, Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carol Woods, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2340.

Dated: August 16, 1999.

**A. Bradley Mims,**

*Acting Assistant Secretary for Aviation and International Affairs.*

[FR Doc. 99–21650 Filed 8–19–99; 8:45 am]

BILLING CODE 4910–62–M

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Notice of Establishment of Point of Contact between DOT and Small Business Concerns With Respect to Problems Arising out of Y2K Failures and Compliance With Federal Rules or Regulations

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Notice.

**SUMMARY:** DOT is establishing a point of contact with small business concerns with respect to problems arising out of Y2K failures and compliance with Federal rules or regulations. This action is required by the Y2K Act.

**DATES:** Effective August 20, 1999.

**FOR FURTHER INFORMATION CONTACT:** Gerardo Franco, Department of Transportation, 400 7th Street SW., Washington, DC 20590, (202) 366–1902.

**SUPPLEMENTARY INFORMATION:** On July 20, 1999, the President signed H.R. 775, the ''Y2K Act.'' The Act provides temporary relief for small business concerns that cannot comply with Federal rules and regulations because of Y2K problems. Among other things, it requires agencies to waive civil penalties for a first time violation of any federally enforceable rule by a small business (defined as 50 employees or less) that was due to a Y2K failure when the small business meets the standards for a waiver. An agency shall provide a waiver of civil penalties for a first-time violation, if the small business concern demonstrates, and the agency determines that:

(1) The small business concern previously made a reasonable good faith effort to anticipate, prevent, and effectively remediate a potential Y2K failure;

(2) A first-time violation occurred as a result of the Y2K failure of the small business concern or other entity, which significantly affected the small business concern's ability to comply with a Federal rule or regulation;

(3) The first-time violation was unavoidable in the face of a Y2K failure or occurred as a result of efforts to prevent the disruption of critical functions or services that could result in harm to life or property;

(4) Upon identification of a first-time violation, the small business concern initiated reasonable and prompt measures to correct the violation; and

(5) The small business concern submitted notice to the appropriate agency of the first-time violation within a reasonable time not to exceed 5 business days from the time that the small business concern became aware that the first-time violation had occurred.

An agency may impose civil money penalties authorized under Federal law on a small business concern for a first-time violation if:

(1) The small business concern's failure to comply with Federal rules or regulations resulted in actual harm, or constitutes or creates an imminent threat to public health, safety, or the environment; or

(2) The small business concern fails to correct the violation not later than 1 month after initial notification to the agency.

This relief does not apply to first-time violations caused by a Y2K failure occurring after December 31, 1999.

The Act requires that by August 19, 1999, each agency must establish a point of contact for small businesses ''with respect to problems arising out of Y2K failures and compliance with Federal rules or regulations.''

The Department's point of contact for this purpose is Gerardo Franco, Department of Transportation, 400 7th Street SW., Washington, DC 20590, (202) 366–1902.

Small businesses may also directly contact the Department's constituent agencies about these problems. More information about Y2K and a list of the DOT agencies' small business liaison officers may be obtained through our Office of Small and Disadvantaged Business Utilization's Internet website at: http://osdbuweb.dot.gov.

**Rosalind A. Knapp,**

*Deputy General Counsel.*

[FR Doc. 99–21773 Filed 8–18–99; 11:46 am]

BILLING CODE 4910–62–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Aberdeen Regional Airport, Aberdeen, SD

**AGENCY:** Federal Aviation Administration (FAA) DOT.

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Aberdeen Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

**DATES:** Comment must be received on or before September 20, 1999.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Bismarck Airports District Office, 2000 University Drive, Bismarck, North Dakota 58504. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Rebecca L. Hupp, Airport Manager, of the Aberdeen Regional Airport at the following address: City of Aberdeen, 123 South Lincoln Street, Aberdeen, SD 57401.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Aberdeen under section 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Ms. Irene R. Porter, Manager, Bismarck Airports District Office, 2000 University Drive, Bismarck, North Dakota 58504, (701) 250–4385. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Aberdeen Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). On August 5, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Aberdeen was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 9, 1999.

The following is a brief overview of the application.

*PFC application number:* 99–01–C–00–ABR.

*Level of the proposed PFC:* $3.00.

*Proposed charge effective date:* January 1, 2000.

*Proposed charge expiration date:* April 30, 2007.

*Brief description of proposed project(s):* (1) Acquire Snow Removal Equipment (plow truck and sander); (2) Acquire Snow Removal Equipment (snow blower and broom); (3) Rehabilitate Taxiway ''D''; (4) Reconstruct Taxiway ''B''; (5) Reconstruct and Narrow Runway 13/31; (6) Construct Taxiway ''C''; (7) Reconstruct Runway 17/35; (8) Extend Runway 17/35; (9) Acquire Airport Rescue and Fire Fighting Vehicle; (10) Prepare Passenger Facility Charge Application. Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators Filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Aberdeen Regional Airport.

Issued in Des Plaines, Illinois on August 12, 1999.

**Henry Lamberts,**

*Acting Manager, Planning and Programming Branch Airports Division, Great Lakes Region.*

[FR Doc 99–21649 Filed 8–19–99; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement; Clark County, Indiana and Jefferson County, Kentucky

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Supplemental notice of intent.

**SUMMARY:** The FHWA is issuing this supplemental notice to advise the public of the ongoing scoping process for an environmental impact statement (EIS) for the proposed construction of two new Ohio River crossings, including approaches and connections to existing roadway systems, between Clark County, Indiana, and Jefferson County, Kentucky. The FHWA previously published a notice of intent on March 27, 1998, for the preparation of an EIS for the proposed project. This supplemental notice of intent describes in greater detail the scoping process that FHWA, in cooperation with the Indiana Department of Transportation (INDOT) and the Kentucky Transportation Cabinet (KYTC), is utilizing to identify the significant issues to be addressed in the EIS. The purpose of the scoping process is to obtain the views of other Federal, State, and local agencies and the public regarding the scope of the EIS.

**FOR FURTHER INFORMATION CONTACT:** Contact: Jesse A. Story, Division Administrator, Federal Highway Administration, John C. Watts Federal Building and U.S. Courthouse, 330 W. Broadway, Frankfort, Kentucky 40601; Telephone: (502) 223–6720; Fax: (502) 223–6735; Pete Wolff, Kentucky Transportation Cabinet, Telephone: (502) 564–4780; Steve Cecil, Indiana Department of Transportation, Telephone: (317) 232–5468; or the project consultant, Community Transportation Solutions, Inc., 10000 Shelbyville Road, Louisville, Kentucky 40223; Telephone: (502) 253–9221 or (800) 513–6691; Fax: (502) 253–9520.

**SUPPLEMENTARY INFORMATION:**

#### Electronic Access

An electronic copy of this document may be downloaded by using a computer, modem and suitable

communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.nara*.

**Background**

As stated in FHWA's March 27, 1998 notice of intent (63 FR 14989), the EIS will build upon the work performed previously for the Ohio River Major Investment Study (ORMIS), and will discuss the environmental, social and economic impacts associated with the development of the proposed action and a range of alternatives.

The scoping process for the EIS builds on the extensive public and agency involvement that occurred during ORMIS and the public involvement activities that have occurred since the publication of the March 27, 1998 notice of intent. As part of those activities, a Federal agency finding was held on October 6, 1998, to introduce interested Federal agencies to the proposed project. Two public information meetings were held on December 1–2, 1998, in Jeffersonville, Indiana, and Louisville, Kentucky, respectively, to introduce the public to the proposed project and to answer questions about the EIS process. Briefings for Indiana and Kentucky State agencies were held on February 10 and February 16, 1999, respectively. Two additional public information meetings were held on April 14–15, 1999, in Jeffersonville, Indiana, and Louisville, Kentucky, to allow members of the public to provide comments concerning the scope of, and significant issues to be addressed in, the EIS.

A project web site has been established at *www.kyinbridges.com* and a quarterly newsletter entitled ''Riverlink'' began publication in November 1998. A mailing list is being maintained of all those members of the public who have requested notice of meetings, hearings, and/or the availability of information and documents concerning the proposed action. Public comments on the project may be submitted in writing, care of Community Transportation Solutions, Inc., 10000 Shelbyville Road, Louisville, KY 40223; via electronic mail at the project web site; by facsimile at 502–253–9520; or by calling the project's toll-free number at 800–513–6691.

In addition to the foregoing opportunities for public participation, scoping meetings will be held in September 1999. A Federal and State agency scoping meeting will occur on September 8, 1999, at 9 a.m., in Room 105, South Wing, Kentucky Fair and Exposition Center, Louisville, Kentucky, to solicit agency input concerning the scope of the EIS. The public is invited to two public meetings, to be held as follows: September 1, 1999, at 6 p.m., at the Jeffersonville High School cafeteria, Clark County, Indiana; and September 2, 1999, at 6 p.m., at the Ballard High School cafeteria, Jefferson County, Kentucky. A scoping document that describes current alternatives under consideration and identifies currently known relevant issues can be obtained from the project web site (*www.kyinbridges.com*) or the project consultant's office.

Additional public and agency meetings are anticipated during the preparation of the EIS to allow the public and agencies to remain informed and provide input into the preparation of the EIS. A Regional Advisory Council and four Area Work Groups have been formed to provide a more formal method of input from affected constituencies within the project area. The Regional Advisory Council will address regional goals relating to transportation, economic development, and quality of life. The Area Work Groups will address issues of concern to specific geographic areas potentially affected by the proposed action and alternatives. All meetings of these groups are open to the public. Information on the membership of these groups and their meeting dates can be obtained from project web site or by contacting Community Transportation Solutions, Inc., at 800–513–6691. Finally, the release of the draft EIS for public comment and the date of the formal public hearing will be announced to the public as such dates are established.

Comments on the scope and significant issues to be addressed in the EIS, or questions concerning this proposed action and the EIS process, may be submitted to the FHWA at the address provided above, or to the project consultant through one of the methods identified above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

(23 U.S.C. 315; 49 CFR 1.48)

Issued on August 12, 1999.

**Dennis Luhrs,**

*Assistant Division Administrator, Frankfort, Kentucky.*

[FR Doc. 99–21451 Filed 8–19–99; 8:45 am]

BILLING CODE 4910–22–M

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Federal Transit Administration

### Draft Environmental Impact Statement; Denver, Arapahoe, and Douglas Counties

**AGENCIES:** Federal Highway Administration (FHWA) and Federal Transit Administration (FTA), DOT.

**ACTION:** Notice of availability.

**SUMMARY:** In compliance with the National Environmental Policy Act of 1969, the FHWA and FTA, in cooperation with the Colorado Department of Transportation (CDOT) and the Regional Transportation District (RTD), have jointly prepared a Draft environmental impact statement (EIS) for proposed transportation improvements in the Southeast Corridor of the Denver, Colorado metropolitan area. The project is within the municipalities of Denver, Arapahoe and Douglas Counties. The Draft EIS identifies a preferred alternative and the associated environmental impacts of the proposed preferred alternative. Interested citizens are invited to review the Draft EIS and submit comments. Copies of the Draft EIS may be obtained by telephoning or writing the contact person listed below under Addresses. Public reading copies of the Draft EIS are available at the locations listed under Supplementary Information.

**DATES:** A 45-day public review period will begin on August 20, 1999 and conclude on October 5, 1999. Written comments on the scope of the alternatives and impacts to be considered must be received by CDOT by October 4, 1999. Public hearings to receive oral comments on the Draft EIS will be held in two locations in Denver. See Supplementary Information section for hearing dates and locations.

**ADDRESSES:** Written comments on the Draft EIS should be addressed to Jim Bumanglag, Project Manager, Colorado Department of Transportation, Southeast Corridor, 4201 East Arkansas, Denver, CO 80222. Requests for a copy of the Draft EIS may be addressed to Mr. Bumanglag at the address above. Please see Supplementary Information section for a listing of the available documents and formats in which they may be

obtained. Copies of the Draft EIS are also available for public inspection and review. See Supplementary Information section for locations.

**FOR FURTHER INFORMATION CONTACT:** To request copies of the Draft EIS or for additional information, contact: Mr. Vincent P. Barone, FHWA Colorado Division, 555 Zang Street, Room 250, Denver, CO 80228, Telephone (303) 969–6730, extension 369; or Mr. David L. Beckhouse, FTA Region VIII, 216 16th Street Mall, Suite 650, Denver, CO 80202, Telephone (303) 844–3242

**SUPPLEMENTARY INFORMATION:**

*Hearing Dates and Locations:*

- Thursday, September 9, 1999, Most Precious Blood Catholic School, 2250 South Harrison Street, Denver, CO 80237, 4:00 p.m. to 7:00 p.m.
- Thursday, September 16, 1999, Calvary Baptist Church, 6500 East Girard Avenue, Denver, CO 80224, 4:00 p.m. to 7:00 p.m.

*Copies of the Draft EIS, supporting technical reports and engineering plan sheets are available in hard copy format for public inspection at:*

- CDOT Region 6 Office, 2000 South Holly Street, Denver, CO 80222, 303–757–9372
- CDOT Environmental Services, 1325 S. Colorado Boulevard, Denver, CO 80222, 303–757–9259
- RTD Administrative Services, 1600 Blake Street, Denver, CO 80202, 303–299–2484
- Denver Public Library, 10 West 14th Avenue, Denver, CO 80203, 303–640–6220
- Castlewood Public Library, 6739 South Uinta Street, Denver, CO 80237, 303–771–3197
- Southeast Corridor Project Office (Carter & Burgess), 216 16th Street Mall, Suite 1700, Denver CO 80202, 303–820–5278

The Draft EIS evaluated a No-Action, and a Preliminary Preferred Alternative (including transportation management solutions) in the I–25 Southeast Corridor study limits from Broadway to Lincoln Avenue, which includes I–225 from I–25 to Parker Road, and determined the estimated costs and potential impacts associated with each. CDOT was the local lead agency for the preparation of the Draft EIS. The Draft EIS satisfies the requirements of the 1999 Clean Air Act Amendments.

The FHWA, the FTA, the CDOT, the RTD and other local agencies invite interested individuals, organizations, and Federal, State and local agencies to comment on the identified preferred alternative and associated social, economic, or environmental impacts related to the alternatives.

The preferred alternative is consistent with the Southeast Corridor Major Investment Study completed in July, 1997. It begins at approximately I–25 and Broadway and proceeds south and southeast to Lincoln Avenue following the general alignment of I–25. Also included is a segment along I–225 from I–25 to Parker Road. The preferred alternative excludes any proposed roadway improvements near I–25 from 6th Avenue to approximately the Logan Street crossing including the I–25 interchanges at Alameda, Santa Fe, and Broadway. The primary purpose of the Southeast Corridor Multi-Modal Project is to improve travel time and enhance safety along these two transportation corridors, while causing the least disruption to neighboring residents and businesses. The Southeast Corridor is the most heavily congested corridor on a daily basis, in the State of Colorado. It has been the focus of study for twenty years. These studies have consistently recommended that improvements be made to the highway system and to the provision of public transit.

The alternatives evaluated in the Draft EIS include the following:

1. The No-Action alternative served as the baseline for environmental analysis and consists of the existing transit and highway systems and all projects contained in the federally approved Transportation Improvement Program (TIP) for the Denver metropolitan area.

2. The Preliminary Preferred Alternative generally used the I–25 right-of-way between Broadway and Lincoln Avenue, and the I–225 right-of-way between I–25 and Parker. There are 17.9 miles of double tracked light rail transit beginning at the existing Broadway Station and ending at Lincoln Avenue on the west side of I–25. Light rail will also be added to the median of I–225, from I–25 to the existing Nine Mile Park-n-Ride. There will be thirteen stations. Improvements to I–25 and I–225 consist of one additional lane in each direction on I–25 from Logan Avenue to I–225, two additional lanes in each direction on I–25 from I–225 to C–470/E–470 and one additional lane in each direction on I–225 from I–25 to Yosemite. This alternative is designed to accommodate future transportation needs and includes improvements to the highway, transportation systems management, and pedestrian and bicycle facilities in the study area.

The FHWA, the FTA, the CDOT and the RTD evaluated all significant social, economic, and environmental impacts of the alternatives. The primary areas of examination included transit ridership, the capital outlays needed to construct the recommended alternative, the cost of operating and maintaining facilities created by the project, and the financial requirements on the funding agencies. Environmental and social impacts evaluated in the analysis include land use and neighborhood impacts, traffic and parking impacts near stations, visual impacts, hazardous material impacts, impacts on cultural and paleontological resources, and noise and vibration impacts. Impacts on natural areas, threatened and endangered species, air and water quality, and groundwater are also covered. Right-of-way impacts are also identified. Impacts were also evaluated both for the construction period and for the long-term period of operation. Measures to mitigate adverse impacts were developed.

In accordance with the Federal Transit Act, as amended, and FHWA and FTA policy, the Draft EIS was prepared with required engineering design studies necessary to complete the document. On the basis of the Draft EIS and the comments received, a preferred alternative will be selected and preparation of the Final EIS and Record of Decision will proceed.

(23 U.S.C. 315; 49 U.S.C. 107, 5301 *et seq.*; 49 CFR 1.48 and 1.51)

Issued on August 12, 1999.

**James Daves,**

*Division Administrator, Federal Highway Administration, Lakewood, Colorado.*

**Louis F. Mraz, Jr.,**

*Regional Administrator, Federal Transit Administration, Region VIII, Denver, Colorado.*

[FR Doc. 99–21395 Filed 8–19–99; 8:45 am]

BILLING CODE 4910–22–P

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA 99–5541; Notice 2]**

### Vectrix Corporation; Grant of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 123

For the reasons expressed below, we are granting the petition by Vectrix Corporation of New Bedford, Massachusetts, for a temporary exemption of two years from a requirement of S5.2.1 (Table 1) of Federal Motor Vehicle Safety Standard No. 123 *Motorcycle Controls and Displays*. The basis of the grant is our finding that ''the exemption would make the development or field evaluation of a low-emission vehicle easier and would not unreasonably

lower the safety level of that vehicle,'' 49 U.S.C. Sec. 30113(b)(3)(B)(iii).

We published notice of receipt of the application on April 26, 1999, affording an opportunity for comment (64 FR 20353). No comments were received on this notice.

The following discussion is based on information in Vectrix's application.

**Argument Why an Exemption Would Make the Development or Field Evaluation of a Low-Emission Vehicle Easier and Would Not Unreasonably Lower the Safety Level of That Vehicle**

The Vectrix Electric Scooter is ''powered exclusively by an electric motor which draws current from ten 12-volt lead-acid batteries wired in series,'' and is a ''low-emission vehicle'' within the meaning of the statute.

If a motorcycle is produced with rear wheel brakes, S5.2.1 of Standard No. 123 requires that the brakes be operable through the right foot control, though the left handlebar is permissible for motor driven cycles (Item 11, Table 1). Vectrix would like to use the left handlebar as the control for the rear brakes of its Electric Scooter whose ''peak motor output of 26 horsepower'' produces more than the 5 hp maximum that separates motor driven cycles from motorcycles. The Electric Scooter can attain speeds up to 60 mph. The gear ratio of the vehicle is fixed, and ''there is no need for the rider to shift gears, as on a standard motorcycle.'' Because of this, the Electric Scooter ''is equipped with neither a clutch nor a clutch lever, and the left hand of the rider is free to operate a brake lever.'' Vectrix states that it prefers this design, given its focus on European and Asian markets ''where rear brake controls for scooters of all horsepower ratings are typically mounted on the left handlebar.''

Vectrix argues that a left handlebar rear-brake control ''will not 'unreasonably degrade the safety of the vehicle,' compared to a fully compliant vehicle equipped with a right foot, rear brake pedal.'' It believes that ''vehicle safety might be somewhat enhanced with the left hand brake lever, as the hand (bare or gloved) is generally more capable of sensitive modulation of the braking force than the foot.'' It also argues that the prevalence of this design in other countries attests to the fact that this type of vehicle ''can be operated safely.''

Vectrix intends to field test ''a small fleet'' of Electric Scooters, to assess ''any weaknesses in the design before production begins in summer, 1999.'' Requiring it to redesign the Electric Scooter to incorporate a rear brake foot pedal would delay the road test program by six months. While an exemption is in effect, Vectrix would consider whether the U.S. scooter market offered sufficient sales potential to justify creation of a U.S.-specific design incorporating a right foot brake pedal. Alternatively, it might petition NHTSA for rulemaking to ''allow the rear brake to be operated by a lever mounted on the left handlebar for all motorcycles designed without a clutch.''

The applicant anticipates sales of 600 Electric Scooters while an exemption is in effect.

**Arguments Why an Exemption Would Be in the Public Interest and Consistent With the Objectives of Motor Vehicle Safety**

Vectrix believes that an exemption would be in the public interest and consistent with the objectives of traffic safety ''because it would maintain an acceptable level of safety while accelerating the advancement of an important new class of vehicles for use by consumers and businesses.''

**Our Finding That an Exemption Would Make the Development or Field Evaluation of a Low-Emission Vehicle Easier and Would Not Unreasonably Lower the Safety Level of That Vehicle**

In adopting Standard No. 123 in April 1972, effective September 1, 1974, we justified standardization of the location and operation of motorcycle controls as a means of minimizing operator error in responding to the motoring environment, saying that ''a cyclist, especially the novice and the cyclist who has changed from one make of machine to another, must not hesitate when confronted with an emergency'' (37 FR 7207). Therefore, we have traditionally regarded with concern any deviation from standardization.

Recently, we granted a petition similar to that of Vectrix, a request by Aprilia, S.p.A., for a temporary exemption of its Leonardo 150 that would allow the left hand control to serve as the control for the rear brake (64 FR 44264). We had asked Aprilia to comment on our concern that a left hand lever-operated rear brake may contribute to unfamiliarity and thus degrade a rider's overall braking reaction beyond what would exist on a motorcycle with conventionally configured controls. At the request of Aprilia's U.S. sales subsidiary, Aprilia U.S.A. Inc. of Woodstock, Georgia, Carter Engineering of Franklin, Tennessee, prepared a report on ''Motorscooter Braking Control Study'' (Report No. CE–99-APR–05, May 1999) comparing braking response times of riders using the left hand control of the Leonardo 150 and the right foot control of the Yamaha XC–125 Riva. We placed a copy of this report in Docket No. NHTSA–98–4357. Aprilia U.S.A. observed that ''[o]verall, the test subjects' reaction times on the Leonardo were approximately 20% quicker than their reaction times on the conventional motorcycle.'' Aprilia believed that ''a less complex braking arrangement like that of the Leonardo will improve rider reaction in an emergency situation.''

We interpreted the report as indicating that a Leonardo rider's braking response is not likely to be degraded by the different placement of the brake controls, thus directly addressing and meeting our safety concern. We believe it is also germane to consider that it applies to Vectrix's Electric Scooter as well. The maximum speed of the Vectrix, 60 mph, is slightly less than that of the Leonardo 150's 65.7 mph. The principal difference between the two vehicles appears to be in the method of propulsion, which we do not deem relevant to the issue of rear brake control location and operation. An exemption would permit Vectrix to test market the 600 vehicles intended.

Accordingly, we find that a temporary exemption would make the development and field evaluation of a low-emission motor vehicle easier, and that such an exemption would not unreasonably lower the safety level of the vehicle.

**Our Finding That an Exemption Would Be in the Public Interest and Consistent With the Objectives of Motor Vehicle Safety**

We find that the entry into the nation's motor vehicle fleet of 600 low-emission motor vehicles is in the public interest. We also find that allowing this limited number of motor vehicles whose rear brake controls allows braking performance at least equivalent to that of a conforming vehicle is consistent with the objectives of motor vehicle safety.

Therefore, Vectrix Corporation is hereby granted NHTSA Temporary Exemption No. 99–10 from the requirement of Item 11, Column 2, Table 1 of 49 CFR 571.123 Standard No. 123, *Motorcycle Controls and Displays*, that the rear wheel brakes be operable through the right foot control. This exemption applies only to the Electric Scooter and will expire on July 1, 2001.

(49 U.S.C. 30113; delegation of authority at 49 CFR 1.50.)

Issued on: August 12, 1999.

**Ricardo Martinez,**

*Administrator.*

[FR Doc. 99–21338 Filed 8–16–99; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Ex Parte No. 633]**

### Y2K Readiness

**AGENCY:** Surface Transportation Board.

**ACTION:** Y2K Notice.

**SUMMARY:** The Surface Transportation Board (Board) is opening this docket for railroads and other interested parties to inform the Board of any anticipated Y2K problems within the railroad transportation industries.

**DATES:** Comments should be filed as soon as possible after any Y2K problems are discovered that will not be corrected by December 31, 1999.

**ADDRESSES:** Send an original plus 10 copies of any comments, referring to STB Ex Parte No. 633, to the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001.

**FOR FURTHER INFORMATION CONTACT:** Melvin F. Clemens, Jr., (202) 565–1573. [TDD for the hearing impaired: (202) 565–1695.]

**SUPPLEMENTARY INFORMATION:** Under 49 U.S.C. 11101(a), railroads must provide transportation or rail services upon reasonable request. Given the complex nature of railroad operations, switching and interchange, some potential Y2K problems appear capable of disrupting railroad operations and the smooth flow of traffic between rail carriers. In such an event, the Board is prepared to assume an active role in the interest of the public, both to maintain rail operations while any computer problems are repaired and to take steps to return rail service to normal levels. If rail service is disrupted, the Board can issue temporary emergency service orders and can direct a carrier to operate the lines of another carrier that has ceased operations. Such orders can be effective for a period of up to 270 days. Emergency orders may direct the handling, routing, or distribution of traffic; require joint or common use of railroad facilities; or prescribe temporary through routes. Additionally, the Board may prioritize traffic, such as the movements of coal to electric generating plants, and require traffic to move only under special permits.

The Board also may issue emergency orders to enable Amtrak to reroute passenger trains when its normal routes are temporarily unavailable. Through the Board's Agent, Melvin F. Clemens, Jr., Director, Office of Compliance and Enforcement, such emergency orders may be issued at any time, day or night.

In order to assist the Board in preparing for any possible disruptions of railroad operations that may result from Y2K problems, the Board is requesting railroads and other interested parties to inform the Board of any such anticipated problems before they occur. Such information to the Board should be based on specific Y2K problems that are considered unresolvable by December 31, 1999.

Additionally, under section 18 of the Y2K Act, Pub. L. 106–37, 113 Stat. 185, civil penalties are suspended for a small business concern, as defined in section 105 of Title 5, United States Code, for a first time violation of a Federally enforceable rule or regulation caused by a Y2K failure, if that Federal rule or regulation has not been violated within the preceding 3 years by that small business concern. Under 49 U.S.C. Chapter 119, the Board has the authority to impose civil penalties for violations of statutes and regulations within its jurisdiction. Under section 18 of the Y2K Act, each agency of the United States Government with such authority must establish a point of contact within the agency to act as a liaison between the agency and small business concerns with respect to problems arising out of Y2K failures and compliance with Federal rules or regulations. The Board is complying with this statutory requirement by designating its Office of Compliance and Enforcement as its point of contact for small business concerns that experience a Y2K failure.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.'' This notice will also be specifically served on the Association of American Railroads, The American Short Line and Regional Railroad Association, the Federal Railroad Administration, and Amtrak.

Decided: August 17, 1999.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 99–21820 Filed 8–18–99; 2:52 pm]

BILLING CODE 4915–00–P

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Office of the Comptroller of the Currency (OCC), Treasury.

**ACTION:** Submission for OMB review; comment request.

**SUMMARY:** The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. The OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection that has been extended, revised, or implemented unless it displays a currently valid Office of Management and Budget (OMB) control number. Currently, the OCC is soliciting comments concerning extension, without change, of an information collection titled Fiduciary Activities of National Banks (12 CFR 9). The OCC also gives notice that it has sent the information collection to OMB for review.

**DATES:** You should submit your written comments to both OCC and the OMB Reviewer by September 20, 1999.

**ADDRESSES:** You should send your written comments to the Communications Division, Attention: 1557–0140, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. In addition, you can send comments by facsimile transmission to (202) 874–5274, or by electronic mail to regs.comments@occ.treas.gov.

**FOR FURTHER INFORMATION CONTACT:** You may request additional information, a copy of the collection, or a copy of the supporting documentation submitted to OMB by contacting Jessie Gates or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division (1557–0140), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:** The OCC is proposing to extend OMB approval of the following information collection:

*Title:* Fiduciary Activities of National Banks (12 CFR 9).

*OMB Number:* 1557–0140.

*Form Number:* None.

*Abstract:* This submission covers an existing regulation and involves no change to the regulation or to the

information collections embodied in the regulation. The OCC requests only that OMB renew its approval of the information collections in the current regulation.

Under 12 U.S.C. 92a, the OCC regulates the fiduciary activities of national banks, including the administration of collective investment funds. The requirements in 12 CFR part 9 enable the OCC to perform its responsibilities relating to the fiduciary activities of national banks and collective investment funds. Part 9 requires national banks to retain fiduciary records, note annually in the minutes of the board of directors the results of fiduciary audits, to operate a collective investment fund pursuant to a written plan, to submit written plans to the OCC for approval, and to prepare an annual financial report on each fund and notify participants of its availability.

The collections of information in part 9 are found in: 12 CFR 9.8(b), 9.9(a) and (b), 9.17(a), 9.18(b)(1), 9.18(b)(6)(ii), 9.18(b)(6)(iv), and 9.18(c)(5).

The following is a brief discussion of the elements of the information collection in each section of regulations:

Section 9.8(b) requires a national bank to maintain fiduciary records;

Section 9.9 (a) and (b) require a national bank to note the results of its fiduciary audit in the board of directors minutes;

Section 9.17(a) requires a national bank that wants to surrender its fiduciary powers to file a certified board of directors resolution with the OCC;

Section 9.18(b)(1) requires a national bank to file new and amended collective fund plans with the OCC;

Section 9.18(b)(1) also requires a national bank to disclose their collective fund plans to investors and other interested persons;

Section 9.18(b)(6)(ii) requires a national bank to prepare financial reports regarding each collective investment fund;

Section 9.18(b)(6)(iv) requires a national bank to disclose their collective investment fund financial reports to investors and other interested persons; and

Section 9.18(c)(5) requires a national bank to request OCC approval to establish a special exemption fund.

These information collection requirements ensure bank compliance with applicable Federal law, further bank safety and soundness, provide protections for banks and the public, and further public policy interests.

*Type of Review:* Extension, without change, of a currently approved collection.

*Affected Public:* Businesses or other for-profit.

*Number of Respondents:* 1,000.

*Total Annual Responses:* 1,000.

*Frequency of Response:* On occasion.

*Estimated Total Annual Burden:* 15,010 hours.

*OCC Contact:* Jessie Gates or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, OMB No. 1557–0140, Office of the Comptroller of the Currency, 250 E Street SW, Washington, DC 20219.

*OMB Reviewer:* Alexander Hunt, (202) 395–7340, Paperwork Reduction Project 1557–0140, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

*Comments:* Your comment will become a matter of public record. You are invited to comment on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) Whether the OCC's burden estimate is accurate;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Whether the OCC's estimates of the capital or startup costs and costs of operation, maintenance, and purchase of services to provide information are accurate.

Additionally, the OCC requests comments on the impact of this information collection on community banks. The OCC recognizes that community banks operate with more limited resources than larger institutions and may present a different risk profile. Thus, the OCC specifically requests comments on the impact of this information collection on community banks' current resources and available personnel with the requisite expertise, and whether the goals of part 9 could be achieved, for community banks, through an alternative approach.

Dated: August 16, 1999.

**Mark Tenhundfeld,**

*Assistant Director, Legislative & Regulatory Activities Division.*

[FR Doc. 99–21718 Filed 8–19–99; 8:45 am]

BILLING CODE 4810–33–P

## DEPARTMENT OF THE TREASURY

### Fiscal Service

### Financial Management Service

### Senior Executive Service; Financial Management Service Performance Review Board (PRB)

**AGENCY:** Financial Management Service, Fiscal Service, Treasury.

**ACTION:** Notice.

**SUMMARY:** This notice announces the appointment of members to the Financial Management Service (FMS) Performance Review Board (PRB).

**DATES:** This notice is effective on August 20, 1999.

**FOR FURTHER INFORMATION CONTACT:** Kenneth R. Papaj, Deputy Commissioner, Financial Management Service, 401 14th St., SW, Washington, DC; telephone (202) 874–7000.

**SUPPLEMENTARY INFORMATION:** Pursuant to 5 U.S.C. 4314(c)(4), this notice is given of the appointment of individuals to serve as members of the Financial Management Service (FMS) Performance Review Board (PRB). This Board reviews the performance appraisals of career senior executives below the Assistant Commissioner level and makes recommendations regarding ratings, bonuses, and other personnel actions. Three voting members constitute a quorum. The names and titles of the FMS PRB members are as follows:

*Primary Members:* Kenneth R. Papaj, Deputy Commissioner; Constance E. Craig, Assistant Commissioner, Information Resources; John D. Newell, Assistant Commissioner, Regional Operations; Larry D. Stout, Assistant Commissioner, Government-Wide Accounting

*Alternate Members:* Nancy C. Fleetwood, Assistant Commissioner, Debt Management Services; Bettsy H. Lane, Assistant Commissioner, Federal Finance

Dated: August 16, 1999.

**Kenneth R. Papaj,**

*Acting Commissioner.*

[FR Doc. 99–21707 Filed 8–19–99; 8:45 am]

BILLING CODE 4810–35–M

# Corrections

**Federal Register**

Vol. 64, No. 161

Friday, August 20, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## FARM CREDIT ADMINISTRATION

### 12 CFR Part 602

**RIN 3052-AB84**

### Releasing Information

*Correction*

In rule document 99–19584, beginning on page 41770, in the issue of Monday, August 2, 1999, make the following correction(s):

**§ 602.11 [Corrected]**

1. On page 41773, in § 602.11 (e), in the table, in the first column titled ''Type of requester'', in the first line, the ''*'' should read ''1''.

2. On page 41773, § 602.11 (e), in the table, in the first column, in the footnote, ''*'' should read ''1''

[FR Doc. C9–19584 Filed 8-19-99; 8:45 am]

BILLING CODE 1505–01–D

## INTERNATIONAL TRADE COMMISSION

**[Investigations Nos. 731–TA–308–310 and 520–521 (Review)]**

### Carbon Steel Butt-Weld Pipe Fittings From Brazil, China, Japan, Taiwan, and Thailand

*Correction*

In notice document 99–21171 beginning on page 44536 in the issue of Monday, August 16, 1999, the subject heading is corrected to read as set forth above.

[FR Doc. C9–21171 Filed 8–19–99; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 25

**[Docket No. FAA–1999–6063; Notice No. 99–16]**

**RIN 2120–AG80**

### Revision of Braking Systems Airworthiness Standards To Harmonize With European Airworthiness Standards for Transport Category Airplanes

*Correction*

In proposed rule document 99–20518 beginning on page 43570 in the issue of Tuesday, August 10, 1999, make the following corrections:

1. On page 43573, in the first column, in the 12th line, ''§ 25.735(e9'' should read ''§ 25.735(e)''.

2. On the same page, in the same column, in the 20th line from the bottom, ''satisfactory'' should read ''satisfactorily''.

3. On the same page, in the third column, in the first full paragraph, in the 14th line from the end, remove ''ensures the paragraph,'''.

4. On page 43574, in the second column, in the 17th line, after ''services,'' remove ''for'' and add ''five''.

**§ 25.731 [Corrected]**

5. On page 43577, in the third column, in § 25.731(e), in the third line, ''§ 24.735'' should read ''§ 25.735''.

**§ 25.735 [Corrected]**

6. On page 43578, in the first column, in § 25.735(e)(1), in the first line, ''satisfactory'' should read ''satisfactorily''.

[FR Doc. C9–20518 Filed 8–19–99; 8:45 am]

BILLING CODE 1505–01–D

federal register

Friday
August 20, 1999

# Part II

# Department of Housing and Urban Development

## Federal Property Suitable as Facilities To Assist the Homeless; Notice

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4432–N–33]**

## Federal Property Suitable as Facilities to Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**FOR FURTHER INFORMATION CONTACT:** Clifford Taffet, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

**SUPPLEMENTARY INFORMATION:** In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.C.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Clifford Taffet at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: ARMY: Mr. Jeff Holste, U.S. Army Center for Public Works, Installation Support Center, Facilities Management, 7701 Telegraph Road, Alexandria, VA 22315–3862; (703) 428–6318; (These are not toll-free numbers).

Dated: August 12, 1999.

**Fred Karnas, Jr.,**

*Deputy Assistant Secretary for Economic Development.*

**TTITLE V, FEDERAL SURPLUS PROPERTY PROGRAM, FEDERAL REGISTER REPORT FOR 8/20/99**

**Suitable/Available Properties**

*Buildings (by State)*

Alabama

Bldg. 60101
Shell Army Heliport
Ft. Rucker Co: Dale AL 36362–5000
Landholding Agency: Army
Property Number: 21199520152
Status: Unutilized
Comment: 6082 sq. ft., 1-story, most recent use—airfield fire station, off-site use only

Bldg. 60103
Shell Army Heliport
Ft. Rucker Co: Dale AL 36362–5000
Landholding Agency: Army
Property Number: 21199520154
Status: Unutilized
Comment: 12516 sq. ft., 2-story, most recent use—admin., off-site use only

Bldg. 60110
Shell Army Heliport
Ft. Rucker Co: Dale AL 36362–5000
Landholding Agency: Army
Property Number: 21199520155
Status: Unutilized
Comment: 8319 sq. ft., 1-story, most recent use—admin., off-site use only

Bldg. 60113
Shell Army Heliport
Ft. Rucker Co: Dale AL 36362–5000
Landholding Agency: Army
Property Number: 21199520156
Status: Unutilized
Comment: 4000 sq. ft., 1-story, most recent use—admin., off-site use only

Bldg. 172
Anniston Army Depot
Annison AL 36201–
Landholding Agency: Army
Property Number: 21199840125
Status: Unutilized
Comment: 5895 sq. ft., needs rehab, most recent use—demolition shop, off-site use only

Bldg. 88
Anniston Army Depot
Annison AL 36201–
Landholding Agency: Army
Property Number: 21199840126
Status: Unutilized
Comment: 5360 sq. ft., needs rehab, most recent use—renovation shop, off-site use only

Alaska

Bldgs. 420, 422, 426, 430
Fort Richardson
Anchorage AK 99505–6500
Landholding Agency: Army
Property Number: 21199740276
Status: Excess
Comment: 13,056 sq. ft., presence of asbestos/lead paint, most recent use—family housing, off-site use only

Bldg. 789

Fort Richardson
Anchorage AK 99505–6500
Landholding Agency: Army
Property Number: 21199910084
Status: Excess
Comment: 19,001 sq. ft., concrete block, most recent use—vehicle maint., off-site use only

Arizona

Bldg. 30012, Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 21199310298
Status: Excess
Comment: 237 sq. ft., 1-story block, most recent use—storage

Bldg. S–306
Yuma Proving Ground
Yuma Co: Yuma/La Paz AZ 85365–9104
Landholding Agency: Army
Property Number: 21199420346
Status: Unutilized
Comment: 4103 sq. ft., 2-story, needs major rehab, scheduled to be vacated on or about 2/95

Bldg. 503, Yuma Proving Ground
Yuma Co: Yuma AZ 85365–9104
Landholding Agency: Army
Property Number: 21199520073
Status: Underutilized
Comment: 3789 sq. ft., 2-story, major structural changes required to meet floor loading & fire code requirements, presence of asbestos

5 Bldgs.
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Location: 44101, 44102, 44124, 44125, 44201
Landholding Agency: Army
Property Number: 21199840129
Status: Excess
Comment: Various sq. ft. & bdrm units, presence of asbestos/lead paint, most recent use—family housing, off-site use only

Bldgs. 87821, 90420
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 21199910087
Status: Excess
Comment: 377 and 5,662 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 90201
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 21199920182
Status: Unutilized
Comment: 25,503 sq.ft., presence of asbestos/lead paint, most recent use—laundry, off-site use only

Bldgs. 12521, 13572
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 21199920183
Status: Unutilized
Comment: 448 sq.ft., & 54 sq. ft., off-site use only

California

Bldg. 4282
Presidio of Monterey Annex
Seaside Co: Monterey CA 93944–
Landholding Agency: Army
Property Number: 21199810378
Status: Unutilized
Comment: 2283 sq.ft., presence of asbestos/lead paint, most recent use—office

Bldg. 4461
Presidio of Monterey Annex
Seaside Co: Monterey CA 93944–
Landholding Agency: Army
Property Number: 21199810379
Status: Unutilized
Comment: 992 sq.ft., presence of asbestos/lead paint, most recent use—storage

Bldg. 104
Presidio of Monterey
Monterey Co: CA 93944–
Landholding Agency: Army
Property Number: 21199910088
Status: Unutilized
Comment: 8039 sq.ft., presence of asbestos/lead paint, most recent use—office, off-site use only

Bldg. 106
Presidio of Monterey
Monterey Co: CA 93944–
Landholding Agency: Army
Property Number: 21199910089
Status: Unutilized
Comment: 1950 sq. ft., presence of asbestos/lead paint, most recent use—office/storage, off-site use only

Bldg. 125
Presidio of Monterey
Monterey Co: CA 93944–
Landholding Agency: Army
Property Number: 21199910090
Status: Unutilized
Comment: 371 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only

Bldg. 339
Presidio of Monterey
Monterey Co: CA 93944–
Landholding Agency: Army
Property Number: 21199910092
Status: Unutilized
Comment: 5654 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only

Bldg. 340
Presidio of Monterey
Monterey Co: CA 93944–
Landholding Agency: Army
Property Number: 21199910093
Status: Unutilized
Comment: 6500 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only

Bldg. 341
Presidio of Monterey
Monterey Co: CA 93944–
Landholding Agency: Army
Property Number: 21199910094
Status: Unutilized
Comment: 371 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only

Bldg. 4214
Presidio of Monterey
Monterey Co: CA 93944–
Landholding Agency: Army
Property Number: 21199910094
Status: Unutilized
Comment: 3168 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only

Colorado

Bldg. P–1008
Fort Carson
Ft. Carson Co: El Paso CO 80913–5023
Landholding Agency: Army
Property Number: 21199630127
Status: Unutilized
Comment: 3362 sq. ft., fair condition, possible asbestos/lead based paint, most recent use—service outlet, off-site use only

Bldg. P–1007
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21199730210
Status: Unutilized
Comment: 3818 sq. ft., needs repair, possible asbestos/lead paint, most recent use—health clinic, off-site use only

Bldg. T–1342
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21199730211
Status: Unutilized
Comment: 13,364 sq. ft., possible asbestos/lead paint, most recent use—instruction bldg.

Bldg. T–6005
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21199730213
Status: Unutilized
Comment: 19,015 sq. ft., possible asbestos/lead paint, most recent use—warehouse

Georgia

Bldg. 2285
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199011704
Status: Unutilized
Comment: 4574 sq. ft.; most recent use—clinic; needs substantial rehabilitation; 1 floor

Bldg. 1252, Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220694
Status: Unutilized
Comment: 583 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only

Bldg. 4881, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220707
Status: Unutilized
Comment: 2449 sq. ft., 1 story, most recent use—storehouse, need repairs, off-site removal only

Bldg. 4963, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220710
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storehouse, need repairs, off-site removal only

Bldg. 2396, Fort Benning

Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220712
Status: Unutilized
Comment: 9786 sq. ft., 1 story, most recent use—dining facility, need major rehab, off-site removal only

Bldg. 4882, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220727
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storage, need repairs, off-site removal only

Bldg. 4967, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220728
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storage, need repairs, off-site removal only

Bldg. 4977, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220736
Status: Unutilized
Comment: 192 sq. ft., 1 story, most recent use—offices, need repairs, off-site removal only

Bldg. 4944, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220747
Status: Unutilized
Comment: 6400 sq. ft., 1 story, most recent use—vehicle maintenance shop, need repairs, off-site removal only

Bldg. 4960, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220752
Status: Unutilized
Comment: 3335 sq. ft., 1 story, most recent use—vehicle maintenance shop, off-site removal only

Bldg. 4969, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220753
Status: Unutilized
Comment: 8416 sq. ft., 1 story, most recent use—vehicle maintenance shop, off-site removal only

Bldg. 4884, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220762
Status: Unutilized
Comment: 2000 sq. ft., 1 story, most recent use—headquarters bldg., need repairs, off-site removal only

Bldg. 4964, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220763
Status: Unutilized
Comment: 2000 sq. ft., 1 story, most recent use—headquarters bldg., need repairs, off-site removal only

Bldg. 4966, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220764
Status: Unutilized
Comment: 2000 sq. ft., 1 story, most recent use—headquarters bldg., need repairs, off-site removal only

Bldg. 4965, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220769
Status: Unutilized
Comment: 7713 sq. ft., 1 story, most recent use—supply bldg., need repairs, off-site removal only

Bldg. 4945, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220779
Status: Unutilized
Comment: 220 sq. ft., 1 story, most recent use—gas station, needs major rehab, off-site removal only

Bldg. 4979, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220780
Status: Unutilized
Comment: 400 sq. ft., 1 story, most recent use—oil house, need repairs, off-site removal only

Bldg. 4023, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199310461
Status: Unutilized
Comment: 2269 sq. ft., 1 story, needs rehab, most recent use—maintenance shop, off-site use only

Bldg. 4024, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199310462
Status: Unutilized
Comment: 3281 sq. ft., 1 story, needs rehab, most recent use—maintenance shop, off-site use only

Bldg. 4067, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199310465
Status: Unutilized
Comment: 4406 sq. ft., 1 story, needs rehab, most recent use—admin., off-site use only

Bldg. 354, Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199330259
Status: Unutilized
Comment: 4237 sq. ft., 1-story wood, possible termite damage, needs repair, presence of asbestos, most recent use—offices, off-site use only

Bldg. 355, Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199330260
Status: Unutilized
Comment: 4237 sq. ft., 1-story wood, needs repair, presence of asbestos, most recent use—offices, off-site use only

Bldg. 356, Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199330261
Status: Unutilized
Comment: 4237 sq. ft., 1-story wood, possible termite damage, needs repair, most recent use—offices, off-site use only

Bldg. 332, Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199330289
Status: Unutilized
Comment: 5340 sq. ft., 1-story wood, needs repair, presence of asbestos, most recent use—laboratory, off-site use only

Bldg. 333, Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199330290
Status: Unutilized
Comment: 5340 sq. ft., 1-story wood, possible termite damage, needs repair, presence of asbestos, most recent use—laboratory, off-site use only

Bldg. 10501, Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199410264
Status: Unutilized
Comment: 2516 sq. ft., 1-story wood, needs rehab.; most recent use office; off-site use only

Bldg. 11813
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199410269
Status: Unutilized
Comment: 70 sq. ft.; 1 story; metal; needs rehab.; most recent use—storage; off-site use only

Bldg. 21314
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199410270
Status: Unutilized
Comment: 85 sq. ft.; 1 story; needs rehab.; most recent use—storage; off-site use only

Bldg. 12809
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199410272
Status: Unutilized
Comment: 2788 sq. ft.; 1 story; wood; needs rehab.; most recent use—maintenance shop; off-site use only

Bldg. 10306
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199410273
Status: Unutilized
Comment: 195 sq. ft.; 1 story; wood; most recent use—oil storage shed; off-site use only

Bldg. 4051, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199520175
Status: Unutilized
Comment: 967 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only

Bldg. 2141
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Landholding Agency: Army

Property Number: 21199610655
Status: Unutilized
Comment: 2283 sq. ft., needs repair, most recent use—office, off-site use only

Bldg. T–293
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21199710230
Status: Excess
Comment: 5220 sq. ft., most recent use—admin., needs major repairs, off-site use only

Bldg. 239
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720155
Status: Unutilized
Comment: 2817 sq. ft., needs rehab, most recent use—exchange service outlet, off-site use only

Bldg. 322
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720156
Status: Unutilized
Comment: 9600 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. 1737
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720161
Status: Unutilized
Comment: 1500 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 2592
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720166
Status: Unutilized
Comment: 11674 sq. ft., needs rehab, most recent use—gym, off-site use only

Bldg. 2593
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720167
Status: Unutilized
Comment: 13644 sq. ft., needs rehab, most recent use—parachute shop, off-site use only

Bldg. 2595
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720168
Status: Unutilized
Comment: 3356 sq. ft., needs rehab, most recent use—chapel, off-site use only.

Bldgs. 2865, 2869, 2872
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720169
Status: Unutilized
Comment: approx. 1100 sq. ft. each, needs rehab, most recent use—shower fac., off-site use only.

Bldg. 4476
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720184
Status: Unutilized
Comment: 3148 sq. ft., needs rehab, most recent use—vehicle maint. shop, off-site use only

8 Bldgs.
Fort Benning
4700–4701, 4704–4707, 4710–4711
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720189
Status: Unutilized
Comment: 6433 sq. ft. each, needs rehab, most recent use—unaccompanied personnel housing, off-site use only

Bldg. 4714
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720191
Status: Unutilized
Comment: 1983 sq. ft., needs rehab, most recent use—battalion headquarters bldg., off-site use only

Bldg. 4702
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720192
Status: Unutilized
Comment: 3690 sq. ft., needs rehab, most recent use—dining facility off-site use only

Bldgs. 4712–4713
Fort Benning
Ft. Benning Co: Muscogee 31905–
Landholding Agency: Army
Property Number: 21199720193
Status: Unutilized
Comment: 1983 sq. ft., and 10,270 sq. ft., needs rehab, most recent use—company headquarters bldg., off-site use only

Bldg. T–930
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21199730218
Status: Unutilized
Comment: 34,098 sq. ft., poor condition, most recent use—laundry, off-site use only

Bldg. T–931
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21199730219
Status: Unutilized
Comment: 2232 sq. ft., poor condition, most recent use—gas gen. plant, off-site use only

Bldg. T–949
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21199730220
Status: Unutilized
Comment: 240 sq. ft., poor condition, most recent use—plant bldg., off-site use only

Bldg. T–286
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21199810261
Status: Excess
Comment: 5310 sq. ft., poor condition, most recent use—admin., off-site use only

Bldg. 123
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810265
Status: Unutilized
Comment: 3590 sq. ft., most recent use—admin., off-site use only

Bldg. 124, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810266
Status: Unutilized
Comment: 227 sq. ft., most recent use—access control, off-site use only

Bldg. 214, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810267
Status: Unutilized
Comment: 26,268 sq. ft., most recent use—confinement facility, off-site use only

Bldg. 305, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810268
Status: Unutilized
Comment: 4083 sq. ft., most recent use—recreation center, off-site use only

Bldg. 318, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810269
Status: Unutilized
Comment: 374 sq. ft., poor condition most recent use—maint. shop, off-site use only

Bldg. 1792, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810274
Status: Unutilized
Comment: 10,200 sq. ft., most recent use—storage, off-site use only

Bldg. 1796, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810275
Status: Unutilized
Comment: 5071 sq. ft., most recent use—recreation, off-site use only

Bldg. 1836
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810276
Status: Unutilized
Comment: 2998 sq. ft., most recent use—admin., off-site use only

Bldg. 4373
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810286
Status: Unutilized
Comment: 409 sq. ft., poor condition, most recent use—station bldg., off-site use only

Bldg. 4628
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810287
Status: Unutilized
Comment: 5483 sq. ft., most recent use—admin., off-site use only

Bldg. 92
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199830278
Status: Unutilized
Comment: 637 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. 2445
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199830279
Status: Unutilized
Comment: 2385 sq. ft., needs rehab, most recent use—fire station, off-site use only

Bldg. 4232
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199830291
Status: Unutilized
Comment: 3720 sq. ft., needs rehab, most recent use—maint. bay, off-site use only

Bldg. 9103
Fort Benning
Ft. Benning Co: GA 31905–
Landholding Agency: Army
Property Number: 21199830301
Status: Unutilized
Comment: 3378 sq. ft., needs rehab, most recent use—veh. maint. shop, off-site use only

Bldg. T–288
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21199840130
Status: Excess
Comment: 2500 sq. ft., poor condition, most recent use—MP station, off-site use only

Bldg. T–291
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21199840131
Status: Excess
Comment: 5220 sq. ft., poor condition, most recent use—MP station, off-site use only

Bldg. 294
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21199840133
Status: Excess
Comment: 5220 sq. ft., poor condition, most recent use—admin., off-site use only

Hawaii

P–88
Aliamanu Military
Honolulu Co: Honolulu HI 96818–
Location: Approximately 600 feet from Main Gate on Aliamanu Drive
Landholding Agency: Army
Property Number: 21199030324
Status: Unutilized
Comment: 45,216 sq. ft., underground tunnel complex, pres. of asbestos, clean-up required of contamination, use of respirator required by those entering property, use limitations

Bldg. T–675A
Schofield Barracks
Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 21199640202
Status: Unutilized
Comment: 4365 sq. ft., most recent use—office, off-site use only

Bldg. T–337
Fort Shafter
Honolulu Co: Honolulu HI 96819–
Landholding Agency: Army
Property Number: 21199640203
Status: Unutilized
Comment: 132 sq. ft., most recent use—storage, off-site use only

Illinois

Bldg. 54
Rock Island Arsenal
Rock Island Co: Rock Island IL 61299–
Landholding Agency: Army
Property Number: 21199620666
Status: Unutilized
Comment: 2000 sq. ft., most recent use—oil storage, needs repair, off-site use only

Bldgs. HP 113, 114
Sheridan Army Reserve Complex
Sheridan Co: IL 60037–
Landholding Agency: Army
Property Number: 21199920186
Status: Unutilized
Comment: 2864 sq. ft., and 3458 sq. ft., most recent use—admin., off-site use only

Bldgs. HP 432–439
Sheridan Army Reserve Complex
Sheridan Co: IL 60037–
Landholding Agency: Army
Property Number: 21199920189
Status: Unutilized
Comment: 4845 sq. ft. each, presence of asbestos, most recent use—admin/storage, off-site use only

Bldgs. HP 459, 460
Sheridan Army Reserve Complex
Sheridan Co: IL 60037–
Landholding Agency: Army
Property Number: 21199920191
Status: Unutilized
Comment: 4848 sq. ft., presence of asbestos, most recent use—storage, off-site use only

Iowa

Bldg. 46
Des Moines Reserve Complex
Des Moines Co: Polk IA 50315–5899
Landholding Agency: Army
Property Number: 21199840135
Status: Unutilized
Comment: 20,944 sq. ft., presence of asbestos/lead paint, most recent use—officer quarters/admin., historical/National Register

Bldg. 49
Des Moines Reserve Complex
Des Moines Co: Polk IA 50315–5899
Landholding Agency: Army
Property Number: 21199840136
Status: Unutilized
Comment: 2100 sq. ft., most recent use—chapel, historical/National Register

Kansas

Bldg. 166, Fort Riley
Ft. Riley Co: KS 66442–
Landholding Agency: Army
Property Number: 21199410325
Status: Unutilized
Comment: 3803 sq. ft., 3-story brick residence, needs rehab, presence of asbestos, located within National Registered Historic District

Bldg. 184, Fort Riley
Ft. Riley Co: KS 66442–
Landholding Agency: Army
Property Number: 21199430146
Status: Unutilized
Comment: 1959 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—boiler plant, historic district

Bldg. P–313, Fort Riley
Ft. Riley Co: KS 66442–
Landholding Agency: Army
Property Number: 21199620668
Status: Unutilized
Comment: 6222 sq. ft., most recent use—admin. bldg., needs repair, possible asbestos

Bldg. S–404
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199730235
Status: Unutilized
Comment: 4795 sq. ft., possible asbestos/lead paint, most recent use—hospital clinic, off-site use only

Bldg. P–390
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199740295
Status: Unutilized
Comment: 4713 sq. ft., presence of lead paint, most recent use—swine house, off-site use only

Bldg. T–323
Fort Leavenworth
Leavenworth Co: Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199810297
Status: Unutilized
Comment: 720 sq. ft., most recent use—Boy Scout bldg., off-site use only

Bldg. T–688
Fort Leavenworth
Leavenworth Co: Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199810298
Status: Unutilized
Comment: 832 sq. ft., possible lead paint, most recent use—Girl Scout bldg., off-site use only

Bldg. T–895
Fort Leavenworth
Leavenworth Co: Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199810299
Status: Unutilized
Comment: 228 sq. ft., possible lead paint, most recent use—storage, off-site use only

Bldg. P–68
Fort Leavenworth
Leavenworth Co: Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199820153
Status: Unutilized
Comment: 2236 sq. ft., most recent use—vehicle storage, off-site use only

Bldg. P–69
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199820154

Status: Unutilized
Comment: 224 sq. ft., most recent use—storage, off-site use only

Bldg. P–93
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199820155
Status: Unutilized
Comment: 63 sq. ft., concrete, most recent use—storage, off-site use only

Bldg. P–128
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199820156
Status: Unutilized
Comment: 79 sq. ft., concrete, most recent use—storage, off-site use only

Bldg. P–321
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199820157
Status: Unutilized
Comment: 600 sq. ft., most recent use—picnic shelter, off-site use only

Bldg. P–347
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199820158
Status: Unutilized
Comment: 2135 sq. ft., most recent use—bath house, off-site use only

Bldg. P–397
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199820159
Status: Unutilized
Comment: 80 sq. ft., most recent use—storage, off-site use only

Bldg. S–809
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199820160
Status: Unutilized
Comment: 39 sq. ft., most recent use—access control, off-site use only

Bldg. S–830
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199820161
Status: Unutilized
Comment: 5789 sq. ft., most recent use—underground storage, off-site use only

Bldg. S–831
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199820162
Status: Unutilized
Comment: 5789 sq. ft., most recent use—underground storage, off-site use only

Bldg. T–2360
Fort Riley
Ft. Riley KS
Landholding Agency: Army
Property Number: 21199830310
Status: Unutilized
Comment: 4534 sq. ft., needs major rehab, most recent use—aces. fac.

Bldgs. P–104, P–105, P–106
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199830313
Status: Unutilized
Comment: 81 sq. ft., most recent use—storage, off-site use only

Bldg. P–108
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199830314
Status: Unutilized
Comment: 138 sq. ft., most recent use—storage, off-site use only

Bldg. P–147
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199830315
Status: Unutilized
Comment: 378 sq. ft., most recent use—storage, off-site use only

Bldgs. P–163, P–169
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199830316
Status: Unutilized
Comment: 87 sq. ft., most recent use—storage, off-site use only

Bldg. P–164
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199830317
Status: Unutilized
Comment: 145 sq. ft., most recent use—storage, off-site use only

Bldg. P–171
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199830318
Status: Unutilized
Comment: 144 sq. ft., most recent use—storage, off-site use only

Bldg. P–172
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199830319
Status: Unutilized
Comment: 87 sq. ft., most recent use—storage, off-site use only

Bldgs. P–173, P–174
Fort Leavenworth
Leavenworth Co: Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199830320
Status: Unutilized
Comment: 120 sq. ft., most recent use—storage, off-site use only

Bldg. P–243
Fort Leavenworth
Leavenworth Co: Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199830321
Status: Unutilized
Comment: 242 sq. ft., most recent use—industrial, off-site use only

Bldg. P–218
Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 21199920196
Status: Unutilized
Comment: 1992 sq. ft., most recent use—gas station

Bldg. P–220
Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 21199920197
Status: Unutilized
Comment: 774 sq. ft., most recent use—warehouse

Bldg. P–146
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21199920198
Status: Unutilized
Comment: 196 sq. ft., most recent use—utility, off-site use only

Bldg. P–149
Fort Leavenworth
Leavenworth Co: KS 66027
Landholding Agency: Army
Property Number: 21199920199
Status: Unutilized
Comment: 76 sq. ft., most recent use—utility, off-site use only

Bldg. P–150
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21199920200
Status: Unutilized
Comment: 96 sq. ft., most recent use—utility, off-site use only

Bldg. P–162
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21199920201
Status: Unutilized
Comment: 81 sq. ft., most recent use—utility, off-site use only

Bldg. P–242
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21199920202
Status: Unutilized
Comment: 4580 sq. ft., most recent use—storage, off-site use only

Louisiana

Bldg. 8405, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640524
Status: Underutilized
Comment: 1029 sq. ft., most recent use—office

Bldg. 8407, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640525
Status: Underutilized
Comment: 2055 sq. ft., most recent use—admin.

Bldg. 8408, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640526
Status: Underutilized

Comment: 2055 sq. ft., most recent use—admin.

Bldg. 8414, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640527
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8423, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640528
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8424, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640529
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8426, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640530
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8427, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640531
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8428, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640532
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8429, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640533
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8430, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640534
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8431, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640535
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8432, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640536
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8433, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640537
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8446, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640538
Status: Underutilized
Comment: 4172 sq. ft., most recent use—admin.

Bldg. 8449, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640539
Status: Underutilized
Comment: 2093 sq. ft., most recent use—office

Bldg. 8450, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640540
Status: Underutilized
Comment: 2093 sq. ft., most recent use—admin.

Bldg. 8458, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640542
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8459, Fork Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640543
Status: Underutilized
Comment: 4172 sq. ft. most recent use—barracks

Bldg. 8460, Fork Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640544
Status: Underutilized
Comment: 4172 sq. ft. most recent use—barracks

Bldg. 8461, Fork Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640545
Status: Underutilized
Comment: 4172 sq. ft. most recent use—barracks

Bldg. 8462, Fork Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640546
Status: Underutilized
Comment: 4172 sq. ft. most recent use—barracks

Bldg. 8463, Fork Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640547
Status: Underutilized
Comment: 4172 sq. ft. most recent use—barracks

Bldg. 8501, Fork Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640548
Status: Underutilized
Comment: 1687 sq. ft. most recent use—office

Bldg. 8502, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640549
Status: Underutilized
Comment: 1029 sq. ft., most recent use—office

Bldg. 8541, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640551
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8542, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640552
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8543, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640553
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8544, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640554
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8545, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640555
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8546, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640556
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8547, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640557
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8548, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640558
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8549, Fort Polk
Fort Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640559
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Maryland

Bldg. 370
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755–5115

Landholding Agency: Army
Property Number: 21199730256
Status: Unutilized
Comment: 19,583 sq. ft., most recent use—NCO club, possible asbestos/lead paint.

Bldg. 4039
Aberdeen Proving Ground
Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21199740304
Status: Unutilized
Comment: 249 sq. ft., concrete block, presence of asbestos/lead paint, most recent use—storage

Bldg. 2446
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21199740305
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 2472
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21199740306
Status: Unutilized
Comment: 7670 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 3179
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21199740308
Status: Unutilized
Comment: 7670 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 4700
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21199740309
Status: Unutilized
Comment: 36,619 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 6294
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21199810302
Status: Unutilized
Comment: 4720 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—custodial, off-site use only

Bldg. 3176
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21199810303
Status: Unutilized
Comment: 7670 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. E5813
Aberdeen Proving Ground
Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21199830326
Status: Unutilized
Comment: 69 sq. ft., presence of asbestos/lead paint, most recent use—storage

Bldg. 39
Aberdeen Proving Ground
Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21199840137
Status: Unutilized
Comment: 2791 sq. ft., presence of asbestos/lead paint, most recent use—housing, off-site use only

Bldg. 0459E
Aberdeen Proving Ground
Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21199840138
Status: Unutilized
Comment: 320 sq. ft., poor condition, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 1102B
Aberdeen Proving Ground
Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21199840139
Status: Unutilized
Comment: 1600 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. E1455
Aberdeen Proving Ground
Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21199840140
Status: Unutilized
Comment: 36 sq. ft., poor condition, presence of asbestos/lead paint, most recent use—guard shack, off-site use only

Bldg. 32
Fort George G. Meade
Anne Arundel Co: MD 20755–5115
Landholding Agency: Army
Property Number: 21199910098
Status: Unutilized
Comment: 100 sq. ft., concrete block, off-site use only

Bldg. 2232
Fort George G. Meade
Anne Arundel Co: MD 20755–5115
Landholding Agency: Army
Property Number: 21199910099
Status: Unutilized
Comment: 1144 sq. ft., presence of asbestos/lead paint, most recent use—supply-storage, off-site use only

Bldg. 2233
Fort George G. Meade
Anne Arundel Co: MD 20755–5115
Landholding Agency: Army
Property Number: 21199910100
Status: Unutilized
Comment: 1297 sq. ft., presence of asbestos/lead paint, most recent use—supply-storage, off-site use only

Missouri

Bldg. T599
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199230260
Status: Unutilized
Comment: 18270 sq. ft., concrete, most recent use—storehouse, off-site use only

Bldg. T427
Ft. Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199330299
Status: Underutilized
Comment: 10245 sq. ft., 1-story, presence of asbestos, most recent use—post office, off-site use only

Bldg. T2171
Ft. Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199340212
Status: Unutilized
Comment: 1296 sq. ft., 1-story wood frame, most recent use—administrative, no handicap fixtures, lead base paint, off-site use only

Bldg. T6822
Ft. Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199340219
Status: Underutilized
Comment: 4000 sq. ft., 1-story wood frame, most recent use—storage, no handicap fixtures, off-site use only

Bldg. T429
Ft. Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199420439
Status: Underutilized
Comment: 2475 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T1497
Ft. Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199420441
Status: Underutilized
Comment: 4720 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T2139
Ft. Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199420446
Status: Underutilized
Comment: 3663 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T–2191
Ft. Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199440334
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks

Bldg. T–2197
Ft. Leonard Wood

Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199440335
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks

Bldg. T590
Ft. Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–
Landholding Agency: Army
Property Number: 21199510110
Status: Excess
Comment: 3263 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only

Bldg. T2385
Ft. Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–
Landholding Agency: Army
Property Number: 21199510115
Status: Excess
Comment: 3158 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only

Bldgs. T–2340 thru T2343
Ft. Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199710138
Status: Underutilized
Comment: 9267 sq. ft. each, most recent use—storage/general purpose, off-site use only

Bldg. 1226
Ft. Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199730275
Status: Unutilized
Comment: 1600 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 1271
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199730276
Status: Unutilized
Comment: 2360 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 1280
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199730277
Status: Unutilized
Comment: 1144 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only

Bldg. 1281
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199730278
Status: Unutilized
Comment: 2360 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only

Bldg. 1282
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199730279
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only

Bldg. 1283
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199730280
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 1284
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199730281
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 1285
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199730282
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 1286
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199730283
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 1287
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199730284
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only

Bldg. 1288
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199730285
Status: Unutilized
Comment: 2360 sq. ft., presence of asbestos/lead paint, most recent use—dining facility, off-site use only

Bldg. 1289
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199730286
Status: Unutilized
Comment: 1144 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only

Bldg. 430
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810305
Status: Unutilized
Comment: 4100 sq. ft., presence of asbestos/lead paint, most recent use—Red Cross facility, off-site use only

Bldg. 758
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810306
Status: Unutilized
Comment: 2400 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only

Bldg. 759
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810307
Status: Unutilized
Comment: 2400 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only

Bldg. 760
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810308
Status: Unutilized
Comment: 2400 sq. ft., presence of asbestos/lead paint, off-site use only

Bldgs. 761–766
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810309
Status: Unutilized
Comment: 2400 sq. ft. each, presence of asbestos/lead paint, most recent use—classroom, off-site use only

Bldg. 1650
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810311
Status: Unutilized
Comment: 1676 sq. ft., presence of asbestos/lead paint, most recent use—union hall, off-site use only

Bldg. 2111
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810312
Status: Unutilized

Comment: 1600 sq. ft., presence of asbestos/lead paint, most recent use—union hall, off-site use only

Bldg. 2170
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810313
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 2204
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810315
Status: Unutilized
Comment: 3525 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 2225
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810316
Status: Unutilized
Comment: 820 sq. ft., presence of lead paint, most recent use—storage, off-site use only

Bldg. 2271
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810317
Status: Unutilized
Comment: 256 sq. ft., presence of lead paint, most recent use—storage, off-site use only

Bldg. 2275
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810318
Status: Unutilized
Comment: 225 sq. ft., presence of lead paint, most recent use—storage, off-site use only

Bldg. 2291
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810319
Status: Unutilized
Comment: 510 sq. ft., presence of lead paint, most recent use—storage, off-site use only

Bldg. 2318
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810322
Status: Unutilized
Comment: 9267 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 2579
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810325
Status: Unutilized
Comment: 176 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 2580
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810326
Status: Unutilized
Comment: 200 sq. ft., presence of asbestos/lead paint, most recent use—generator plant, off-site use only

Bldg. 4199
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810327
Status: Unutilized
Comment: 2400 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 386
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820163
Status: Unutilized
Comment: 4902 sq. ft., presence of asbestos/lead paint, most recent use—fire station, off-site use only

Bldg. 401
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820164
Status: Unutilized
Comment: 9567 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 801
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820165
Status: Unutilized
Comment: 17012 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only

Bldg. 856
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820166
Status: Unutilized
Comment: 2400 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 859
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820167
Status: Unutilized
Comment: 2400 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 1242
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820168
Status: Unutilized
Comment: 2360 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 1265
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820169
Status: Unutilized
Comment: 2360 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 1267
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820170
Status: Unutilized
Comment: 1144 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 1272
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820171
Status: Unutilized
Comment: 1144 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 1277
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820172
Status: Unutilized
Comment: 1144 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldgs. 2142, 2145, 2151–2153
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820174
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only

Bldg. 2150
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820175
Status: Unutilized
Comment: 2892 sq. ft., presence of asbestos/lead paint, most recent use—dayroom, off-site use only

Bldg. 2155
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army

Property Number: 21199820176
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldgs. 2156, 2157, 2163, 2164
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820177
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only

Bldg. 2165
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820178
Status: Unutilized
Comment: 2892 sq. ft., presence of asbestos/lead paint, most recent use—dayroom, off-site use only

Bldg. 2167
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820179
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldgs. 2169, 2181, 2182, 2183
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820180
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only

Bldg. 2186
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820181
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 2187
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820182
Status: Unutilized
Comment: 2892 sq. ft., presence of asbestos/lead paint, most recent use—dayroom, off-site use only

Bldg. 2192, 2196, 2198
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820183
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only

Bldg. 2304, 2306
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820184
Status: Unutilized
Comment: 1625 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 12651
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820186
Status: Unutilized
Comment: 240 sq. ft., presence of lead paint, off-site use only

Bldg. 1448
Fort Leonard Wood
Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199830327
Status: Unutilized
Comment: 8450 sq. ft., presence of asbestos/lead paint, most recent use—training, off-site use only

Bldg. 2210
Fort Leonard Wood
Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199830328
Status: Unutilized
Comment: 808 sq. ft., concrete, presence of asbestos/lead paint, most recent use—storate, off-site use only

Bldg. 2270
Fort Leonard Wood
Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199830329
Status: Unutilized
Comment: 256 sq. ft., concrete, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 6036
Fort Leonard Wood
Co: Pulaski MO 65473–8994
Landholding Agency: Army
Property Number: 21199910101
Status: Unutilized
Comment: 240 sq. ft., off-site use only

Bldgs. 9017, 9019
Fort Leonard Wood
Pulaski Co: MO 65473–8994
Landholding Agency: Army
Property Number: 21199910102
Status: Underutilized
Comment: 6498 sq. ft., presence of asbestos/lead paint, most recent use—family quarters, off-site use only.

Bldgs. 9021, 9023, 9025
Fort Leonard Wood
Pulaski Co: MO 65473–8994
Landholding Agency: Army
Property Number: 21199910103
Status: Underutilized
Comment: 6498 sq. ft., presence of asbestos/lead paint, most recent use—family quarters, off-site use only.

Bldgs. 9027, 9031
Fort Leonard Wood
Pulaski Co: MO 65473–8994
Landholding Agency: Army
Property Number: 21199910104
Status: Underutilized
Comment: 6498 sq. ft., presence of asbestos/lead paint, most recent use—family quarters, off-site use only.

Bldgs. 9033, 9049
Fort Leonard Wood
Pulaski Co: MO 65473–8994
Landholding Agency: Army
Property Number: 21199910105
Status: Underutilized
Comment: 4332 sq. ft., presence of asbestos/lead paint, most recent use—family quarters, off-site use only.

Bldgs. 9051, 9100
Fort Leonard Wood
Pulaski Co: MO 65473–8994
Landholding Agency: Army
Property Number: 21199910106
Status: Underutilized
Comment: 8664 sq. ft., presence of asbestos/lead paint, most recent use—family quarters, off-site use only.

Bldgs. 9053, 9103
Fort Leonard Wood
Pulaski Co: MO 65473–8994
Landholding Agency: Army
Property Number: 21199910107
Status: Underutilized
Comment: 4332 sq. ft., presence of asbestos/lead paint, most recent use—family quarters, off-site use only.

Bldg. 9110
Fort Leonard Wood
Pulaski Co: MO 65473–8994
Landholding Agency: Army
Property Number: 21199910108
Status: Underutilized
Comment: 6498 sq. ft., presence of asbestos/lead paint, most recent use—family quarters, off-site use only.

Bldgs. 9113, 9115, 9117
Fort Leonard Wood
Pulaski Co: MO 65473–8994
Landholding Agency: Army
Property Number: 21199910109
Status: Underutilized
Comment: 4332 sq. ft., presence of asbestos/lead paint, most recent use—family quarters, off-site use only.

New Jersey

Bldg. 22
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199740311
Status: Unutilized
Comment: 4220 sq. ft., needs rehab, most recent use—machine shop, off-site use only.

Bldg. 178
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199740312
Status: Unutilized
Comment: 2067 sq. ft., most recent use—research, off-site use only

Bldg. 642
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199740314

Status: Unutilized
Comment: 280 sq. ft., most recent use—explosives testing, off-site use only

Bldg. 732
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199740315
Status: Unutilized
Comment: 9077 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 1604
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199740321
Status: Unutilized
Comment: 8519 sq. ft., most recent use—loading facility, off-site use only

Bldg. 3117
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199740322
Status: Unutilized
Comment: 100 sq. ft., most recent use—sentry station, off-site use only

Bldg. 3201
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199740324
Status: Unutilized
Comment: 1360 sq. ft., most recent use—water treatment plant, off-site use only

Bldg. 3202
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199740325
Status: Unutilized
Comment: 96 sq. ft., most recent use—snack bar, off-site use only

Bldg. 3219
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199740326
Status: Unutilized
Comment: 288 sq. ft., most recent use—snack bar, off-site use only

Bldg. 117
Armament Research, Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910110
Status: Excess
Comment: 17,458 sq. ft., possible lead paint, most recent use—housing, off-site use only

Bldg. 119
Armament Research,
Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910111
Status: Excess
Comment: 8596 sq. ft., possible lead paint, most recent use—housing, off-site use only

Bldg. 1109
Armament Research,
Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910112
Status: Excess
Comment: 1140 sq. ft., possible lead paint, most recent use—housing, off-site use only

Bldg. 1111
Armament Research,
Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910113
Status: Excess
Comment: 1581 sq. ft., possible lead paint, most recent use—housing, off-site use only

Bldg. 1123
Armament Research,
Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910114
Status: Excess
Comment: 2465 sq. ft., possible lead paint, most recent use—housing, off-site use only

Bldg. 1125
Armament Research,
Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910115
Status: Excess
Comment: 2513 sq. ft., possible lead paint, most recent use—housing, off-site use only

Bldg. 1127
Armament Research,
Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910116
Status: Excess
Comment: 2098 sq. ft., possible lead paint, most recent use—housing, off-site use only

Bldg. 1130
Armament Research,
Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910117
Status: Excess
Comment: 1977 sq. ft., possible lead paint, most recent use—housing, off-site use only

Bldg. 1132
Armament Research,
Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910118
Status: Excess
Comment: 2307 sq. ft., possible lead paint, most recent use—housing, off-site use only

Bldg. 1138
Armament Research,
Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910119
Status: Excess
Comment: 1893 sq. ft., possible lead paint, most recent use—housing, off-site use only

Bldg. 1140
Armament Research,
Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910120
Status: Excess
Comment: 1323 sq. ft., possible lead paint, most recent use—housing, off-site use only

Bldg. 1142
Armament Research,
Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910121
Status: Excess
Comment: 2018 sq. ft., possible lead paint, most recent use—housing, off-site use only

Bldg. 1144
Armament Research,
Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910122
Status: Excess
Comment: 1394 sq. ft., possible lead paint, most recent use—housing, off-site use only

Bldg. 1146
Armament Research,
Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910123
Status: Excess
Comment: 1365 sq. ft., possible lead paint, most recent use—housing, off-site use only

Bldg. 1147
Armament Research,
Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910124
Status: Excess
Comment: 1177 sq. ft., possible lead paint, most recent use—housing, off-site use only

Bldg. 1149
Armament Research,
Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910125
Status: Excess
Comment: 1421 sq. ft., possible lead paint, most recent use—housing, off-site use only

Bldg. 1393
Armament Research,
Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910126
Status: Excess
Comment: 1413 sq. ft., possible lead paint, most recent use—housing, off-site use only

Bldg. 1398
Armament Research,
Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910127
Status: Excess
Comment: 1929 sq. ft., possible lead paint, most recent use—housing, off-site use only

Bldg. 3327
Armament Research,
Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910128
Status: Excess
Comment: 1512 sq. ft., possible lead paint, most recent use—housing, off-site use only

17 Bldgs.
Armament Research,
Development and Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Location: 1112, 1114, 1116, 1120, 1124, 1126, 1139, 1141, 1145, 1148, 1104A, 1109A, 1140A, 1392A, 1398A, 3326
Landholding Agency: Army
Property Number: 21199910129
Status: Excess
Comment: 210–1100 sq. ft., possible lead paint, most recent use—garages, off-site use only

New York

Bldg. T–35
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840143
Status: Unutilized
Comment: 1296 sq. ft., most recent use—admin., off-site use only

Bldg. S–149
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840144
Status: Unutilized
Comment: 2488 sq. ft., most recent use—admin., off-site use only

Bldg. T–250
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840145
Status: Unutilized
Comment: 2360 sq. ft., most recent use—storage, off-site use only

T–254
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840146
Status: Unutilized
Comment: 4720 sq. ft., most recent use—barracks, off-site use only

Bldg. T–260
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840147
Status: Unutilized
Comment: 2371 sq. ft., most recent use—HQ bldg., off-site use only

Bldg. T–261
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840148
Status: Unutilized
Comment: 1144 sq. ft., most recent use—HQ bldg., off-site use only

Bldg. T–262
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840149
Status: Unutilized
Comment: 1144 sq. ft., most recent use—HQ bldg., off-site use only

Bldg. T–340
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840150
Status: Unutilized
Comment: 2360 sq. ft., most recent use—storage, off-site use only

Bldg. T–392
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840151
Status: Unutilized
Comment: 2740 sq. ft., most recent use—storage, off-site use only

Bldg. T–413
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840152
Status: Unutilized
Comment: 3663 sq. ft., most recent use—admin., off-site use only

Bldg. T–415
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840153
Status: Unutilized
Comment: 1676 sq. ft., most recent use—HQ bldg., off-site use only

Bldg. T–530
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840154
Status: Unutilized
Comment: 2588 sq. ft., most recent use—HQ bldg., off-site use only

Bldg. T–840
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840155
Status: Unutilized
Comment: 2803 sq. ft., most recent use—dining, off-site use only

Bldg. T–892
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840156
Status: Unutilized
Comment: 2740 sq. ft., most recent use—HQ bldg., off-site use only

Bldg. T–991
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840157
Status: Unutilized
Comment: 2740 sq. ft., most recent use—HQ bldg., off-site use only

Bldg. P–996
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840158
Status: Unutilized
Comment: 9602 sq. ft., most recent use—storage, off-site use only

Bldg. S–998
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840159
Status: Unutilized
Comment: 1432 sq. ft., most recent use—storage, off-site use only

Bldg. T–2159
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840160
Status: Unutilized
Comment: 1948 sq. ft., off-site use only

Bldg. T–2339
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840163
Status: Unutilized
Comment: 2027 sq. ft., most recent use—museum, off-site use only

Bldg. P–2415
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840164
Status: Unutilized
Comment: 214 sq. ft., most recent use—incinerator, off-site use only

Bldg. P–21572
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840167
Status: Unutilized
Comment: 240 sq. ft., most recent use—bunker, off-site use only

Bldg. P–87
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199920203
Status: Unutilized
Comment: 360 sq. ft., needs rehab, most recent use—admin., off-site use only

North Dakota

Bldg. 1101
Stanley R. Mickelsen
Safeguard Complex
Nekoma Co: Ramsey ND 58355–
Landholding Agency: Army
Property Number: 21199640213
Status: Unutilized
Comment: 2259 sq. ft., earth covered concrete bldg., needs rehab, off-site use only

Bldg. 1110
Stanley R. Mickelsen
Safeguard Complex
Nekoma Co: Ramsey ND 58355–
Landholding Agency: Army
Property Number: 21199640214
Status: Unutilized
Comment: 11956 sq. ft., concrete, needs rehab, off-site use only

Bldg. 2101
Stanley R. Mickelsen
Safeguard Complex
Nekoma Co: Cavalier ND 58355–
Landholding Agency: Army
Property Number: 21199640215
Status: Unutilized
Comment: 2259 sq. ft., earth covered concrete bldg., needs rehab, off-site use only

Bldg. 2110
Stanley R. Mickelsen
Safeguard Complex
Nekoma Co: Cavalier ND 58355–
Landholding Agency: Army

Property Number: 21199640216
Status: Unutilized
Comment: 11956 sq. ft., concrete, needs rehab, off-site use only

Bldg. 4101
Stanley R. Mickelsen
Safeguard Complex
Nekoma Co: Walsh ND 58355–
Landholding Agency: Army
Property Number: 21199640217
Status: Unutilized
Comment: 2259 sq. ft., earth covered concrete bldg., needs rehab, off-site use only

Bldg. 4110
Stanley R. Mickelsen
Safeguard Complex
Nekoma Co: Walsh ND 58355–
Landholding Agency: Army
Property Number: 21199640218
Status: Unutilized
Comment: 11956 sq. ft., concrete, needs rehab, off-site use only

Bldg. 405
Stanley R. Mickelsen
Safeguard Complex
Nekoma Co: Cavalier ND 58355–
Landholding Agency: Army
Property Number: 21199840168
Status: Unutilized
Comment: 520 sq. ft., concrete block, most recent use—fuel oil pumping facility, off-site use only

Ohio

15 Units
Military Family Housing
Ravenna Army Ammunition
Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 21199230354
Status: Excess
Comment: 3 bedroom (7 units)—1,824 sq. ft. each, 4 bedroom (8 units)—2,430 sq. ft. each, 2-story wood frame, presence of asbestos, off-site use only

7 Units
Military Family Housing
Garages
Ravenna Army Ammunition
Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 21199230355
Status: Excess
Comment: 1–4 stall garage and 6–3 stall garages, presence of asbestos, off-site use only

Oklahoma

Bldg. T–2606
Fort Sill
2606 Currie Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199011273
Status: Unutilized
Comment: 2722 sq. ft., possible asbestos, one floor wood frame; most recent use—Headquarters Bldg.

Bldg. T–838, Fort Sill
838 Macomb Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199220609
Status: Unutilized
Comment: 151 sq. ft., wood frame; 1 story, off-site removal only, most recent use—vet facility (quarantine stable)

Bldg. T–954, Fort Sill
954 Quinette Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199240659
Status: Unutilized
Comment: 3571 sq. ft., 1 story wood frame; needs rehab, off-site use only, most recent use—motor repair shop.

Bldg. T–4050 Fort Sill
4050 Pitman Street
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199240676
Status: Unutilized
Comment: 3177 sq. ft., 1 story wood frame, need rehab, off-site use only, most recent use—storage

Bldg. T–3325, Fort Sill
3325 Naylor Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199240681
Status: Unutilized
Comment: 8832 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—warehouse

Bldg. P–2610, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199330372
Status: Unutilized
Comment: 512 sq. ft., 1-story possible asbestos, most recent use—classroom, off-site use only

Bldg. T1652, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199330380
Status: Unutilized
Comment: 1505 sq. ft., 1-story wood possible asbestos, most recent use—storage, off-site use only

Bldg. T2705, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199330384
Status: Unutilized
Comment: 1601 sq. ft., 2-story wood, possible asbestos, most recent use—storage, off-site use only

Bldg. T3026, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199330392
Status: Unutilized
Comment: 2454 sq. ft., 1-story possible asbestos, most recent use—storage, off-site use only

Bldg. T5637 Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199330419
Status: Unutilized
Comment: 1606 sq. ft., 1 story possible asbestos, most recent use—storage, off-site use only

Bldg. T–4226
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 21199440384
Status: Unutilized
Comment: 114 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—storage, off-site use only

Bldg. P–1015, Fort Sill
Lawton Co: Comanche OK 73501–5100
Landholding Agency: Army
Property Number: 21199520197
Status: Unutilized
Comment: 15402 sq. ft., 1-story, most recent use—storage, off-site use only

Bldg. T–2648, Fort Sill
2648 Tacy Street
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199540022
Status: Excess
Comment: 9407 sq. ft., 1 story wood frame, possible asbestos/lead paint, off-site removal only, most recent use—general purpose warehouse

Bldg. T–2649, Fort Sill
2649 Tacy Street
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199540024
Status: Excess
Comment: 9374 sq. ft., 1 story wood frame, possible asbestos/lead paint, off-site removal only, most recent use—general storehouse

Bldg. P–366, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 21199610740
Status: Unutilized
Comment: 482 sq. ft., possible asbestos, most recent use—storage, off-site use only

Building T–598
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710029
Status: Unutilized
Comment: 744 sq. ft., possible asbestos and leadpaint, most recent use—storage, off-site use only

Building T–1601
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710032
Status: Unutilized
Comment: 5,258 sq. ft., possible asbestos and leadpaint, most recent use—chapel, off-site use only

Building P–1800
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710033
Status: Unutilized
Comment: 2,545 sq. ft., possible asbestos and leadpaint, most recent use—military equipment, off-site use only

Building T–2035
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710039
Status: Unutilized

Comment: 18,157 sq. ft., possible asbestos and leadpaint, most recent use—storage, off-site use only

Building T–2451
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710043
Status: Unutilized
Comment: 9,470 sq. ft., possible asbestos and leadpaint, most recent use—storage, off-site use only

Building T–2608
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710045
Status: Unutilized
Comment: 6,737 sq. ft., possible asbestos and leadpaint, most recent use—classroom, off-site use only

Building T–2952
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710047
Status: Unutilized
Comment: 4,327 sq. ft., possible asbestos and leadpaint, most recent use—motor repair shop, off-site use only

Building T–2953
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710048
Status: Unutilized
Comment: 114 sq. ft., possible asbestos and leadpaint, most recent use—storehouse, off-site use only

Building T–3152
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710051
Status: Unutilized
Comment: 3,151 sq. ft., possible asbestos and leadpaint, most recent use—storage, off-site use only

Building T–3153
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710052
Status: Unutilized
Comment: 3,151 sq. ft., possible asbestos and leadpaint, most recent use—storage, off-site use only

Building T–3154
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710053
Status: Unutilized
Comment: 3,151 sq. ft., possible asbestos and leadpaint, most recent use—storage, off-site use only

Building T–3155
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710054
Status: Unutilized
Comment: 3,151 sq. ft., possible asbestos and leadpaint, most recent use—storage, off-site use only

Building T–4009
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710056
Status: Unutilized
Comment: 2,817 sq. ft., possible asbestos and leadpaint, most recent use—classroom, off-site use only

Building T–4010
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710057
Status: Unutilized
Comment: 2,815 sq. ft., possible asbestos and leadpaint, most recent use—office, off-site use only

Building T–4011
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710058
Status: Unutilized
Comment: 9,456 sq. ft., possible asbestos and leadpaint, most recent use—storage, off-site use only

Building T–4026
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710059
Status: Unutilized
Comment: 9,597 sq. ft., possible asbestos and leadpaint, most recent use—storage, off-site use only

Building T–4030
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710060
Status: Unutilized
Comment: 9,618 sq. ft., possible asbestos and leadpaint, most recent use—storage, off-site use only

Building T–4068
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710061
Status: Unutilized
Comment: 2,750 sq. ft. possible asbestos and leadpaint, most recent use—office, off-site use only

Building T–4069
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710062
Status: Unutilized
Comment: 2,750 sq. ft., possible asbestos and leadpaint, most recent use—office, off-site use only

Building T–4070
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710063
Status: Unutilized
Comment: 2,750 sq. ft., possible asbestos and leadpaint, most recent use—office, off-site use only

Building P–5042
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710066
Status: Unutilized
Comment: 119 sq. ft., possible asbestos and leadpaint, most recent use—heatplant, off-site use only

Building T–5093
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710067
Status: Unutilized
Comment: 9,361 sq. ft., possible asbestos and leadpaint, most recent use—storage, off-site use only

6 Buildings
Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: P–6449, S–6451, T–6452, P–6460, P–6463, S–6450
Landholding Agency: Army
Property Number: 21199710085
Status: Unutilized
Comment: various sq. ft., possible asbestos and leadpaint, most recent use—range support, off-site use only

4 Buildings
Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: T–6465, T–6466, T–6467, T–6468
Landholding Agency: Army
Property Number: 21199710086
Status: Unutilized
Comment: various sq. ft., possible asbestos and leadpaint, most recent use—range support, off site use only

Building P–6539
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710087
Status: Unutilized
Comment: 1,483 sq. ft., possible asbestos and leadpaint, most recent use—office, off-site use only

Bldg. T–205
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730343
Status: Unutilized
Comment: 95 sq. ft., possible asbestos/lead paint, most recent use—waiting shelter, off-site use only

Bldg. T–208
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730344
Status: Unutilized
Comment: 20525 sq. ft., possible asbestos/lead paint, most recent use—training center, off-site use only

Bldg. T–210
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730345
Status: Unutilized
Comment: 19,049 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldg. T–214

Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730346
Status: Unutilized
Comment: 6332 sq. ft., possible asbestos/lead paint, most recent use—training center, off-site use only

Bldg. T–2215, T–216
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730347
Status: Unutilized
Comment: 6300 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–217
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730348
Status: Unutilized
Comment: 6394 sq. ft., possible asbestos/lead paint, most recent use—training center, off-site use only

Bldg. T–219, T–220
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730349
Status: Unutilized
Comment: 152 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–810
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730350
Status: Unutilized
Comment: 7205 sq. ft., possible asbestos/lead paint, most recent use—hay storage, off-site use only

Bldg. T–837, T–839
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730351
Status: Unutilized
Comment: approx. 100 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. P–934
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730353
Status: Unutilized
Comment: 402 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. S–936
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730354
Status: Unutilized
Comment: 342 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. P–956
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730355
Status: Unutilized
Comment: 1602 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–1177
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730356
Status: Unutilized
Comment: 183 sq. ft., possible asbestos/lead paint, most recent use—snack bar, off-site use only

Bldgs. T–1468, T–1469
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730357
Status: Unutilized
Comment: 114 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–1470
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730358
Status: Unutilized
Comment: 3120 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–1508
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730359
Status: Unutilized
Comment: 3176 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–1940
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730360
Status: Unutilized
Comment: 1400 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–1944
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730361
Status: Unutilized
Comment: 449 sq. ft., possible asbestos/lead paint, off-site use only

Bldgs. T–1954, T–2022
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730362
Status: Unutilized
Comment: approx. 100 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–2180
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730363
Status: Unutilized
Comment: possible asbestos/lead paint, most recent use—vehicle maint. facility, off-site use only

Bldg. T–2184
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730364
Status: Unutilized
Comment: approx. 454 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–2185
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730365
Status: Unutilized
Comment: 151 sq. ft., possible asbestos/lead paint, most recent use—fuel storage, off-site use only

Bldgs. T–2186, T–2188, T–2189
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730366
Status: Unutilized
Comment: 1656—3583 sq. ft., possible asbestos/lead paint, most recent use—vehicle maint. shop, off-site use only

Bldg. T–2187
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730367
Status: Unutilized
Comment: 1673 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–2209
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730368
Status: Unutilized
Comment: 1257 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–2240, T–2241
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730369
Status: Unutilized
Comment: approx. 9500 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–2262, T–2263
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730370
Status: Unutilized
Comment: approx. 3100 sq. ft., possible asbestos/lead paint, most recent use—maint. shop, off-site use only

Bldgs. T–2271, T–2272
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730371
Status: Unutilized
Comment: 232 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–2291 thur T–2296
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730372
Status: Unutilized
Comment: 400 sq. ft., each, possible asbestos/lead paint, most recent use—storage, off-site use only

5 Bldgs.
Fort Sill
T–2300, T–2301, T–2303, T–2306, T–2307,
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730373
Status: Unutilized
Comment: various sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–2406
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730374
Status: Unutilized
Comment: 114 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

3 Bldgs.
Fort Sill
#T–2430, T–2432, T–2435
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730376
Status: Unutilized
Comment: approx. 8900 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. T–2434
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730377
Status: Unutilized
Comment: 8997 sq. ft., possible asbestos/lead paint, most recent use—vehicle maint. shop, off-site use only

Bldgs. T–2800, T–2809, T–2810
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730380
Status: Unutilized
Comment: approx. 19,000 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–2963, T–2964, T–2965
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730382
Status: Unutilized
Comment: approx. 3000 sq. ft., possible asbestos/lead paint, most recent use—maint. shop, off-site use only

Bldgs. T–3001, T–3006
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730383
Status: Unutilized
Comment: approx. 9300 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–3025
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730384
Status: Unutilized
Comment: 5259 sq. ft., possible asbestos/lead paint, most recent use—museum, off-site use only

Bldg. T–3314
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730385
Status: Unutilized
Comment: 229 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldgs. T–3318, T–3324, T–3327
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730386
Status: Unutilized
Comment: 8832—9048 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–3323
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730387
Status: Unutilized
Comment: 8832 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. T–3328
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730388
Status: Unutilized
Comment: 9030 sq. ft., possible asbestos/lead paint, most recent use—refuse, off-site use only

Bldg. T–4021, T–4022
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730389
Status: Unutilized
Comment: 442—869 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–4065
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730390
Status: Unutilized
Comment: 3145 sq. ft., possible asbestos/lead paint, most recent use—maint. shop, off-site use only

Bldg. T–4067
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730391
Status: Unutilized
Comment: 1032 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–4281
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730392
Status: Unutilized
Comment: 9405 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–4401, T–4402
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730393
Status: Unutilized
Comment: 2260 sq. ft., possible of asbestos/lead paint, most recent use—office, off-site use only

Bldg. T–4407
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730395
Status: Unutilized
Comment: 3070 sq. ft., possible of asbestos/lead paint, most recent use—dining facility, off-site use only

4 Bldgs.
Fort Sill
#T–4410, T–4414, T–4415, T–4418
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730396
Status: Unutilized
Comment: 1311 sq. ft., possible of asbestos/lead paint, most recent use—office, off-site use only

5 Bldgs.
Fort Sill
#T–4411 thru T–4413, T–4416 thru T–4417
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730397
Status: Unutilized
Comment: 1244 sq. ft., possible of asbestos/lead paint, most recent use—showers, off-site use only

Bldg. T–4421
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730398
Status: Unutilized
Comment: 3070 sq. ft., possible of asbestos/lead paint, most recent use—dining, off-site use only

10 Bldgs.
Fort Sill
#T–4422 thru T–44427, T–4431 thru T–4434
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730399
Status: Unutilized
Comment: 2263 sq. ft., possible of asbestos/lead paint, most recent use—barracks, off-site use only

6 Bldgs.
Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: #T–4436, T–4440, T–4444, T–4448, T–4449
Landholding Agency: Army
Property Number: 21199730400
Status: Unutilized
Comment: 1311—2263 sq. ft., possible of asbestos/lead paint, most recent use—office, off-site use only

5 Bldgs.

Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: #T–4441, T–4442, T–4443, T–4446, T–4447
Landholding Agency: Army
Property Number: 21199730401
Status: Unutilized
Comment: 1244 sq. ft., possible of asbestos/lead paint, most recent use—showers, off-site use only

4 Bldgs.
Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: #T–4471, T–4472, T–4473, T–4477
Landholding Agency: Army
Property Number: 21199730406
Status: Unutilized
Comment: 1244 sq. ft., possible of asbestos/lead paint, most recent use—showers, off-site use only

Bldg. T–4707
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730407
Status: Unutilized
Comment: 160 sq. ft., possible asbestos/lead paint, most recent use—waiting shelter, off-site use only

Bldg. T–5005
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730408
Status: Unutilized
Comment: 3206 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–5041
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730409
Status: Unutilized
Comment: 763 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–5044, T–5045
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730410
Status: Unutilized
Comment: 1798/1806 sq. ft., possible asbestos/lead paint, most recent use—class rooms, off-site use only

4 Bldgs.
Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: #T–5046, T–5047, T–5048, T–5049
Landholding Agency: Army
Property Number: 21199730411
Status: Unutilized
Comment: various sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. T–5094
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730412
Status: Unutilized
Comment: 3204 sq. ft., possible asbestos/lead paint, most recent use—maint. shop, off-site use only

Bldg. T–5095
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730413
Status: Unutilized
Comment: 3223 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–5420
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730414
Status: Unutilized
Comment: 189 sq. ft., possible asbestos/lead paint, most recent use—fuel storage, off-site use only

Bldg. T–5595
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730415
Status: Unutilized
Comment: 695 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. T–5639
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730416
Status: Unutilized
Comment: 10,720 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. T–7290, T–7291
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730417
Status: Unutilized
Comment: 224/840 sq. ft., possible asbestos/lead paint, most recent use—kennel, off-site use only

Bldg. T–7775
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730419
Status: Unutilized
Comment: 1452 sq. ft., possible asbestos/lead paint, most recent use—private club, off-site use only

Bldg. S955
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199810354
Status: Unutilized
Comment: 854 sq. ft., possible asbestos/lead paint, most recent use—training, off-site use only

Bldg. T–207
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910130
Status: Unutilized
Comment: 19,531 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. P–364, P–584, P–588
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910131
Status: Unutilized
Comment: 106 sq. ft., possible asbestos/lead paint, most recent use—utility plant, off-site use only

Bldg. P–599
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910132
Status: Unutilized
Comment: 1400 sq. ft., possible asbestos/lead paint, most recent use—clubhouse, off-site use only

4 Bldgs.
Fort Sill
P–617, P–1114, P–1386, P–1608
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910133
Status: Unutilized
Comment: 106 sq. ft., possible asbestos/lead paint, most recent use—utility plant, off-site use only

Bldg. P–703, P–1816, T–1930
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910134
Status: Unutilized
Comment: 661 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. P–746
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910135
Status: Unutilized
Comment: 6299 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldgs. P–1908, P–2078
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910136
Status: Unutilized
Comment: 106 & 131 sq. ft., possible asbestos/lead paint, most recent use—utility plant, off-site use only

Bldgs. T–1938, S–2101
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910137
Status: Unutilized
Comment: 964 & 1640 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–1941
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910138
Status: Unutilized
Comment: 1242 sq. ft., possible asbestos/lead paint, most recent use—classroom, off-site use only

Bldg. T–2183
Fort Sill
Lawton Co: Comanche OK 73503–5100

Landholding Agency: Army
Property Number: 21199910139
Status: Unutilized
Comment: 14,530 sq. ft., possible asbestos/lead paint, most recent use—repair shop, off-site use only

Bldgs. P–2581, P–2773
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910140
Status: Unutilized
Comment: 4093 and 4129 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. P–2582
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910141
Status: Unutilized
Comment: 3672 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldgs. S–2790, P–2906
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910142
Status: Unutilized
Comment: 1602 and 1390 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. P–2909
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910143
Status: Unutilized
Comment: 1236 sq. ft., possible asbestos/lead paint, most recent use—classroom, off-site use only

Bldgs. P–2912, P–2921, P–2944
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910144
Status: Unutilized
Comment: 1390 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. S–3169
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910145
Status: Unutilized
Comment: 6437 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. P–2914
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910146
Status: Unutilized
Comment: 1236 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. P–3469
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910147
Status: Unutilized
Comment: 3930 sq. ft., possible asbestos/lead paint, most recent use—car wash, off-site use only

Bldg. S–3559
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910148
Status: Unutilized
Comment: 9462 sq. ft., possible asbestos/lead paint, most recent use—classroom, off-site use only

Bldg. S–4064
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910149
Status: Unutilized
Comment: 1389 sq. ft., possible asbestos/lead paint, off-site use only

Bldg. S–4610
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910150
Status: Unutilized
Comment: 3095 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. T–4748
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910151
Status: Unutilized
Comment: 1896 sq. ft., possible asbestos/lead paint, most recent use—classroom, off-site use only

Bldg. S–5086
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910152
Status: Unutilized
Comment: 6453 sq. ft., possible asbestos/lead paint, most recent use—maintenance shop, off-site use only

Bldg. P–5101
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholder Agency: Army
Property Number: 21199910153
Status: Unutilized
Comment: 82 sq. ft., possible asbestos/lead paint, most recent use—gas station, off-site use only

Bldg. S–5401
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholder Agency: Army
Property Number: 21199910154
Status: Unutilized
Comment: 3200 sq. ft., possible asbestos/lead paint, most recent use—clubhouse, off-site use only

Bldg. P–5638
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholder Agency: Army
Property Number: 21199910155
Status: Unutilized
Comment: 300 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. S–6430
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholder Agency: Army
Property Number: 21199910156
Status: Unutilized
Comment: 2080 sq. ft., possible asbestos/lead paint, most recent use—range support, off-site use only

Bldg. T–6461
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholder Agency: Army
Property Number: 21199910157
Status: Unutilized
Comment: 200 sq. ft., possible asbestos/lead paint, most recent use—range support, off-site use only

Bldg. T–6462
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholder Agency: Army
Property Number: 21199910158
Status: Unutilized
Comment: 64 sq. ft., possible asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. P–7230
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholder Agency: Army
Property Number: 21199910159
Status: Unutilized
Comment: 160 sq. ft., possible asbestos/lead paint, most recent use—transmitter bldg., off-site use only

Pennsylvania

Bldg. T–3–87
Fort Indiantown Gap
Annville Co: Lebanon PA 17003–5000
Landholder Agency: Army
Property Number: 21199740337
Status: Unutilized
Comment: 1144 sq. ft., most recent use—classroom, off-site use only

South Carolina

Bldg. 5412
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholder Agency: Army
Property Number: 21199510139
Status: Excess
Comment: 3900 sq. ft., 1–story, wood frame, needs rehab, recent use—admin., off-site use only

Bldg. 3499
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 21199730310
Status: Unutilized
Comment: 3724 sq. ft., needs repair, most recent use—admin.

Bldg. 2441
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 21199820187
Status: Unutilized
Comment: 2160 sq. ft., needs repair, most recent use—admin.

Bldg. 3605
Fort Jackson

Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 21199820188
Status: Unutilized
Comment: 711 sq. ft., needs repair, most recent use—storage

Texas

Bldg. P–377, Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199330444
Status: Unutilized
Comment: 74 sq. ft., 1-story brick, needs rehab, most recent use—scale house, located in National Historic District, off-site use only

Bldg. T–5901
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199330486
Status: Unutilized
Comment: 742 sq. ft., 1-story wood frame, most recent use—admin., off-site use only

Bldg. 4480, Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21199410322
Status: Unutilized
Comment: 2160 sq. ft., 1-story, most recent use—storage, off-site use only

Bldg. P–6615
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199440454
Status: Unutilized
Comment: 400 sq. ft., 1-story concrete frame, off-site removal only, most recent use—detached garage

Bldg. 4201, Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21199520201
Status: Unutilized
Comment: 9000 sq. ft., 1-story, off-site use only

Bldg. 4202, Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21199520202
Status: Unutilized
Comment: 5400 sq. ft., 1 story, most recent use—storage, off-site use only

Bldg. P–197
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199640220
Status: Unutilized
Comment: 13819 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. T–230
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199640221
Status: Unutilized
Comment: 18102 sq. ft., presence of asbestos/lead paint, most recent use—printing plant and shop, off-site use only

Bldg. S–3898
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199640235
Status: Unutilized
Comment: 4200 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only

Bldg. P–3899
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199640236
Status: Unutilized
Comment: 4200 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only

Bldg. P–5126
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199640240
Status: Unutilized
Comment: 189 sq. ft., off-site use only

Bldg. P–6201
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199640241
Status: Unutilized
Comment: 3003 sq. ft., presence of asbestos/lead paint, most recent use—officers family quarters, off-site use only

Bldg. P–6202
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199640242
Status: Unutilized
Comment: 1479 sq. ft., presence of lead paint, most recent use—officers family quarters, off-site use only

Bldg. P–6203
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199640243
Status: Unutilized
Comment: 1381 sq. ft., presence of lead paint, most recent use—military family quarters, off-site use only

Bldg. P–6204
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199640244
Status: Unutilized
Comment: 1454 sq. ft., presence of asbestos/lead paint, most recent use—military family quarters, off-site use only

Bldg. 7137, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 21199640564
Status: Unutilized
Comment: 35,736 sq. ft., 3-story, most recent use—housing, off-site use only

Building. 4630
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21199710088
Status: Unutilized
Comment: 21,833 sq. ft., most recent use—Admin., off-site use only

Bldg. T–330
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199730315
Status: Unutilized
Comment: 59,149 sq. ft., presence of asbestos/lead paint, historical category, most recent use—laundry, off-site use only

Bldgs. P–605A & P–606A
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199730316
Status: Unutilized
Comment: 2418 sq. ft., poor condition, presence of asbestos/lead paint, historical category, most recent use—indoor firing range, off-site use only

Bldg. S–1150
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199730317
Status: Unutilized
Comment: 8629 sq. ft., presence of asbestos/lead paint, most recent use—instruction bldg., off-site use only

Bldgs. S–1140—S–1446, S–1452
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199730318
Status: Unutilized
Comment: 4200 sq. ft., presence of lead, most recent use—instruction bldgs., off-site use only

4 Bldgs.
Fort Sam Houston
#S–1447, S–1449, S–1450, S–1451
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199730319
Status: Unutilized
Comment: 4200 sq. ft., presence of asbestos/lead paint, most recent use—instruction bldgs., off-site use only

Bldg. P–4115
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199730327
Status: Unutilized
Comment: 529 sq. ft., presence of asbestos/lead paint, historical bldg., most recent use—admin., off-site use only

Bldg. 4205
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199730328
Status: Unutilized
Comment: 24,573 sq. ft., presence of asbestos/lead paint, most recent use—warehouse, off-site use only

Bldg. T–5113
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholder Agency: Army
Property Number: 21199730330
Status: Unutilized
Comment: 2550 sq. ft., presence of asbestos/lead paint, historical bldg., most recent use—medical clinic, off-site use only

Bldg. T–5122

Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholder Agency: Army
Property Number: 21199730331
Status: Unutilized
Comment: 3602 sq. ft., presence of asbestos/lead paint, historical category, most recent use—instruction bldg., off-site use only

Bldg. T–5903
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholder Agency: Army
Property Number: 21199730332
Status: Unutilized
Comment: 5200 sq. ft., presence of asbestos/lead paint, historical category, most recent use—admin., off-site use only

Bldg. T–5907
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholder Agency: Army
Property Number: 21199730333
Status: Unutilized
Comment: 570 sq. ft., presence of asbestos/lead paint, historical category, most recent use—admin., off-site use only

Bldg. T–6284
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholder Agency: Army
Property Number: 21199730335
Status: Unutilized
Comment: 120 sq. ft., presence of asbestos/lead paint, most recent use—pump station, off-site use only

Bldg. T–5906
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholder Agency: Army
Property Number: 21199730420
Status: Unutilized
Comment: 570 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. P–1382
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholder Agency: Army
Property Number: 21199810365
Status: Unutilized
Comment: 30,082 sq. ft., presence of asbestos/lead paint, most recent use—housing, off-site use only

Bldg. P–2014
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholder Agency: Army
Property Number: 21199810367
Status: Unutilized
Comment: 10,990 sq. ft., historical property, presence of asbestos/lead paint, most recent use—instruction, off-site use only

Bldg. P–2015
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholder Agency: Army
Property Number: 21199810368
Status: Unutilized
Comment: 11,333 sq. ft., historical property, presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. P–2016
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199810369
Status: Unutilized
Comment: 11,517 sq. ft., historical property, presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. P–2017
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199810370
Status: Unutilized
Comment: 10,990 sq. ft., historical property, presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. S–3897
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199810371
Status: Unutilized
Comment: 4,200 sq. ft., presence of asbestos/lead paint, most recent use—instruction, off-site use only

Bldg. S–1155
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830347
Status: Unutilized
Comment: 2100 sq. ft., good, hazard abatement required, most recent use—instruction bldg., off-site use only

Bldg. S–3896
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830349
Status: Unutilized
Comment: 4200 sq. ft., fair, hazard abatement required, most recent use—training, off-site use only

Bldg. T–5123
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830350
Status: Unutilized
Comment: 2596 sq. ft., fair, hazard abatement required, most recent use—instruction, off-site use only, historical significance

Bldg. P–6150
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830351
Status: Unutilized
Comment: 48 sq. ft., fair, hazard abatement required, most recent use—pumphouse, off-site use only

Bldgs. P–6331, P–6335, P–6495
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830353
Status: Unutilized
Comment: 36 sq. ft., fair, hazard abatement required, most recent use—pumping station, off-site use only

Bldg. P–8000
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830354
Status: Unutilized
Comment: 1766 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

9 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8001, P8008, 8014, 8027, 8033, 8035, 8127, 8229, 8265
Landholding Agency: Army
Property Number: 21199830355
Status: Unutilized
Comment: 2456 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

11 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8003, P8011, 8012, 8019, 8043, 8202, 8216, 8235, 8241 8261
Landholding Agency: Army
Property Number: 21199830356
Status: Unutilized
Comment: 2358 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

Bldgs. P–8003C, P–8220C
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830357
Status: Unutilized
Comment: 1174 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only

Bldg. P–8004
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830358
Status: Unutilized
Comment: 2243 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

7 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8005, 8101, 8107, 8141, 8143, 8146, 8150
Landholding Agency: Army
Property Number: 21199830359
Status: Unutilized
Comment: 1804 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

15 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8006, 8007, 8010, 8013, 8015, 8017, 8020, 8029, 8103, 8105, 8201, 8208, 8218, 8225, 8234
Landholding Agency: Army
Property Number: 21199830360
Status: Unutilized
Comment: 1703 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

7 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8009, 8024, 8207, 8214, 8217, 8226, 8256
Landholding Agency: Army
Property Number: 21199830361
Status: Unutilized

Comment: 2253 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

4 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8009C, 8027C, 8248C, 8256C
Landholding Agency: Army
Property Number: 21199830362
Status: Unutilized
Comment: 681 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only

3 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8012C, 8039C, 8224C
Landholding Agency: Army
Property Number: 21199830363
Status: Unutilized
Comment: 1185 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only

Bldg. P8016
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830364
Status: Unutilized
Comment: 2347 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

8 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8021, 8211, 8244, 8270, 8213, 8223, 8243, 8266
Landholding Agency: Army
Property Number: 21199830365
Status: Unutilized
Comment: 249 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

Bldg. P–8022
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830366
Status: Unutilized
Comment: 1849 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

5 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #8022C, 8023C, 8106C, 8127C, 8206C
Landholding Agency: Army
Property Number: 21199830367
Status: Unutilized
Comment: 513 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only

Bldgs. P8026, P8028
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830369
Status: Unutilized
Comment: approx. 1850 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

3 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8028C, P8143C, P8150C
Landholding Agency: Army
Property Number: 21199830370
Status: Unutilized
Comment: 838 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only

3 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8035C, P8104C, 8236C
Landholding Agency: Army
Property Number: 21199830372
Status: Unutilized
Comment: 1017 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only

3 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8102, 8106, 8108
Landholding Agency: Army
Property Number: 21199830375
Status: Unutilized
Comment: approx. 2700 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

Bldgs. P8109, P8137
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830376
Status: Unutilized
Comment: 1540 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

Bldgs. P8112, P8228
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830378
Status: Unutilized
Comment: 1807 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

3 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: P8116, 8151, 8158
Landholder Agency: Army
Property Number: 21199830380
Status: Unutilized
Comment: 1691 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

Bldg. P8117
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholder Agency: Army
Property Number: 21199830381
Status: Unutilized
Comment: 1581 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

8 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8118, 8121, 8125, 8153, 8119, 8120, 8124, 8168
Landholder Agency: Army
Property Number: 21199830382
Status: Unutilized
Comment: various sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

Bldgs. P8122, P8123
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholder Agency: Army
Property Number: 21199830383
Status: Unutilized
Comment: approx. 1400 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

Bldg. P8126
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholder Agency: Army
Property Number: 21199830384
Status: Unutilized
Comment: 1331 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

8 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: P8131C, 8139C, 8211C, 8231C, 8243C, 8249C, 8261C
Landholder Agency: Army
Property Number: 21199830386
Status: Unutilized
Comment: 849 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only

Bldgs. P8133, P8134
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholder Agency: Army
Property Number: 21199830387
Status: Unutilized
Comment: approx. 2000 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

Bldgs. P8135, P8136
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholder Agency: Army
Property Number: 21199830388
Status: Unutilized
Comment: approx. 1500 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

4 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P–8144, 8267, 8148, 8149
Landholding Agency: Army
Property Number: 21199830389
Status: Unutilized
Comment: Approx. 2200 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

Bldg. P8171
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830392
Status: Unutilized
Comment: 1289 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

Bldg. P8172
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830393

Status: Unutilized
Comment: 1597 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

Bldgs. P8173, P8174
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830394
Status: Unutilized
Comment: Approx. 2200 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

Bldg. P8174C
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830395
Status: Unutilized
Comment: 670 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only

Bldg. P8175
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830396
Status: Unutilized
Comment: 2220 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

Bldg. P8200
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830397
Status: Unutilized
Comment: 892 sq. ft., fair, hazard abatement required, most recent use—officers quarters, off-site use only

Bldg. P8200C
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830398
Status: Unutilized
Comment: 924 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only

Bldg. P8205
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830399
Status: Unutilized
Comment: 1745 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

3 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8206, 8232, 8233
Landholding Agency: Army
Property Number: 21199830400
Status: Unutilized
Comment: approx. 2400 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

Bldg. P8245
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830401
Status: Unutilized
Comment: 2876 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

Bldgs. P8262C, 8271C
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830403
Status: Unutilized
Comment: 1006 sq. ft., fair, hazard abatement required, most recent use—detached garage, off-site use only

Bldg. P8269
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199830404
Status: Unutilized
Comment: 2396 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

20 Bldgs.
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Location: #P8271, 8002, 8018, 8025, 8037, 8100, 8130, 8132, 8138, 8140, 8142, 8145, 8147, 8210, 8212, 8221, 8242, 8247, 8264, 8257
Landholding Agency: Army
Property Number: 21199830405
Status: Unutilized
Comment: 2777 sq. ft., fair, hazard abatement required, most recent use—housing, off-site use only

Bldg. P–1374
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199840169
Status: Unutilized
Comment: 111,448 sq. ft., presence of asbestos/lead paint, hazard abatement responsibility, most recent use—barracks, off-site use only

Bldg. P–1980
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199840170
Status: Unutilized
Comment: 2989 sq. ft., presence of asbestos/lead paint, hazard abatement responsibility, most recent use—radio system station, off-site use only

Bldg. P–1981
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199840171
Status: Unutilized
Comment: 200 sq. ft., presence of asbestos/lead paint, hazard abatement responsibility, most recent use—generator plant, off-site use only

Bldg. P–2396
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199840172
Status: Unutilized
Comment: 1080 sq. ft., presence of asbestos, hazard abatement responsibility, most recent use—generator plant, off-site use only

Bldg. P–4226
Fort Sam Houston
San Antonio Co: Bexar TX 78234-5000
Landholding Agency: Army
Property Number: 21199840173
Status: Unutilized
Comment: 1809 sq. ft., presence of lead paint, hazard abatement responsiblity, most recent use—storage, off-site use only

Bldg. 2840
Fort Hood
Ft. Hood TX 76544–
Landholding Agency: Army
Property Number: 21199840175
Status: Unutilized
Comment: 2250 sq. ft., most recent use—admin., off-site use only

Bldg. 2841
Fort Hood
Ft. Hood TX 76544–
Landholding Agency: Army
Property Number: 21199840176
Status: Unutilized
Comment: 2220 sq. ft., most recent use—storage, off-site use only

Bldg. 2842
Fort Hood
Ft. Hood TX 76544–
Landholding Agency: Army
Property Number: 21199840177
Status: Unutilized
Comment: 2650 sq. ft., most recent use—admin., off-site use only

Bldg. 2843
Fort Hood
Ft. Hood TX 76544–
Landholding Agency: Army
Property Number: 21199840178
Status: Unutilized
Comment: 8043 sq. ft., most recent use—admin., off-site use only

Bldg. 2844
Fort Hood
Ft. Hood TX 76544–
Landholding Agency: Army
Property Number: 21199840179
Status: Unutilized
Comment: 8043 Sq. st., most recent use—only

Bldg. 2845
Fort Hood
Ft. Hood TX 76544–
Landholding Agency: Army
Property Number: 21199840180
Status: Unutilized
Comment: 8043 sq. ft., most recent use—admin., off-site use only

Bldg. 2846
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199840181
Status: Unutilized
Comment: 8043 sq. ft., most recent use—admin., off-site use only

Bldg. 36
Fort Hood
Ft. Hood Co. Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920204
Status: Unutilized
Comment: 2250 sq. ft., needs repair, most recent use—ACS center, off-site use only

Bldg. 37
Fort Hood

Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920205
Status: Unutilized
Comment: 2220 sq. ft., needs repair, most recent use—storage, off-site use only

Bldg. 38
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920206
Status: Unutilized
Comment: 2070 sq. ft., needs repair, most recent use—gen. inst., off-site use only

Bldg. 39
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920207
Status: Unutilized
Comment: 2220 sq. ft., needs repair, most recent use—storage, off-site use only

Bldg. 41
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920208
Status: Unutilized
Comment: 1750 sq. ft., needs repair, most recent use—admin., off-site use only

Bldgs. 43–44
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920209
Status: Unutilized
Comment: 2750 sq. ft., needs repair, most recent use—admin., off-site use only

Bldgs. 209–212
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920210
Status: Unutilized
Comment: 8043 sq. ft., needs repair, most recent use—admin., off-site use only

Bldg. 213
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920211
Status: Unutilized
Comment: 7670 sq. ft., needs repair, most recent use—operations, off-site use only

Bldg. 919
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920212
Status: Unutilized
Comment: 11,800 sq. ft., needs repair, most recent use—Bde. Hq. Bldg., off-site use only

Bldg. 923
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920213
Status: Unutilized
Comment: 4440 sq. ft., needs repair, most recent use—admin., off-site use only

Bldg. 924
Fort Hood
Fort Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920214
Status: Unutilized
Comment: 3500 sq. ft., need repair, most recent use—admin., off-site use only

Bldg. 2304
Fort Hood
Fort Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920215
Status: Unutilized
Comment: 8043 sq. ft., need repair, most recent use—Avn. Unit Ops., off-site use only

Bldgs. 2306–2307
Fort Hood
Fort Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920216
Status: Unutilized
Comment: 8043 sq. ft., need repair, most recent use—health clinic, off-site use only

Bldg. 3203
Fort Hood
Fort Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920217
Status: Unutilized
Comment: 1680 sq. ft., need repair, most recent use—car wash, off-site use only

Bldgs. 3204–3205
Fort Hood
Fort Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920218
Status: Unutilized
Comment: 64 sq. ft., need repair, most recent use—storage, off-site use only

Bldgs. 3949–3950
Fort Hood
Fort Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920219
Status: Unutilized
Comment: 5310 sq. ft., need repair, most recent use—Bn. Hq. Bldg., off-site use only

Bldg. 3951
Fort Hood
Fort Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920220
Status: Unutilized
Comment: 2500 sq. ft., need repair, most recent use—admin., off-site use only

Bldgs. 3952–3953
Fort Hood
Fort Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920221
Status: Unutilized
Comment: 3100 sq. ft., need repair, most recent use—admin, off-site use only

Bldgs. 3954–3957
Fort Hood
Fort Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920222
Status: Unutilized
Comment: 5310 sq. ft., need repair, most recent use—admin., off-site use only

Bldg. 3958
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Propety Number: 21199920223
Status: Unutilized
Comment: 3241 sq. ft., needs repair, most recent use—admin., off-site use only

Bldg. 3959
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Propety Number: 21199920224
Status: Unutilized
Comment: 3373 sq. ft., needs repair, most recent use—admin., off-site use only

Bldgs. 3960–3962
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Propety Number: 21199920225
Status: Unutilized
Comment: 5310 sq. ft., needs repair, most recent use—admin., off-site use only

Bldgs. 3964–3965
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Propety Number: 21199920226
Status: Unutilized
Comment: 3100 sq. ft., needs repair, most recent use—Bn. Hq. Bldg., off-site use only

Bldg. 3966
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Propety Number: 21199920227
Status: Unutilized
Comment: 2741 sq. ft., needs repair, most recent use—Co. Hq. Bldg., off-site use only

Bldgs. 3967–3969
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Propety Number: 21199920228
Status: Unutilized
Comment: 5310 sq. ft., needs repair, most recent use—admin., off-site use only

Bldgs. 3970–3971
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Propety Number: 21199920229
Status: Unutilized
Comment: 3241 sq. ft., needs repair, most recent use—admin., off-site use only

Virginia

Bldg. T–192
Fort Monroe
Ft. Monroe VA 23651–
Landholding Agency: Army
Propety Number: 21199830416
Status: Unutilized
Comment: 2804 sq. ft., presence of asbestos/lead paint, most recent use—hobby shop, off-site use only

Washington

13 Bldgs., Fort Lewis
A0402, CO723, CO726, CO727, CO90, CO907, CO922, CO923, CO926, CO92
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Propety Number: 21199630199
Status: Unutilized
Comment: 2360 sq. ft., possible asbestos/lead paint, most recent use—barracks, off-site use only

7 Bldgs., Fort Lewis
AO438, AO439, CO901, CO910, CO91
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630200
Status: Unutilized
Comment: 1144 sq. ft., possible asbestos/lead paint, most recent use—dayroom bldgs., off-site use only

6 Bldgs., Fort Lewis
CO908, CO728, CO921, CO928, C100
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630204
Status: Unutilized
Comment: 2207 sq. ft., possible asbestos/lead paint, most recent use—dining, off-site use only

Bldg., CO909, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630205
Status: Unutilized
Comment: 1984 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldg., CO920, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630206
Status: Unutilized
Comment: 1984 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldg. C1249, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630207
Status: Unutilized
Comment: 992 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 1164, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630213
Status: Unutilized
Comment: 230 sq. ft., possible asbestos/lead paint, most recent use—storehouse, off-site use only

Bldgs. 1307, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630216
Status: Unutilized
Comment: 1092 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 1309, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630217
Status: Unutilized
Comment: 1092 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 2167, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630218
Status: Unutilized
Comment: 288 sq. ft., possible asbestos/lead paint, most recent use—warehouse, off-site use only

Bldg. 4078, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630219
Status: Unutilized
Comment: 10200 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—warehouse, off-site use only

Bldg. 9599, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630220
Status: Unutilized
Comment: 12366 sq. ft., possible asbestos/lead paint, most recent use—warehouse, off-site use only

Bldg. A1404, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199640570
Status: Unutilized
Comment: 557 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. A1419, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199640571
Status: Unutilized
Comment: 1307 sq. ft., needs rehab, most recent use—storage, off-site use only

11 Buildings
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: #EO103–EO106, EO306, EO315–EO316, EO343–EO344, EO353—EO354
Landholding Agency: Army
Property Number: 21199710143
Status: Unutilized
Comment: 2360 sq. ft., possible asbestos/lead paint, most recent use—officer's quarters, off-site use only

Bldgs. EO109, EO350
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199710144
Status: Unutilized
Comment: 1165 sq. ft., possible asbestos/lead paint, most recent use—dayroom, off-site use only

Bldgs. EO120, EO321, EO338
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199710145
Status: Unutilized
Comment: 3810 sq. ft., possible asbestos/lead paint, most recent use—officer's quarters, off-site use only

5 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: #EO127, EO136, EO302, EO204, EO330
Landholding Agency: Army
Property Number: 21199710146
Status: Unutilized
Comment: 2284 sq. ft., possible asbestos/lead paint, most recent use—offices, off-site use only

Bldg. EO136
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199710147
Status: Unutilized
Comment: 3885 sq. ft., possible asbestos/lead paint, most recent use—officer's quarters, off-site use only

Bldgs. EO158, EO303
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199710148
Status: Unutilized
Comment: 1675 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. EO202
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199710149
Status: Unutilized
Comment: 992 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. EO312
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199710150
Status: Unutilized
Comment: 3885 sq. ft., possible asbestos/lead paint, most recent use—officer's quarters, off-site use only

Bldg. EO322
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199710151
Status: Unutilized
Comment: 2250 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. EO325
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199710152
Status: Unutilized
Comment: 3336 sq. ft., possible asbestos/lead paint, most recent use—officer's quarters, off-site use only

Bldg. EO329
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199710153
Status: Unutilized
Comment: 1843 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. EO334
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199710154
Status: Unutilized
Comment: 3779 sq. ft., possible asbestos/lead paint, most recent use—recreation, off-site use only

Bldg. EO335
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199710155
Status: Unutilized

Comment: 2207 sq. ft., possible asbestos/lead paint, most recent use—dining facility, off-site use only

Bldg. EO347
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199710156
Status: Unutilized
Comment: 1800 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldgs. EO349, EO110
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199710157
Status: Unutilized
Comment: 1296 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

4 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: #EO351, EO308, EO207, EO108
Landholding Agency: Army
Property Number: 21199710158
Status: Unutilized
Comment: 1144 sq. ft., possible asbestos/lead paint, most recent use—dayroom, off-site use only

Bldgs. EO352, EO307
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199710159
Status: Unutilized
Comment: 992 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. EO355
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199710160
Status: Unutilized
Comment: 2360 sq. ft., possible asbestos/lead paint, most recent use—training facility, off-site use only

Bldg. B1008, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199720216
Status: Unutilized
Comment: 7387 sq. ft., 2-story, needs rehab, possible asbestos/lead paint, most recent use—medical clinic, off-site use only

Bldgs. B1011–B1012, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199720217
Status: Unutilized
Comment: 992 sq. ft., and 1144 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—office, off-site use only

Bldgs. CO509, CO709, CO720
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199810372
Status: Unutilized
Comment: 1984 sq. ft., possible asbestos/lead paint, needs rehab, most recent use—storage, off-site use only

4 Bldgs.
Fort Lewis
CO511, CO710, CO711, CO719
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199810373
Status: Unutilized
Comment: 1,144 sq. ft., possible asbestos/lead paint, needs rehab, most recent use—dayrooms, off-site use only

11 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: CO528, CO701, CO708, CO721, CO526, CO527, CO702, CO703, CO706, CO707, CO722
Landholding Agency: Army
Property Number: 21199810374
Status: Unutilized
Comment: 2207 sq. ft., possible asbestos/lead paint, needs rehab, most recent use—dining, off-site use only

Bldg. 1021
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199830418
Status: Unutilized
Comment: 3724 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—carport, off-site use only

Bldg. 5162
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199830419
Status: Unutilized
Comment: 2360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—office, off-site use only

Bldg. A0631
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199830422
Status: Unutilized
Comment: 2207 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—dayroom, off-site use only

Bldg. C1246
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199830426
Status: Unutilized
Comment: 7670 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—office, off-site use only

Bldg. B0813
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199830427
Status: Unutilized
Comment: 1144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—office, off-site use only

Bldg. B0812
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199830428
Status: Unutilized
Comment: 1144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—dayroom, off-site use only

Bldg. B0228
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199830429
Status: Unutilized
Comment: 2739 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. C0409
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199830431
Status: Unutilized
Comment: 1948 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 9575
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199830432
Status: Unutilized
Comment: 17,217 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—veh. maint., off-site use only

Bldg. 5224
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199830433
Status: Unutilized
Comment: 2360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—educ. fac., off-site use only

Bldg. 9794
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199830435
Status: Unutilized
Comment: 210 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—vet. fac., off-site use only

Bldg. 4540
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199840183
Status: Unutilized
Comment: 1200 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—office, off-site use only

Bldg. 4541
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199840184
Status: Unutilized
Comment: 880 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 4542
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199840185
Status: Unutilized
Comment: 112 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—heat plant, off-site use only

Bldg. 4549
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199840186
Status: Unutilized
Comment: 26220 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—green house heat plant, off-site use only

Bldg. U001B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920237
Status: Excess
Comment: 54 sq. ft.,needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U001C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920238
Status: Unutilized
Comment: 960 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—supply, off-site use only

10 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U002B, U002C, U005C, U015I, U016E, U019C, U022A, U028B, 0091A, U093C
Landholding Agency: Army
Property Number: 2119920239
Status: Excess
Comment: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

6 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U003A, U004B, U006C, U015B, U016B, U019B
Landholding Agency: Army
Property Number: 21199920240
Status: Unutilized
Comment: 54 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U004D
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920241
Status: Unutilized
Comment: 960 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—supply, off-site use only

Bldg. U005A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920242
Status: Unutilized
Comment: 360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldgs. U006A, U024A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920243
Status: Excess
Comment: 1440 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

Bldgs. U007A, U021A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920244
Status: Excess
Comment: 100 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

7 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U014A, U022B, U023A, U043B, U059B, U060A, U101A
Landholding Agency: Army
Property Number: 21199920245
Status: Excess
Comment: needs repair, presence of asbestos/lead paint, most recent use—ofc/tower/support, off-site use only

Bldg. U015J
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920246
Status: Excess
Comment: 144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only

Bldg. U018B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920247
Status: Unutilized
Comment: 121 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldg. U018C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920248
Status: Unutilized
Comment: 48 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. U024B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920249
Status: Unutilized
Comment: 168 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U024D
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920250
Status: Unutilized
Comment: 120 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—ammo bldg., off-site use only

Bldg. U027A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920251
Status: Unutilized
Comment: 64 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tire house, off-site use only

Bldgs. U028A–U032A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920252
Status: Unutilized
Comment: 72 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U031A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920253
Status: Excess
Comment: 3456 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—line shed, off-site use only

Bldg. U031C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920254
Status: Unutilized
Comment: 32 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—off-site use only

Bldg. U040D
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920255
Status: Excess
Comment: 800 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldgs. U052C, U052H
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920256
Status: Excess
Comment: various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldgs. U035A, U035B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920257
Status: Excess
Comment: 192 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

Bldg. U035C
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920258
Status: Excess
Comment: 242 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldg. U039A
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920259
Status: Excess
Comment: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U039B
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920260
Status: Excess
Comment: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—grandstand/bleachers, off-site use only

Bldg. U039C
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920261
Status: Excess
Comment: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only

Bldg. U043A
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920262
Status: Excess
Comment: 132 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldg. U052A
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920263
Status: Excess
Comment: 69 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only

Bldg. U052E
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920264
Status: Excess
Comment: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. U052G
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920265
Status: Excess
Comment: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

3 Bldgs.
Fort Lewis
Fort Lewis Co: Pierce WA 98433–
Location: U058A, U103A, U018A
Landholding Agency: Army
Property Number: 21199920266
Status: Excess
Comment: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U059A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920267
Status: Excess
Comment: 16 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only

Bldg. U093B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920268
Status: Excess
Comment: 680 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

4 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U101B, U101C, U507B, U557A
Landholding Agency: Army
Property Number: 21199920269
Status: Excess
Comment: 400 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. U102B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920270
Status: Excess
Comment: 1058 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

Bldg. U108A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920271
Status: Excess
Comment: 31,320 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—line shed, off-site use only

Bldg. U110B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920272
Status: Excess
Comment: 138 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only

6 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U111A, U015A, U024E, U052F, U109A, U110A
Landholding Agency: Army
Property Number: 21199920273
Status: Excess
Comment: 1000 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support/shelter/mess, off-site use only

Bldg. U112A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920274
Status: Excess
Comment: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

Bldg. U115A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920275
Status: Excess
Comment: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only

Bldg. U507A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920276
Status: Excess
Comment: 400 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only

Bldg. U516B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920277
Status: Excess
Comment: 5000 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shed, off-site use only

7 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: F0002, F0004, F0003, F0005, F0006, F0008, F0009
Landholding Agency: Army
Property Number: 21199920278
Status: Excess
Comment: various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storehouse, off-site use only

Bldg. F0022A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920279
Status: Excess
Comment: 4373 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—gen. inst., off-site use only

Bldg. F0022B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920280
Status: Excess
Comment: 3100 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. C0120
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920281
Status: Excess
Comment: 384 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—scale house, off-site use only

Bldg. A0220
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920282
Status: Excess
Comment: 2284 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—club facility, off-site use only

18 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: A0337, A0617, B0820, B0821, C0319, C0833, C0310, C0311, C0318, C1019, D0712, D0713, D0720, D0721, D1108, D1153, C1011, C1018
Landholding Agency: Army
Property Number: 21199920283
Status: Excess

Comment: 1144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—day room, off-site use only

Bldg. A0334
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920284
Status: Excess
Comment: 1092 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only

7 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: C0302, C0303, C0306, C0322, C0323, C0326, C0327
Landholding Agency: Army
Property Number: 21199920285
Status: Excess
Comment: 2340 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—barracks, off-site use only

12 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: C1002, C1003, C1006, C1007, C1022, C1023, C1026, C1027, C1207, C1301, C13333, C1334
Landholding Agency: Army
Property Number: 21199920287
Status: Excess
Comment: 2360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—barracks, off-site use only

Bldgs. E1010
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920288
Status: Excess
Comment: 148 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—gas station, off-site use only

Bldgs. D1154
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920289
Status: Excess
Comment: 1165 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—day room, off-site use only

Bldg. 01205
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920290
Status: Excess
Comment: 87 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storehouse, off-site use only

Bldg. 01259
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920291
Status: Excess
Comment: 16 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 0126
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 211999202892
Status: Excess
Comment: 45 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

Bldg. B1410
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920293
Status: Excess
Comment: 3108 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—motor repair, off-site use only

Bldg. 1445
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920294
Status: Excess
Comment: 144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—generator bldg., off-site use only

Bldg. 02082
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920295
Status: Excess
Comment: 16 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. 03091, 03099
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920296
Status: Excess
Comment: various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only

Bldgs. 03100, 3101
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920297
Status: Excess
Comment: various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 4040
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920298
Status: Excess
Comment: 8326 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shed, off-site use only

Bldgs. 4072, 5104
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920299
Status: Excess
Comment: 24/36 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. 4295
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920300
Status: Excess
Comment: 48 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 5170
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920301
Status: Excess
Comment: 19,411 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—store, off-site use only

Bldg. 6191
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920303
Status: Excess
Comment: 3663 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—exchange branch, off-site use only

Bldgs. 08076, 08080
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920304
Status: Excess
Comment: 3660/412 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. 08093
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920305
Status: Excess
Comment: 289 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 8279
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920306
Status: Excess
Comment: 210 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—fuel disp. fac., off-site use only

Bldg. 8280, 8291
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920307
Status: Excess
Comment: 800/464 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 8956
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920308
Status: Excess
Comment: 100 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 9530
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920309
Status: Excess

Comment: 64 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only

Bldg. 9574
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920310
Status: Excess
Comment: 6005 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—veh. shop., off-site use only

Bldg. 9596
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920311
Status: Excess
Comment: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—gas station, off-site use only

Bldg. 9939
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920313
Status: Excess
Comment: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—recreation, off-site use only

Bldg. E0324
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920314
Status: Excess
Comment: 2207 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

*Land (by State)*

Georgia

Land (Railbed)
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199440440
Status: Unutilized
Comment: 17.3 acres extending 1.24 miles, no known utilities potential

Minnesota

Land
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 21199120269
Status: Unutilized
Comment: Approx. 49 acres, possible contamination, secured area with alternate access

Nevada

Parcel A
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: At foot of Eastern slope of Mount Grant in Wassuk Range & S.W. edge of Walker Lane
Landholding Agency: Army
Property Number: 21199012049
Status: Unutilized
Comment: 160 acres, road and utility easements, no utility hookup, possible flooding problem

Parcel B
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: At foot of Eastern slope of Mount Grant in Wassuk Range & S.W. edge of Walker Lane
Landholding Agency: Army
Property Number: 21199012056
Status: Unutilized
Comment: 1920 acres; road and utility easements; no utility hookup; possible flooding problem

Parcel C
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: South-southwest of Hawthorne along HWAAP's South Magazine Area at Western edge of State Route 359
Landholding Agency: Army
Property Number: 21199012057
Status: Unutilized
Comment: 85 acres; road and utility easements; no utility hookup

Parcel D
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: South-southwest of Hawthorne along HWAAP's South Magazine Area at western edge of State Route 359
Landholding Agency: Army
Property Number: 21199012058
Status: Unutilized
Comment: 955 acres; road and utility easements; no utility hookup

New York

Land—6.965 Acres
Dix Avenue
Queensbury Co: Warren NY 12801–
Landholding Agency: Army
Property Number: 21199540018
Status: Unutilized
Comment: 6.96 acres of vacant land, located in industrial area, potential, utilities

Texas

Old Camp Bullis Road
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199420461
Status: Unutilized
Comment: 7.6 acres, rural gravel road

Castner Range
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 21199610788
Status: Unutilized
Comment: approx. 56.81 acres, portion in floodway, most recent use—recreation picnic park

**Suitable/Unavailable Properties**

*Buildings (by State)*

Georgia

Bldg. 4090
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199630007
Status: Underutilized
Comment: 3530 sq. ft., most recent use—chapel, off-site use only

Kansas

Bldg. P–295
Fort Leavenworth
Leavenworth Co: Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21199810296
Status: Unutilized
Comment: 3480 sq. ft. concrete, most recent use—storage underground, off-site use only

Missouri

Bldgs. 1367, 1368, 1371, 1372
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820173
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 4970
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820185
Status: Unutilized
Comment: 5000 sq. ft., presence of lead paint, most recent use—storage, off-site use only

New York

Bldg. T–2215
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840162
Status: Unutilized
Comment: 7670 sq. ft., most recent use—quarters, off-site use only

Bldg. T–2216
Fort Drum
Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21199840162
Status: Underutilized
Comment: 7670 sq. ft., most recent use—quarters, off-site use only

Texas

Bldg. P–2000, Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199220389
Status: Underutilized
Comment: 49,542 sq. ft., 3-story brick structure, within National Landmark Historic District

Bldg. P–2001, Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199220390
Status: Underutilized
Comment: 16,539 sq. ft., 4-story brick structure, within National Landmak Historic District

*Land (by State)*

North Carolina

.92 Acre—Land
Military Ocean Terminal,
Sunny Point
Southport Co: Brunswick NC 28461–5000
Landholding Agency: Army
Property Number: 21199610728
Status: Underutilized

Comment: municipal drinking waterwell, restricted by explosive safety regs., New Hanover County Buffer Zone

10 Acre—Land
Military Ocean Terminal,
Sunny Point
Southport Co: Brunswick NC 28461–5000
Landholding Agency: Army
Property Number: 21199610729
Status: Underutilized
Comment: municipal park, restricted by explosive safety regs., New Hanover County Buffer Zone

257 Acre—Land
Military Ocean Terminal,
Sunny Point
Southport Co: Brunswick NC 28461–5000
Landholding Agency: Army
Property Number: 21199610730
Status: Underutilized
Comment: state park, restricted by explosive safety regs., New Hanover County Buffer Zone

24.83 acres—Tract of Land
Military Ocean Terminal,
Sunny Point
Southport Co: Brunswick NC 28461–5000
Landholding Agency: Army
Property Number: 21199620685
Status: Underutilized
Comment: 24.83 acres, municipal park, most recent use—New Hanover County explosive buffer zone

Texas

Vacant Land, Fort Sam Houston
All of Block 1800, Portions of Blocks 1900, 3100 and 3200
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 21199220438
Status: Unutilized
Comment: 210.83 acres, 85% located in floodplain, presence of unexploded ordnance, 2 land fill areas

**Suitable/To Be Excessed**

*Buildings (by State)*

Idaho

Moore Hall U.S. Army Rsve Ctr
1575 N. Skyline Dr.
Idaho Falls Co: Bonneville ID 83401–
Landholding Agency: Army
Property Number: 21199720207
Status: Unutilized
Comment: 12582 sq. ft., dental clinic in mobile home, 1138 sq. ft., maint. shop, good condition, possible asbestos

Illinois

WARD Army Reserve Center
1429 Northmoor Road
Peoria Co: Peoria IL 61614–3498
Landholding Agency: Army
Property Number: 21199430254
Status: Unutilized
Comment: 2 bldgs. on 3.15 acres, 36451 sq. ft., reserve center & warehouse, presence of asbestos, most recent use—office/shortage/training

Stenafich Army Reserve Center
1600 E. Willow Road
Kankakee Co: Kankakee IL 60901–2631
Landholding Agency: Army
Property Number: 21199430255
Status: Unutilized
Comment: 2 bldgs.—reserve center & vehicle maint. shop on 3.68 acres, 5641 sq. ft., most recent use—office/storage/training, presence of asbestos

Indiana

Bldg. 27, USARC Paulsen
North Judson Co: Starke IN 46366–
Landholding Agency: Army
Property Number: 21199610669
Status: Unutilized
Comment: 10379 sq. ft., presence of asbestos, most recent use—office/storage/training

Bldg. 36, USARC Paulsen
North Judson Co: Starke IN 46366–
Landholding Agency: Army
Property Number: 21199610670
Status: Unutilized
Comment: 1802 sq. ft., presence of asbestos, most recent use—vehicle maintenance

Kansas

U.S. Army Reserve Center Annex
800 South 29th St.
Parsons KS
Landholding Agency: Army
Property Number: 21199720208
Status: Unutilized
Comment: 3157 sq. ft., 1-story, reserve center annex and storage

New York

Bldgs. P–1 and P–2
Olean Reserve Center
423 Riverside Drive
Olean Co: Cattaraugus NY 14760–
Landholding Agency: Army
Property Number: 21199540017
Status: Unutilized
Comment: 4464 sq. ft. reserve center/1325 sq. ft. motor repair shop, 1 story each, concrete block/brick frame, on 3.9 acres

Reserve Center
PFC. Robert J. Manville
USARC
1205 Lafayette Street
Ogdensburg Co: St. Lawrence NY 13669–
Landholding Agency: Army
Property Number: 21199710241
Status: Unutilized
Comment: 11,540 sq. ft., good condition.

Motor Repair Shop
PFC. Robert J. Manville
USARC
1205 Lafayette Street
Ogdensburg Co: St. Lawrence NY 13669–
Landholding Agency: Army
Property Number: 21199710242
Status: Unutilized
Comment: 2524 sq. ft., good condition

Wisconsin

U.S. Army Reserve Center
2310 Center Street
Racine Co: Racine WI 53403–3330
Landholding Agency: Army
Property Number: 21199620740
Status: Unutilized
Comment: 3 bldgs. (14,137 sq. ft.) on 3 acres, needs repair, most recent use—office/storage/training

*Land*

California

U.S. Army Reserve Center
Mountain Lakes Industrial Park
Redding Co: Shasta CA
Landholding Agency: Army
Property Number: 21199610645
Status: Unutilized
Comment: 5.13 acres within a light industrial park

Tennessee

Railroad Bed
Fort Campbell
Jack Miller Blvd.
Clarksville TN
Landholding Agency: Army
Property Number: 21199840189
Status: Unutilized
Comment: Approx. 6.06 acres

**Unsuitable Properties**

*Buildings (by State)*

Alabama

200 Bldgs.
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 219014015, 219430286, 219530034, 219530045, 219630015–219630017, 219710163–219710170, 219720005–2196720006, 219720015, 2197420003, 219810011–219810023, 2198200011, 219820015, 21199840008–21199840012, 21199910003–21199910006, 21199920010–21199920028, 21199930010–21199930018, 21199930110
Status: Unutilized
Reason: Secured Area (Some are extensively deteriorated.)

105 Bldgs.
Ft. Rucker Co: Dale AL 36362
Landholding Agency: Army
Property Number: 219310016, 219330003, 219340116, 219340124, 219410022, 219440094, 219520057–219520058, 2196300011, 219640440, 219710091, 219730008–219730011, 219740004, 219740006, 219810010, 219830001–219830007, 21199840006, 21199910001, 21199930019
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 25203, 25205–252307, 25209, 25501, 25503, 25505, 25507, 25510
Fort Rucker
Stagefield Areas
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219410020–219410021
Status: Unutilized
Reason: Secured area

7 Bldgs.
Anniston Army Depot
Anniston AL 36201
Landholding Agency: Army
Property Number: 219740001–219740002, 21199840001–2119840005
Status: Unutilized
Reason: Extensive deterioration

Alaska

17 Bldgs.
Fort Greely
Ft. Greeley AK 99790–
Landholding Agency: Army
Property Number: 219210124–219210125, 219220320–219220332, 219520064
Status: Unutilized

Reason: Extensive deterioration

18 Bldgs., Fort Wainwright
Ft. Wainwright AK 99703
Landholding Agency: Army
Property Number: 219710090, 219710195–219710198, 219810002–219810007, 21199920001, 21199930001–21199930003
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured area, Floodway (Some are extensively deteriorated)

Bldg. 1501, Fort Greely
Ft. Greely AK 99505
Landholding Agency: Army
Property Number: 219240327
Status: Unutilized
Reason: Secured Area

Sullivan Roadhouse, Fort Greely
Ft. Greely AK
Landholding Agency: Army
Property Number: 219430291
Status: Unutilized
Reason: Extensive deterioration

28 Bldgs., Fort Richardson
Ft. Richardson AK 99505
Landholding Agency: Army
Property Number: 219710199–219710220, 21199930005–21199930009
Status: Unutilized
Reason: Extensive deterioration

Arizona

32 Bldgs.
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–
Location: 12 miles west of Flagstaff, Arizona on I–40
Landholding Agency: Army
Property Number: 219014560–219014591
Status: Underutilized
Reason: Secured Area

10 properties: 753 earth covered igloos; above ground standard magazines
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–
Location: 12 miles west of Flagstaff, Arizona on I–40
Landholding Agency: Army
Property Number: 219014592–219014601
Status: Underutilized
Reason: Secured Area

9 Bldgs.
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–5000
Location: 12 miles west of Flagstaff on I–40
Landholding Agency: Army
Property Number: 219030273–219030274, 219120175–219120181
Status: Unutilized
Reason: Secured Area

3 Bldgs.
Yuma Proving Ground
Yuma Co: AZ 85365
Landholding Agency: Army
Property Number: 21199920030–21199920032
Status: Unutilized
Reason: Extensive deterioration

Bldg. 47017
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635
Landholding Agency: Army
Property Number: 21199930020
Status: Excess
Reason: Extensive deterioration

Arkansas

7 Bldgs.
Pine Bluff Arsenal
Pine Bluff Co: Jefferson AR 71602–9500
Landholding Agency: Army
Property Number: 219420138–219420142, 219440077, 21199910007
Status: Unutilized
Reason: Secured Area; Extensive deterioration

177 Bldgs., Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219630019–219630029, 219640462–219640477
Status: Unutilized
Reason: Extensive deterioration

California

Bldg. 18
Riverbank Army Ammunition Plant
5300 Claus Road
Riverbank Co: Stanislaus CA 95367–
Landholding Agency: Army
Property Number: 219012554
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

11 Bldgs., Nos. 2–8, 156, 1, 120, 181
Riverbank Army Ammunition Plant
Riverbank Co: Stanislaus CA 95367–
Landholding Agency: Army
Property Number: 219013582–219013588, 219013590, 219240444–219240446
Status: Underutilized
Reason: Secured Area

9 Bldgs.
Oakland Army Base
Oakland Co: Alameda CA 94626–5000
Landholding Agency: Army
Property Number: 219013903–219013906, 219120051, 219340008–219340011
Status: Unutilized
Reason: Secured Area (Some are extensively deteriorated.)

Bldgs. 13, 171, 178 Riverbank Ammun Plant
5300 Claus Road
Riverbank Co: Stanislaus CA 95367–
Landholding Agency: Army
Property Number: 219120162–219120164
Status: Underutilized
Reason: Secured Area

14 Bldgs.
DDDRW Shape Facility
Tracy Co: San Jaoquin CA 95331
Landholding Agency: Army
Property Number: 219430025–219430026, 219430032–219430033, 219610289–219610296, 219740008, 21199930021
Status: Unutilized
Reason: Secured Area

6 Buildings .
Oakland Army Base
Oakland Co: Alameda CA 94626
Location: Include: 90, 790, 792, 807, 829, 916
Landholding Agency: Army
Property Number: 219510097
Status: Unutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material

Bldgs. 29, 39, 73, 154, 155, 193, 204, 257
Los Alamitos Co: Orange CA 90720–5001
Landholding Agency: Army
Property Number: 219520040
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 1103, 1131, 1120
Park Reserve Forces Training Area
Dublin Co: Alameda CA 94568–5201
Landholding Agency: Army
Property Number: 219520056, 219830010
Status: Unutilized
Reason: Extension deterioration

12 Bldgs.
Sierra Army Depot
Herlong Co: Lassen CA 96113
Landholding Agency: Army
Property Number: 21199840015–21199840022, 21199920033–21199920036
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

448 Bldgs.
Camp Roberts
Camp Roberts Co: San Obispo CA
Landholding Agency: Army
Property Number: 21199730014, 219820192–219820235
Status: Excess
Reason: Secured Area; Extension deterioration

5 Bldgs.
Presidio of Monterey Annex
Seaside Co: Monterey CA 93944
Landholding Agency: Army
Property Number: 219810380–219810381, 21199930106–21199930108
Status: Unutilized
Reason: Extensive deterioration

21 Bldgs.
Fort Irwin
Ft. Irwin Co: San Bernardino CA 92310
Landholding Agency: Army
Property Number: 21199920037–2119920038
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Colorado

Bldgs. T–317, T–412, 431, 433
Rocky Mountain Arsenal
Commerce Co: Adams CO 80022–2180
Landholding Agency: Army
Property Number: 219320013–219320016
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

46 Bldgs. Fort Carson
Ft. Carson Co: El Paso CO 80913–5023
Landholding Agency: Army
Property Number: 219610317, 219620400, 219710093, 219710173, 219730015, 219730017, 219830020–219830032, 21199910008–2199910010, 21199930022–21199930025
Status: Unutilized
Reason: Extension deterioration

15 Storage Sheds
Pueblo Chemical Depot
Pueblo CO 81006–9330
Landholding Agency: Army
Property Number: 219830011
Status: Unutilized
Reason: Extension deterioration

Connecticut

Bldgs. DK001, DKL05, DKL10
USARC Middleton
Middletown Co: Middlesex CT 06457–1809

Landholding Agency: Army
Property Number: 219810024–219810026
Status: Unutilized
Reason: Extensive deterioration

Georgia

Fort Stewart
Sewage Treatment Plant
Ft. Stewart Co: Hinesville GA 31314–
Landholding Agency: Army
Property Number: 219013922
Status: Unutilized
Reason: Sewage treatment

Facility 12304
Fort Gordon
Augusta Co: Richmond GA 30905–
Location: Located off Lane Avenue
Landholding Agency: Army
Property Number: 219014787
Status: Unutilized
Reason: Wheeled vehicle grease/inspection rack

231 Bldgs.
Fort Gordon
Augusta Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219220269, 219320026, 219410050–219410061, 219410071–219410072, 219410100–219410115, 219520067, 219610330–219610331, 219610336, 219630044–219630067, 219640011–219640037, 219710094, 219730019–219730020, 219810027, 219830034–219830067, 21199910011–21199910012
Status: Unutilized
Reason: Extensive deterioration

3 Bldgs., Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220335–219220337
Status: Unutilized
Reason: Detached lavatory

35 Bldgs., Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219520150, 219610320–219610321, 219640046, 219720017–219720022, 219810028–219810031, 219810035, 219830073–219830083, 21199930030–21199930037, 21199930109
Status: Unutilized
Reason: Extensive deterioration

17 Bldgs.
Fort Gillem
Forest Park Co: Clayton GA 30050
Landholding Agency: Army
Property Number: 219620815, 21199920044–21199920051, 21199930026–21199930029
Status: Unutilized
Reason: Extensive deterioration; Secured Area

2 Bldgs., Fort Stewart
Hinesville Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 219740012–21970013
Status: Unutilized
Reason: Extensive Deterioration

5 Bldgs., Hunter Army Airfield
Savannah Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 219610326, 219620413, 219630034, 219740010, 219830068
Status: Unutilized
Reason: Extensive deterioration

14 Bldgs., Fort McPherson
Ft. McPherson Co: Fulton GA 30330–5000
Landholding Agency: Army
Property Number: 21199920040–21199920043
Status: Unutilized
Reason: Secured Area

Hawaii

PU–01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11
Schofield Barracks
Kolekole Pass Road
Wahiawa Co: Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219014836–219014837
Status: Unutilized
Reason: Secured Area

P–3384, T–1089, T–1093
Schofield Barracks
Wahiawa Co: Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219030361, 21199930039
Status: Unutilized
Reason: Secured Area

Bldgs. T–1305, S–1320
Wheeler Army Airfield
Wahiawa HI 96857
Landholding Agency: Army
Property Number: 219610348, 21199930038
Status: Unutilized
Reason: Extensive deterioration

Bldgs. T–226 T–224
Dillingham Military
Reservation
Wahiawa Co: HI 96857
Landholding Agency: Army
Property Number: 21199930040
Status: Unutilized
Reason: Extensive deterioration

Illinois

Bldgs. 58, 59 and 72, 69, 64, 105, 135
Rock Island Arsenal
Rock Island Co: Rock Island IL 61299–5000
Landholding Agency: Army
Property Number: 219110104–219110108, 219620427
Status: Unutilized
Reason: Secured Area

Bldgs. 133, 141 Rock Island Arsenal
Gillespie Avenue
Rock Island Co: Rock Island IL 61299–
Landholding Agency: Army
Property Number: 219210100, 219620428
Status: Unutilized
Reason: Extensive deterioration

13 Bldgs. Savanna Army Depot Activity
Savanna Co: Carroll IL 61074
Landholding Agency: Army
Property Number: 219230126–219230127, 219430326–219430335, 219430397
Status: Unutilized
Reason: Extensive deterioration

18 Bldgs.
Charles Melvin Price Support Center
Granite City Co: Madison IL 62040
Landholding Agency: Army
Property Number: 219710096, 219820027–219820028, 21199930042–21199930053
Status: Unutilized
Reason: Secured Area; Extensive deterioration; Floodway

Indiana

181 Bldgs.
Newport Army Ammunition Plant
Newport Co: Vermillion IN 47966–
Landholding Agency: Army
Property Number: 219011584, 219011586–219011587, 219011589–219011590, 219011592–219011627, 219011629–219011636, 219011638–219011641, 219210149–219210151, 219220220, 219230032–219230033, 219430336–219430338, 219520033, 219520042, 219530075–219530097, 219740021–219740026, 219820031–219820032, 21199920063
Status: Unutilized
Reason: Secured Area; (Some are extensively deteriorated.)

2 Bldgs.
Atterbury Reserve Forces Training Area
Edinburgh Co: Johnson IN 46124–1096
Landholding Agency: Army
Property Number: 219230030–219230031
Status: Unutilized
Reason: Extensive deterioration

12 Bldgs., Camp Atterbury
Edinburgh IN 46124
Landholding Agency: Army
Property Number: 219610352, 219620429–219620434
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Iowa

97 Bldgs.
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638–
Landholding Agency: Army
Property Number: 219012605–219012607, 219012609, 219012611, 219012613, 219012615, 219012620, 219012622, 219012624, 219013706–219013738, 219120172–219120174, 219440112–219440158, 219510089, 219520002, 219520070, 219610414, 219740027
Status: Unutilized
Reason: (Many are in a Secured Area); (Most are within 2000 ft. of flammable or explosive material.)

30 Bldgs., Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638
Landholding Agency: Army
Property Number: 219230005–219230029, 219310017, 219330061, 219340091, 219520053, 219520151
Status: Unutilized
Reason: Extensive deterioration

Kansas

37 Bldgs.
Kansas Army Ammunition Plant
Production Area
Parsons Co: Labette KS 67357–
Landholding Agency: Army
Property Number: 219011909–219011945
Status: Unutilized
Reason: Secured Area; (Most are within 2000 ft. of flammable or explosive material)

12 Bldgs.
Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 219430040, 219610623–219610626, 219620825–219620826, 219630085, 21199910013
Status: Unutilized
Reason: Extensive deterioration

121 Bldgs.

Kansas Army Ammunition Plant
Parsons Co: Labette KS 67357–
Landholding Agency: Army
Property Number: 219620518–219620638
Status: Unutilized
Reason: Secured Area

Bldgs. P–417, T–994
Fort Leavenworth
Leavenworth KS 66027
Landholding Agency: Army
Property Number: 219740029, 21199920064
Status: Unutilized
Reason: Extensive deterioration; Sewage pump station

Kentucky

Bldg. 126
Lexington-Blue Grass Army Depot
Lexington Co: Fayette KY 40511–
Location: 12 miles northeast of Lexington, Kentucky.
Landholding Agency: Army
Property Number: 219011661
Status: Unutilized
Reason: Secured Area, Sewage treatment facility

Bldg. 12
Lexington-Blue Grass Army Depot
Lexington Co: Fayette KY 40511–
Location: 12 miles Northeast of Lexington, Kentucky.
Landholding Agency: Army
Property Number: 219011663
Status: Unutilized
Reason: Industrial waste treatment plant

Bldg. 1395, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219820033
Status: Unutilized
Reason: Extensive deterioration

11 Bldgs., Fort Campbell
Ft. Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Number: 219730038, 219740031–219740036, 21199920065–2119992066, 21199930041
Status: Unutilized
Reason: Extensive deterioration

Louisiana

533 Bldgs.
Louisiana Army Ammunition Plant
Doylin Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219011668, 219011670, 219011714–21911716, 219011735–219011737, 219012112, 219013572, 219013863–219013869, 219110127, 2191100131, 219110136, 219240138–219240148, 219420332, 219610049–219610263, 219620002–219620200, 219620749–219620801, 219820044–219820078
Status: Unutilized
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material) (Some are extensively deteriorated)

65 Bldgs., Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–7100
Landholding Agency: Army
Property Number: 219430339, 219520059, 219810039–219810061, 219820035–219820043, 219830105–219830108, 21199840033–21199840047, 21199920067–21199920080
Status: Unutilized
Reason: Extensive deterioration (Some are in Floodway.)

Maryland

148 Bldgs.
Aberdeen Proving Ground
Aberdeen City Co: Hartford MD 21005–5001
Landholding Agency: Army
Property Number: 219011406–219011417–219012610, 219012612, 219012614, 219012616–219012617, 219012625–219012628, 219012634, 219012637–219012642, 219012645–219012650, 219012657–219012664, 219013773, 219014711–219014712, 219610480, 219610489–219610490, 219730077–219730084, 219810070–219810127, 219820081–219820096, 219830114, 21199840057, 21199840059, 21199920081
Status: Unutilized
Reason: Most are in a secured area. (Some are within 2000 ft. of flammable or explosive material) (Some are in a floodway) (Some are extensively deteriorated)

82 Bldgs. Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 219130059, 219140460–219140461, 219310031, 219710185–219710192, 219740068–219740089, 219810063–219810069, 21199910018, 2199910019, 21199930054–21199930058
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 132 Fort Ritchie
Ft. Ritchie Co: Washington MD 21719–5010
Landholding Agency: Army
Property Number: 2199330109
Status: Underutilized
Reason: Secured Area

Bldg. P–1001 Fort Detrick
Frederick Co: Frederick MD 21762–5000
Landholding Agency: Army
Property Number: 219830110
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Massachusetts

Bldg. 3462, Camp Edwards
Massachusetts Military Reservation
Bourne Co: Barnstable MD 024620–5003
Landholding Agency: Army
Property Number: 219230095
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Bldgs. 3596, 1209–1211 Camp Edwards
Massachusetts Military Reservation
Bourne Co: Barnstable MA 02462–5003
Landholding Agency: Army
Property Number: 219230096, 219310018–219310020
Status: Unutilized
Reason: Secured Area

Bldg. 101
Hudson Family Housing
U.S. Army Soldier Systems Command
Hudson Co: Middlesex MA 01749
Landholding Agency: Army
Property Number: 219730037
Status: Unutilized
Reason: Extensive deterioration

Facility No. 0G001
LTA Granby
Granby Co: Hampshire MA
Landholding Agency: Army
Property Number: 219810062
Status: Unutilized
Reason: Extensive deterioration

Michigan

Detroit Arsenal Tank Plant
28251 Van Dyke Avenue
Warren Co: Macomb MI 48090–
Landholding Agency: Army
Property Number: 219014605
Status: Underutilized
Reason: Secured Area

Bldgs. 5755–5756
Newport Weekend Training Site
Carleton Co: Monroe MI 48166
Landholding Agency: Army
Property Number: 219310060–219310061
Status: Unutilized
Reason: Secured Area; Extensive deterioration

25 Bldgs.
Fort Custer Training Center
2501 26th Street
Augusta Co: Kalamazoo MI 49102–9205
Landholding Agency: Army
Property Number: 219014947–219014963, 219140447–219140454
Status: Unutilized
Reason: Secured Area

Bldg. 910
Selfridge ANG Base
Selfridge Co: MI 48045
Landholding Agency: Army
Property Number: 21199930059
Status: Unutilized
Reason: Secured Area

Minnesota

170 Bldgs.
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219120165–219120166, 219210014–219210015, 219220227–219220235, 219240328, 219310055–219310056, 219320145–219320156, 219330096–219330108, 219340015, 219410159–219410189, 219420195–219420284, 219430059–219430064, 21199840060
Status: Unutilized
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material.) (Some are extensively deteriorated)

Missouri

82 Bldgs.
Lake City Army Ammo. Plant
Independence Co: Jackson MO 64050–
Landholding Agency: Army
Property Number: 219013666–219013669, 219530134–219530138, 21199910023–21199910035, 21199920082
Status: Unutilized
Reason: Secured Area (Some are within 2000 ft. of flammable or explosive material)

9 Bldgs.
St. Louis Army Ammunition Plant
4800 Goodfellow Blvd.
St. Louis Co: St. Louis MO 63120–1798
Landholding Agency: Army
Property Number: 219120067–219120068, 219610469–219610475
Status: Unutilized

Reason: Secured Area (Some are extensively deteriorated.)

14 Bldgs.
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219430070–219430078, 219830115–219830116, 21199910020–21199910022, 21199930060
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material (Some are extensively deteriorated.)

Montana

19 Bldgs.
Fort Harrison
Ft. Harrison Co: Lewis/Clark MT 59636
Landholding Agency: Army
Property Number: 219620473–219620475, 219740093–219740101
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Extensive deterioration

Nevada

Bldg. 292
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Landholding Agency: Army
Property Number: 219013614
Status: Unutilized
Reason: Secured Area

Bldg. 396
Hawthorne Army Ammunition Plant
Bachelor Enlisted Qtrs W/Dining Facilities
Hawthorne Co: Mineral NV 89415–
Location: East Side of Decatur Street—North of Maine Avenue
Landholding Agency: Army
Property Number: 219011997
Status: Unutilized
Reason: Within airport runway clear zone Secured Area

41 Bldgs.
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Landholding Agency: Army
Property Number: 219012013, 219012021, 219012044, 219013615–219013643,
Status: Underutilized
Reason: Secured Area (Some within airport runway clear zone; many within 2000 ft. of flammable or explosive material)

Group 101, 34 Bldgs.
Hawthorne Army Ammunition Plant
Co: Mineral NV 89415–0015
Landholding Agency: Army
Property Number: 219830132
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

New Jersey

218 Bldgs.
Armament Res. Dev. & Eng. Ctr.
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219010440–219010474, 219010476, 219010478, 219010639–219010665, 219010671–219010721, 219012424, 219012427–219012428, 219012430, 219012433–219012466, 219012469–219012472, 219012475, 219012760, 219012763–219012767, 219014306–219014307, 219014311, 219014313–219014321, 219140617, 219230121–219230125, 219420001–219420002, 219420006–219420008, 219530144–219530150, 219540002–219540007, 219740110–219740127
Status: Excess
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material.) (Some are extensively deteriorated) (Some are in a floodway)

13 Bldgs., Military Ocean Terminal
Bayonne Co: Hudson NJ 07002–
Landholding Agency: Army
Property Number: 219013890–219013896, 219330141–219330143, 219430001, 219440200, 219520149
Status: Unutilized
Reason: Floodway, Secured Area

Structure 403B
Armament Research, Dev. & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219510001
Status: Unutilized
Reason: Drop Tower

New York

Bldgs. 110, 143, 2084, 2105, 2110
Seneca Army Depot
Romulus Co: Seneca NY 14541–5001
Landholding Agency: Army
Property Number: 219240439, 219240440–219240443
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Parcel 19
Stewart Army Subpost, U.S. Military Academy
New Windsor Co: Orange NY 12553
Landholding Agency: Army
Property Number: 219730098
Status: Unutilized
Reason: Within airport runway clear zone

Bldg. 12
Watervliet Arsenal
Watervliet NY
Landholding Agency: Army
Property Number: 219730099
Status: Unutilized
Reason: Extensive deterioration

Bldg. 134
Watervliet Arsenal
CO: Albany NY 12189–4050
Landholding Agency: Army
Property Number: 21199840068
Status: Unutilized
Reason: Secured Area

Bldg. T–2222
Fort Drum
Ft. Drum Co: Jefferson NY 13602
Landholding Agency: Army
Property Number: 21199920083
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 4056, 4275
Stewart Army Subpost
New Windsor Co: Orange NY 12553
Landholding Agency: Army
Property Number: 21199930061
Status: Unutilized
Reason: Sewage pump station

North Carolina

26 Bldgs. Fort Bragg
Ft. Bragg Co: Cumberland NC 28307
Landholding Agency: Army
Property Number: 219620478, 219620480, 219640064, 219640074, 219710102–219710111, 219710224, 219810167, 219830117, 219830120, 21199930062–21199930067
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 16, 139, 261, 273
Military Ocean Terminal
Southport Co: Brunswick NC 28461–5000
Landholding Agency: Army
Property Number: 219530155, 219810158–219810160
Status: Unutilized
Reason: Secured Area

Ohio

219 Bldgs.
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219012476–219012507, 219012509–219012513, 219012515, 219012517–219012518, 219012520, 219012522–219012523, 219012525–219012528, 219012530–219012532, 219012534–219012535, 219012537, 219013670–219013677, 219013781, 219210148, 21199840069–21199840104, 21199930070–21199930072
Status: Unutilized
Reason: Secured Area

7 Bldgs.
Lima Army Tank Plant
Lima OH 45804–1898
Landholding Agency: Army
Property Number: 219730104–219730110
Status: Unutilized
Reason: Secured Area

3 Bldgs.
Defense Supply Center
Columbus Co: Franklin OH 43216–5000
Landholding Agency: Army
Property Number: 219830134, 21199910037, 21199930068
Status: Unutilized
Reason: Extensive deterioration

Oklahoma

548 Bldgs.
McAlester Army Ammunition Plant
McAlester Co: Pittsburg OK 74501–5000
Landholding Agency: Army
Property Number: 219011674, 219011680, 219011684, 219011687, 219012113, 219013981–21913991, 219013994, 219014081–219014102, 219014104, 219014107–219014137, 219014141–219014159, 219014162, 219014165–219014216, 219014218–219014274, 219014336–219014559, 219030007–219030127, 219040004, 21199910039–21199910040
Status: Underutilized
Reason: Secured Area (Some are within 2000 ft. of flammable or explosive material)

17 Bldgs.
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219140548, 219140550, 219440309, 219510023, 219730342, 21199910038
Status: Unutilized

Reason: Extensive deterioration

33 Bldgs.
McAlester Army Ammunition Plant
McAlester Co: Pittsburg OK 74501
Landholding Agency: Army
Property Number: 219310050–219310053, 219320170–219320171, 219330149–219330160, 219430122–219430125, 219620485–219620490, 219630110–219630111, 219810174–219810176
Status: Unutilized
Reason: Secured Area (Some are extensively deteriorated)

Oregon

11 Bldgs.
Tooele Army Depot
Umatilla Depot Activity
Hermiston Co: Morrow/Umatilla OR 97838–
Landholding Agency: Army
Property Number: 219012174–219012176, 219012178–219012179, 219012190–219012191, 219012197–219012198, 2190122217, 219012229
Status: Underutilized
Reason: Secured Area

34 Bldgs.
Tooele Army Depot
Umatilla Depot Activity
Hermiston Co: Morrow/Umatilla OR 97838–
Landholding Agency: Army
Property Number: 219012177, 219012185–219012186, 219012189, 219011195–219012196, 219012199–219012205, 219012207–219012208, 219012225, 219012279, 219014304–219014305, 219014782, 219030362–219030363, 219120032, 21199840107–21199840110, 21199920084–21199920090
Status: Unutilized
Reason: Secured Area

Pennsylvania

Bldg. 82001, Reading USARC
Reading Co: Berks PA 19604–1528
Landholding Agency: Army
Property Number: 219320173
Status: Unutilized
Reason: Extensive deterioration

Bldg. T–685, Carlisle Barracks
Carlisle Co: Cumberland PA 17013
Landholding Agency: Army
Property Number: 219610530
Status: Unutilized
Reason: Extensive deterioration

74 Bldgs.
Fort Indiantown Gap
Annville Co: Lebanon PA 17003–5011
Landholding Agency: Army
Property Number: 219640337, 219720093, 219730116–219730128, 219740129–219740132, 219740134, 219740137, 219810177–219810194
Status: Unutilized
Reason: Extensive deterioration

Bldg. 21
Defense Distribution Depot
New Cumberland Co: York PA 17070–5001
Landholding Agency: Army
Property Number: 219830135
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 209
Tobyhanna Army Depot
Tobyhanna PA 18466
Landholding Agency: Army
Property Number: 21199930069
Status: Unutilized
Reason: Extensive deterioration

South Carolina

55 Bldgs., Fort Jackson
Ft. Jackson Co: Richland SC 29207
Landholding Agency: Army
Property Number: 219440237, 219440239, 219510017, 219620306, 219620312, 219621317, 219620348–219620351, 219620368, 19640138, 21199640148–21199640149, 219640167, 219720095–219720097, 219730130–219730157, 219740138, 219820102–219820111, 219830139–219830157
Status: Unutilized
Reason: Extensive deterioration

Tennessee

32 Bldgs.
Holston Army Ammunition Plant
Kingsport Co: Hawkins TN 61299–6000
Landholding Agency: Army
Property Number: 219012304–219012309, 219012311–219012312, 219012314, 219012316–219012317, 219012319, 219012325, 219012328, 219012330, 219012332, 219012334–219012335, 219012337, 219013789–219013790, 219030266, 219140613, 219330178, 219440212–219440216, 219510025–219510028
Status: Unutilized
Reason: Secured Area (Some are within 2000 ft. of flammable or explosive material)

10 Bldgs.
Milan Army Ammunition Plant
Milan Co: Gibson TN 38358
Landholding Agency: Army
Property Number: 219240447–219240449, 219320182–219320184 219330176–219330177, 219520034, 219740139
Status: Unutilized
Reason: Secured Area

Bldg. Z–183A
Milan Army Ammunition Plant
Milan Co: Gibson TN 38358
Landholding Agency: Army
Property Number: 219240783
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Texas

18 Bldgs.
Lone Star Army Ammunition Plant
Highway 82 West
Texarkana Co: Bowie TX 75505–9100
Landholding Agency: Army
Property Number: 219012524, 219012529, 219012533, 219012536, 219012539–219012540, 219012542, 219012544–219012545, 219030337–219030345
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

95 Bldgs.
Longhorn Army Ammunition Plant
Karnack Co: Harrison TX 75661–
Location: State highway 43 north
Landholding Agency: Army
Property Number: 219042546, 219012548, 219610553–219610584, 219610635, 219620243–219620291, 219620827–219620837
Status: Unutilized
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material)

20 Bldgs., Red River Army Depot
Texarkana Co: Bowie TX 75507–5000
Landholding Agency: Army
Property Number: 219420314–219420327, 219430094–219530097, 219440217
Status: Unutilized
Reason: Secured Area (Some are extensively deteriorated)

34 Bldgs. Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330473, 219610549, 219640172, 219640177, 219640182, 219810197–219810201, 219830201–219830205
Status: Unutilized
Reason: Extensive Deterioration

Bldgs. T–2916, T–3180, T–3192, T–3398, T–2915
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330476–219330479, 219640181
Status: Unutilized
Reason: Detached latrines

97 Bldgs. Fort Bliss
El Paso Co: El Paso TX 79916
Landholding Agency: Army
Property Number: 219640490–219640491, 219730160–219730186, 219740146, 219830161–219830197
Status: Unutilized
Reason: Extensive deterioration

Starr Branch, Bldg. 703B
Longhorn Army Ammunition Plant
Karnack Co: Harrison TX 75661
Landholding Agency: Army
Property Number: 219640186, 219640494
Status: Unutilized
Reason: Floodway

Bldg. 53
Laredo USARC
Laredo Co: Webb TX 78040
Landholding Agency: Army
Property Number: 21199930073
Status: Unutilized
Reason: Extensive deterioration

Utah

3 Bldgs.
Tooele Army Depot
Tooele Co: Tooele UT 84074–5008
Landholding Agency: Army
Property Number: 219012153, 219012166, 219030366
Status: Unutilized
Reason: Secured Area

8 Bldgs.
Tooele Army Depot
Tooele Co: Tooele UT 84074–5008
Landholding Agency: Army
Property Number: 219012148–219012149, 219012152, 219012155, 219012156, 219012158, 219012751, 219240267
Status: Underutilized
Reason: Secured Area

3 Bldgs.
Dugway Proving Ground
Dugway Co: Toole UT 84022–
Landholding Agency: Army
Property Number: 219013997, 219130012, 219130015

Status: Underutilized
Reason: Secured Area

59 Bldgs.
Dugway Proving Ground
Dugway Co: Toole UT 84022–
Landholding Agency: Army
Property Number: 219330181–219330182, 219330185, 219420328–219420329, 21199920091–21199920101
Status: Unutilized
Reason: Secured Area

Bldgs. 3102, 5145, 8030
Deseret Chemical Depot
Tooele UT 84074
Landholding Agency: Army
Property Number: 219820119–219820121
Status: Unutilized
Reason: Secured Area Extensive deterioration

Virginia

320 Bldgs.
Radford Army Ammunition Plant
Radford Co: Montgomery VA 24141–
Landholding Agency: Army
Property Number: 219010833, 219010836, 219010839, 219010842, 219010844, 219010847–219010890, 219010892–219010912, 219011521–219011577, 219011581–219011583, 219011585, 219011588, 219011591, 219013559–219013570, 219110142–219110143, 219120071, 219140618–219140633, 219440219–219440225, 219510031–219510033, 219610607–219610608, 219830223–219830267
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

13 Bldgs.
Radford Army Ammunition Plant
Radford Co: Montgomery VA 24141–
Landholding Agency: Army
Property Number: 219010834–219010835, 219010837–219010838, 219010840–219010841, 219010843, 219010845–219010846, 219010891, 219011578–219011580
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material
Secured Area Latrine, detached structure

80 Bldgs.
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219240107, 219330210–219330211, 2129330219–219330220, 219330225–219330228, 219520062, 219610595, 219610597, 219620497, 219620505, 219620863–219620876, 219630115, 219640497, 219740155–219740156, 219830206–219830210, 21199910041–21199910043, 21199920117–21199920118
Status: Unutilized
Reason: Extensive deterioration (Some are in a secured area.)

16 Bldgs.
Radford Army Ammunition Plant
Radford VA 24141
Landholding Agency: Army
Property Number: 219220210–219220218, 219230100–219230103, 219520037
Status: Unutilized
Reason: Secured Area

Bldg. B7103–01, Motor House
Radford Army Ammunition Plant
Radford VA 24141
Landholding Agency: Army
Property Number: 219240324
Status: Unutilized
Reason: Secured Area Within 2000 ft. of flammable or explosive material
Extensive deterioration

Bldg. 171 Fort Monroe
Ft. Monroe VA 23651
Landholding Agency: Army
Property Number: 219520051
Status: Unutilized
Reason: Extensive deterioration

56 Bldgs.
Red Water Field Office
Radford Army Ammunition Plant
Radford VA 24141
Landholding Agency: Army
Property Number: 219430341–219430396
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material
Secured Area

25 Bldgs.
Fort A.P. Hill
Bowling Green Co: Caroline VA 22427
Landholding Agency: Army
Property Number: 219510030, 219610588, 21199920113–21199920116, 21199930077–21199930079
Status: Underutilized
Reason: Secured Area Extensive deterioration

Bldgs. 2013–00, B2013–00, A1601–00
Radford Army Ammunition Plant
Radford VA 24141
Landholding Agency: Army
Property Number: 219520052, 219530194
Status: Unutilized
Reason: Extensive deterioration

16 Bldgs.
Fort Belvior
Ft. Belvoir Co: Fairfax VA 22060–5116
Landholding Agency: Army
Property Number: 21199910050–21199910057, 21199920107–21199920112
Status: Unutilized
Reason: Extensive deterioration

18 Bldgs.
Fort Story
Ft. Story Co: Princess Ann VA 23459
Landholding Agency: Army
Property Number: 219640506, 219710193
Status: Unutilized
Reason: Extensive deterioration

15 Bldgs., Fort Eustis
#219, 220, 229, 231, 232, 651, 654, 1400, 1404 1408, 1416, 1419, 1505, 1547, 1743
Ft. Eustis Co. VA 23604
Landholding Agency: Army
Property Number: 21199930074–21199930076
Status: Unutilized
Reason: Extensive deterioration

Washington

664 Bldgs., Fort Lewis
Ft. Lewis Co: Pierce WA 98433–5000
Landholding Agency: Army
Property Number: 219610001, 219610006–219610007, 219610009–219610010, 219610012, 219610042–219610046, 219620509–21920517, 219640193, 219710194, 219720142–219720151, 219810205–219810243, 219820130–219820132, 21199840118–21199840123, 21199910063–21199910080, 21199920125–21199920181, 21199930080–21199930105
Status: Unutilized
Reason: Secured Area; Extensive deterioration

11 Bldgs, Fort Lewis
Huckleberry Creek Mountain Training Site
Co: Pierce WA
Landholding Agency: Army
Property Number: 219740162–219740172
Status: Unutilized
Reason: Extensive deterioration

Bldg. 575
Fort Lawton
Seattle Co: King WA 98199
Landholding Agency: Army
Property Number: 21199920119
Status: Unutilized
Reason: Secured Area

Bldg. 415, Fort Worden
Port Angeles Co: Clallam Wa 98362
Landholding Agency: Army
Property Number: 21199910062
Status: Excess
Reason: Extensive deterioration

Bldg. U515A, Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920124
Status: Excess
Reason: gas chamber

Wisconsin

6 Bldgs
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219011094, 219011209–219011212, 219011217
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Friable asbestos; Secured Area

154 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219011104, 219011106, 219011108–219011113, 219011115–219011117, 219011119–219011120, 219011122–219011139, 219011141–219011142, 219011144, 219011148–219011208, 219011213–219011216, 219011218–219011234, 219011236, 219011238, 219011240, 219011242, 219011244, 219011247, 219011249, 219011251, 219011254, 219011256, 219011259, 219011263, 219011265, 219011268, 219011270, 219011275, 219011277, 219011280, 219011282, 219011284, 219011286, 219011290, 219011293, 219011295, 219011297, 219011300, 219011302, 219011304–219011311, 219011317, 219011319–219011321, 219011323
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Friable asbestos; Secured Area

4 Bldgs.
Badger Army Ammunition Plant

Baraboo Co: Sauk WI
Landholding Agency: Army
Property Number: 219013871–219013873, 219013875
Status: Underutilzied
Reason: Secured Area

31 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI
Landholding Agency: Army
Property Number: 219013876–219013878, 219220295–219220311, 219510058–219510068
Status: Unutilized
Reason: Secured Area

316 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219210097–219210099, 219740184–219740271
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 6513–3
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913
Landholding Agency: Army
Property Number: 219510057
Status: Unutilized
Reason: Detached Latrine

124 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913
Landholding Agency: Army
Property Number: 219510069–219510077
Status: Unutilized
Reason: Secured Area; Extensive deterioration

*Land (by State)*

Alabama

23 acres and 2284 acres
Alabama Army Ammunition Plant
110 Hwy. 235
Childersburg Co: Talladega AL 35044–
Landholding Agency: Army
Property Number: 219210095–219210096
Status: Excess
Reason: Secured Area

Indiana

Newport Army Ammunition Plant
East of 14th St. & North of S. Blvd.
Newport Co: Vermillion IN 47966–
Landholding Agency: Army
Property Number: 219012360
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

1505 acres
Indiana Army Ammunition Plant
Charleston Co: Clark IN 47111
Landholding Agency: Army
Property Number: 21199930166
Status: Excess
Reason: Contaminants; Secured Area

Maryland

Carroll Island, Graces Quarters
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Harford MD 21010–5425
Landholding Agency: Army
Property Number: 219012630, 219012632
Status: Underutilized
Reason: Floodway; Secured Area

Minnesota

Portion of R.R. Spur
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112
Landholding Agency: Army
Property Number: 219620472
Status: Unutilized
Reason: Landlocked

New Jersey

Land
Armament Research Development & Eng. Center
Route 15 North
Picatinny Arsenal Co: Morris NJ 07806–
Landholding Agency: Army
Property Number: 219013788
Status: Unutilized
Reason: Secured Area

Spur Line/Right of Way
Armament Rsch., Dev., & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219530143
Status: Unutilized
Reason: Floodway

2.0 Acres, Berkshire Trail
Armament Rsch., Dev., & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910036
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Ohio

0.4051 Acres, Lot 40 & 41
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219630109
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Oklahoma

McAlester Army Ammo. Plant
McAlester Army Ammunition Plant
McAlester Co: Pittsburg OK 74501–
Landholding Agency: Army
Property Number: 219014603
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material

Texas

Land—Approx. 50 acres
Lone Star Army Ammunition Plant
Texarkana Co: Bowie TX 75505–9100
Landholding Agency: Army
Property Number: 219420308
Status: Unutilized
Reason: Secured Area

Land—Harrison Bayou
Longhorn Army Ammunition Plant
Karnack Co: Harrison TX 75661–
Landholding Agency: Army
Property Number: 219640187
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Floodway

Land—.036 acres
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219730202
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Wisconsin

Land
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Location: Vacant land within plant boundaries
Landholding Agency: Army
Property Number: 219013783
Status: Unutilized
Reason: Secured Area

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federal register

Friday
August 20, 1999

# Part III

# Environmental Protection Agency

**40 CFR Parts 259, 261, 266, and 270**

**Standards for the Management of Cement Kiln Dust; Proposed Rule**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 259, 261, 266, and 270

**[FRL–6413–5 RIN 2050–AE34]**

### Standards for the Management of Cement Kiln Dust

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (''we'' or EPA) is today proposing a creative, affordable, and common sense approach for the management of cement kiln dust (CKD) waste under the Resource Conservation and Recovery Act (RCRA). CKD would remain a non-hazardous waste provided the following management standards are met. First, for ground-water protection, the Agency is proposing management standards which require a landfill to be designed to control releases of toxic metals to ground water at the point of compliance. Second, to control releases of fugitive dust, the proposed management standards would require persons managing CKD waste to cover or otherwise manage the landfill, CKD handling areas, and CKD storage areas to control wind dispersal of fugitive CKD. Finally, this rule also proposes concentration limitations on various pollutants in CKD used for agricultural purposes. This rule also proposes RCRA Subtitle C regulatory standards for CKD that is not managed according to the management standards described above.

**DATES:** EPA will accept public comment on this proposed rule until November 18, 1999.

**ADDRESSES:** Commenters must send an original and two copies of their comments referencing docket number F–99–CKDP–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW., Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA, address below.

Comments may also be submitted electronically through the Internet to: rcra-docket@epa.gov. Comments in electronic format should also be identified by the docket number F–99–CKDP–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW., Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Docket Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically. See the ''Supplementary Information'' section for information on accessing them.

**FOR FURTHER INFORMATION CONTACT:** For general information, contact the RCRA Hotline at 800 424–9346 or TDD 800 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703 412–9810 or TDD 703 412–3323. For more detailed information on specific aspects of this proposed rulemaking and regulatory decision, contact Bill Schoenborn, U.S. EPA (5306W), 401 M Street, SW., Washington, DC 20460, (703) 308–8483, or e-mail: schoenborn.william@epa.gov.

**SUPPLEMENTARY INFORMATION:** The index and the following supporting materials are available from the RCRA Information Center:

1. Report to Congress on Cement Kiln Dust (59 FR 709, January 6, 1994).
2. Regulatory Determination on Cement Kiln Dust (60 FR 7366, February 7, 1995).
3. Notice of Data Availability: Additional Data Available on Wastes Studied for the Report to Congress on Cement Kiln Dust; Request for Comments. (59 FR 47133, September 14, 1994).
4. Correction to Notice of Data Availability (59 FR 51440, October 11, 1994).

The index and some of the supporting materials are available on the Internet. Follow these instructions to access the information electronically:

WWW: *http://www.epa.gov/epaoswer/other/ckd/index.htm*
FTP: *ftp.epa.gov*
Login: anonymous
Password: Your internet address

Files are located in /pub/epaoswer.

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

EPA responses to comments, whether the comments are written or electronic, will be published in a notice in the **Federal Register** or in a response to comments document placed in the official record for this proposed rulemaking. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

The contents of today's document are listed in the following outline:

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C. Regulatory Determination and Subsequent Studies
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## I. Statutory Authority

Section 3001(b)(3)(C) of RCRA, as amended, required that, after completing a Report to Congress (RTC) mandated by section 8002(o) of RCRA, the EPA Administrator must determine whether Subtitle C regulation of cement kiln dust (CKD) waste is warranted. The RTC documenting EPA's study of CKD was signed by the Administrator on December 30, 1993. EPA's regulatory determination was published in the **Federal Register** on February 7, 1995 (60 FR 7366). To implement that determination, EPA is today proposing rules using its authorities under sections 2002(a), 3001(b)(3)(C) and 3004(x) of RCRA.

## II. Background

On October 21, 1976, Congress enacted RCRA (Pub. L. 94–580). Section 3001 of RCRA mandated that the EPA Administrator ''promulgate regulations identifying characteristics of hazardous waste, and listing particular hazardous wastes which shall be subject to the provisions of this subtitle.'' Section 3004 required the Administrator to promulgate standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities.

In response to these requirements, EPA proposed regulations for managing hazardous wastes under Subtitle C of RCRA on December 18, 1978 (43 FR 58946). In this regulatory proposal, EPA proposed to defer most of the RCRA Subtitle C requirements for six categories of wastes, which it termed ''special wastes,'' until information could be gathered and assessed and the most appropriate regulatory approach determined. The special wastes were wastes typically generated in large volumes, and, at the time were thought to possibly pose less risk to human health and the environment than wastes being regulated as hazardous wastes. EPA identified CKD waste as one of these ''special wastes.'' [1]

### *A. Bevill Amendment*

On October 12, 1980, Congress enacted the Solid Waste Disposal Act Amendments of 1980 (Pub. L. 96–482), which added section 3001(b)(3)(A)(iii) (now frequently referred to as the Bevill Amendment) to RCRA which, among other things, temporarily exempted ''cement kiln dust waste'' (along with two other categories of waste) from Subtitle C regulation, pending completion of certain studies. These amendments also added section 8002(o), which required the Administrator to study the adverse effects on human health and the environment, if any, from the disposal of ''cement kiln dust waste,'' and submit a Report to Congress on its findings. The 1980 amendments also added section 3001(b)(3)(C), which required the Administrator to make a regulatory determination, within six months of the completion of the section 8002(o) study, whether or not to regulate CKD waste under Subtitle C of RCRA.

In response to the 1980 RCRA amendments, on November 19, 1980, EPA published an interim final amendment to its hazardous waste regulations to reflect the provisions of the Bevill Amendment (45 FR 76618), which is codified at 40 CFR 261.4(b)(8). Since that time, CKD has been exempt from Subtitle C of RCRA—that is, this material has never been regulated as a hazardous waste under Federal law.[2]

### *B. Report to Congress and Notice of Data Availability*

To comply with the Congressional mandate and to establish the factual

[1] The other five proposed ''special wastes'' specifically identified in the 1978 proposed rule were mining waste; utility waste; phosphate rock mining, benefication, and processing waste; uranium waste; and oil and gas drilling muds and oil production brines.

[2] It should be noted here that under the RCRA Subtitle C Boilers and Industrial Furnaces (BIF) Rule, CKD generated by kilns that burn hazardous waste as fuel may be ineligible for Bevill Exclusion under certain conditions (see 40 CFR 266.112).

basis for EPA decision making regarding the appropriate regulatory status of CKD waste under RCRA, EPA published in December 1993 its ''Report to Congress on Cement Kiln Dust'' (RTC). In keeping with the statutory requirements, the report addressed the following eight study factors, as articulated at section 8002(o) of RCRA:

(1) The source and volumes of [CKD] generated per year;

(2) Present disposal practices;

(3) Potential danger, if any, to human health and the environment from the disposal of (CKD);

(4) Documented cases in which danger to human health or the environment has been proved;

(5) Alternatives to current disposal methods;

(6) The costs of such alternatives;

(7) The impact of those alternatives on the use of natural resources; and

(8) The current and potential utilization of (CKD).

The RTC also included a review of applicable State and Federal regulations, so regulatory decisions derived from the report would avoid duplication of existing requirements.

In preparing the RTC, EPA developed industry-wide and, in some cases, facility-specific data and analytical methods that reflect the complexity of the issues addressed in the RTC. Facilities that generate CKD waste vary considerably in size, location, operational aspects, and waste management techniques. Moreover, to examine in detail the broad array of study factors mandated by RCRA section 8002(o), EPA developed approaches and methods that were sufficiently sophisticated to take into account the special nature of CKD. The specific methods that EPA used to address each of the study factors are described in detail in Chapters 3 through 9 of the RTC. Additional information on the methods used and supporting data are contained in the Background Documents to the RTC available from the RIC as discussed above under the **ADDRESSES** section.

In 1992 and 1993, the Agency visited 20 cement manufacturing facilities in the U.S. and obtained samples of cement kiln dust generated by each operation.[3] The Agency conducted chemical analyses on all of the samples for a number of constituents. The analytical results were used in the development of the RTC, and they were included in the Agency's RCRA docket that supports the report. Late in the study, one final set of metals analyses were conducted on the cement kiln dust samples as managed (e.g., stored, disposed) by six of the 20 facilities sampled. The Agency obtained the raw analytical data too late for use in developing the RTC, but did include the data in the RCRA docket for public inspection and comment.[4]

After issuance of the RTC, the raw data were subjected to data validation and the analytical results were finalized. Although not used in the development of the RTC, the Agency did consider these data in the process of formulating the CKD regulatory determination. Accordingly, on September 30, 1994, EPA published a Notice of Data Availability (NODA) (see 59 FR 47133) announcing the availability of the additional analytical data. On October 11, 1994 (59 FR 51440), the Agency published a Correction Notice which identified certain errors and corrected certain portions of the new data pertinent to additional assessments of potential risk from CKD waste.[5]

*C. Regulatory Determination and Subsequent Studies*

1. Summary of Agency's Determination

On February 7, 1995, EPA issued the determination required by section 3001(b)(3)(C) of RCRA, finding that additional control of CKD was warranted (60 FR 7366). The Agency stated that its concerns about the potential harm to human health and the environment posed by some CKD suggest the need for some level of regulation under RCRA Subtitle C authority. The Agency also recognized that certain of these areas of concern (those related to releases to surface waters) are more appropriately controlled under other EPA-administered statutes. In order to avoid unnecessary duplication among regulatory programs, EPA stated it would rather use the other existing regulatory programs to control risks where appropriate, and develop a more creative, affordable, and common sense approach that would control the adverse effects of CKD.

The Agency decided to develop, promulgate, and implement regulations for CKD as necessary to protect human health and the environment by using a variety of statutes. For surface waters, the Agency believes that existing regulations and the planned general permit under the National Pollutant Discharge Elimination System (NPDES) permitting program provide an adequate mechanism for controlling point source discharges and for managing storm water that contains CKD. With respect to ground water, the Agency decided to use its authority under RCRA Subtitle C provided by sections 2002(a), 3001(b)(3)(C), and 3004(x) to develop a program tailored to local cement plant conditions to control specific risks. In the regulatory determination, EPA also stated that it would develop and implement additional controls under the Clean Air Act (CAA), as necessary to address concerns relating to air emissions of CKD. Subsequently, however, EPA has concluded that RCRA authorities will better serve that purpose. EPA's reasons for changing its approach are discussed in detail in Section VII. B. (Clean Air Act) below.

For most off-site beneficial uses of CKD (e.g., in waste stabilization or certain construction uses), EPA's current record indicates there are no significant risks. However, the Agency also decided to evaluate the need for additional controls for a limited number of off-site uses of CKD (such as use as a substitute for lime fertilizer on agricultural fields) in its regulatory proposal. The Agency stated that its focus would be restricted to those off-site uses for which there may be significant risks.

EPA also stated in the regulatory determination that specific RCRA Subtitle C components deserve particular scrutiny in developing a tailored approach, including the following: facility-wide corrective action under section 3004(u); land disposal restrictions requirements (LDRs) under sections 3004(c),(d),(e),(f) and (g); minimum technology standards under section 3004(o); and permit requirements under section 3005. EPA stated that most of the concerns traditionally addressed by the land disposal restrictions program, permit requirements, and the minimum technology standards would be best addressed through management standards developed specifically for CKD.

2. Proposed Enforceable Agreement

On March 22, 1995, the U.S. cement industry, through the American Portland Cement Alliance (APCA), submitted to the Agency a voluntary management program for CKD. This program was based on earlier work APCA submitted to EPA in 1993. Under this voluntary program, cement

[3] The CKD sampling trip reports can be found in the RIC under the following numbers: Phase I sampling trip reports (Nos. F–94–RCKA–S0001 to S0066); Phase II CKD sampling trip reports (Nos. F–94–RCKA–S0067 to S0073).

[4] All of the analytical data on CKD can be found in the Technical Background Document: Analysis of CKD Generation and Characteristics Data, RIC docket Nos. F–94–RC2A–S0017 to S0017.G.

[5] Additional data on CKD waste studied in the Report to Congress, including supplemental errata, is available in the RIC docket under the general identification number F–94–RC2A–FFFFF.

manufacturing facilities would manage their CKD according to industry-developed management standards, and EPA would enforce those standards through a contract rather than through regulation. The proposed agreement included provisions for compliance standards, facility waste management plans, a public participation process, enforcement, and penalties. The industry indicated that its intent was to provide the Agency with a constructive alternative to Subtitle C regulation that would not stigmatize CKD as hazardous waste.

The proposed enforceable contract represented a new approach and raised a number of legal and technical issues which EPA evaluated. The Agency also contacted various State agencies, industry groups, and public citizen groups to assess their positions on the proposal. Although EPA in the past has entered into unenforceable ''voluntary'' agreements with other industries, the Agency has determined that it does not have inherent contract authority to enter into enforceable agreements, although it has authority to enter into enforceable consent orders under the imminent hazard provisions of RCRA section 7003, or section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). The cement industry chose not to pursue enforceable agreements under these authorities because of concern that it would be inappropriate to characterize CKD as posing an imminent and substantial danger to human health and the environment.

3. The Need for CKD Management Standards

In the RTC, the Agency described the decision rationale used to make its regulatory determination. The Agency applied a step-wise approach that it considered to be consistent with Congressional intent that EPA consider all of the study factors listed in RCRA section 8002(o). The methodology used by EPA examined the need for CKD management standards and the economic consequences of imposing full Subtitle C requirements on the industry. (See 60 FR 7366 for a discussion of the steps EPA considered in determining the need for CKD management standards.)

a. Documented Evidence of Damage

The Agency determined that the potential exists for hazardous constituents, including metals, to migrate from CKD waste sites and that CKD has caused documented impacts (and may continue to cause impacts) at levels of concern. Information is available to indicate that ground water has been affected by CKD management units. During the development of the RTC, the Agency identified five cases of damage to ground water, 10 cases of damage to surface water and 21 cases of damage to air from CKD waste management units.[6] Two additional cases of ground water damage, two additional cases of surface water damage, and 16 additional cases of air damage were subsequently identified in the 1994 NODA and placed in the RCRA docket in a technical background document entitled Additional Documented and Potential Damages From the Management of Cement Kiln Dust (See 59 FR 47133, September 14, 1994).[7] In its Regulatory Determination, EPA stated these cases suggest that despite State regulations damages continued to occur with current (i.e., as of 1994) CKD management practices.

Typically, ground-water damages were the result of metals constituents leaching into ground water from unlined CKD landfills and waste piles. Ground-water damages were of concern to the Agency because relatively few (17% in 1991) of all CKD management units had ground-water monitoring systems, while 25 of 91 cement manufacturing facilities were reported in 1991 to be located within one mile of a public drinking water well. Additionally, ground-water damage was a major factor cited for including two CKD disposal units on the CERCLA (Superfund) National Priorities List (NPL).

Damages to air were also identified due to particulate emissions of CKD from quarries, haul roads, and CKD handling equipment. Most of these cases involved visible emissions violations (opacity) related to equipment malfunctions associated with CKD handling equipment (kilns, baghouses, and screw conveyors). In the regulatory determination, EPA characterized the air releases as persistent, with many facilities having more than one violation. Also, significant releases of airborne particulates were frequently observed first-hand by Agency staff during the course of the RTC study.[8]

b. Potential Risks to Human Health and the Environment

The Agency conducted a series of risk screening and site-specific risk modeling studies to evaluate potential risks from on-site management and off-site uses of CKD. Methodologies and results of these studies were documented in Chapter 6 of the RTC and its related technical background documents and in two subsequent EPA technical background documents entitled Human Health and Environmental Risk Assessment in Support of the Regulatory Determination on Cement Kiln Dust (August 31, 1994) and Supplemental Errata Document for the Technical Background Document for the Notice of Data Availability on Cement Kiln Dust (September 30, 1994).[9]

EPA assessed the risks of potential releases of CKD contaminants to the environment, both during the routine management of the dust at cement plants and during beneficial use of the dust at other locations. The risk assessment was intended to complement the damage case study, which provided actual instances of environmental contamination, sometimes attributable to management practices and facility settings not considered in the risk assessment. The risk assessment was also intended to cover the potential for certain more subtle or long-term risks that might not be evidenced in the damage case files.

One of the primary objectives of the risk assessment was to evaluate, as realistically as possible, the baseline risks of CKD management practices at actual sites. This was accomplished by focusing initially on a sample of case-study cement plants and off-site beneficial use scenarios that appeared to provide a reasonable representation of the universe of sites where CKD is disposed and used. For each sample site, EPA evaluated the potential for CKD contaminants to be released into the environment, migrate to possible human and ecological receptors through a number of media and pathways (e.g., ground water contamination, surface water runoff to streams or lakes, windblown dust) and result in exposures and adverse effects. This evaluation included a combination of qualitative analyses designed to document and describe major factors contributing to (or limiting) risks, and quantitative modeling designed to

[6] Based on subsequent review of the damage cases, except for two reassessments (one air damage case and one surface water damage case), the Agency believes the information received in comment does not contradict the Agency's basic conclusions regarding any of the damage cases identified in the RTC and subsequent NODA. A detailed description of these damage cases is available in Chapter 5 of the RTC.

[7] RIC Docket Nos. F–94–RC2A–S0003 to S0015.

[8] A general description of these emissions can be found in the EPA CKD sampling trip reports which are located in the support section of the RIC docket on the Report to Congress.

[9] These documents are available in the RIC docket (Nos. F–94–RCKA–FFFFF, F–94–RC2A–S0019 and –S0019.A).

estimate the magnitude of risks. The analysis conducted for the RTC was then expanded to incorporate significant new information collected after the RTC was published. This expanded analysis, which is documented in EPA's technical background document supporting the Agency's 1995 Regulatory Determination enabled EPA to characterize risk levels for each pathway at each plant for the facilities evaluated.

The Agency's analysis indicates that there are potential risks warranting concern, from both current on-site waste management practices and certain off-site beneficial uses. Based on these analyses, EPA predicted only low or negligible risk potential from on-site management of CKD via direct exposure pathways (e.g., ingestion of drinking water) . The Agency did find potential risk to human health via indirect (i.e., foodchain) exposure pathways, however. Potential risks from exposure to particulate matter were also indicated.

The Agency modeled health risks via indirect food-chain pathways (i.e., risks from ingestion of contaminated crops, livestock, or fish). These contaminants reach food products via movement of stormwater run-off and/or windblown dust from uncontrolled CKD storage or disposal areas to nearby water bodies and farm fields. EPA's foodchain pathway analysis estimated potential individual cancer risks from $1 \times 10^{-5}$ (1 in 100,000) to $1 \times 10^{-3}$ (1 in 1,000) for highly exposed subsistence fishers and farmers. Cancer risks of concern were due primarily to exposure to arsenic in CKD. Similar cancer risk levels due to dioxins are also possible at some additional sites. However, the Agency's data base on dioxin levels in CKD was not extensive enough to conduct a large scale study. EPA's risk modeling also estimated potential exceedances of non-cancer hazard thresholds via indirect exposure to the toxic metals cadmium, chromium, thallium and lead, which are present in CKD.

Finally, EPA's CKD analysis indicated potential human health risks due to exposure to the fine particulate matter (PM) which characterizes CKD. Based on the Agency's analysis, windblown dust (PM less than 10 microns in size) from uncontrolled CKD waste management units could exceed EPA's health-based fine particulate National Ambient Air Quality Standard (NAAQS) at plant boundaries and potentially at nearby residences. Further analysis of potential exposure to airborne PM from cement kiln dust waste management units was conducted as part of EPA's population risk assessment. This analysis also indicates that persons living around cement plants may be exposed to airborne PM concentrations in excess of the NAAQS. An overview of the population risk assessment is provided in Section II.C.4.a. of this preamble. A detailed description of that analysis is provided in the technical background document on population risk assessment.

As previously noted, the Agency predicted a negligible impact to ground water and consequently low or negligible risk to human health via ingestion of contaminated drinking water. However, a large percentage of cement plants (and CKD management units at those cement plants) are located in areas of karst terrain, [10] many of which may be underlain by bedrock with hydrological characteristics conducive to leachate transport to off-site locations with limited filtration, adsorption, and dilution. For reasons discussed in the regulatory determination, the Agency determined that its ground-water model is not suitable for modeling in karst terrain. The Agency has evidence of ground-water contamination at each facility where ground-water data were available, and thus conducted additional analyses of ground-water transport.

The Agency conducted two additional ground-water analyses to evaluate the potential for ground water transport at CKD management facilities. In the first analysis, the Agency evaluated whether the choice of ground water models significantly influenced the results. In this analysis, the Agency used EPA's Composite Model for Leachate Migration with Transformation Products (EPACMTP) with the same parameters used in the modeling to support the Report to Congress. The Agency concluded that the choice of models did not significantly influence the conclusions on ground water transport. In the second analysis, the Agency parameterized the thermodynamic isotherms to reflect the major ions likely to be present in CKD and the typical pHs found in CKD. Based on this analysis, the Agency concluded that the composition of CKD leachate may make metals more mobile. These analyses are discussed in Section II.C.4.b, Additional Ground Water Modeling.

The Agency's initial risk assessment for off-site beneficial uses of CKD indicated that most off-site uses do not pose significant risks. Direct cropland application, however, occurs at a number of locations in the country. Screening level analyses of agricultural use described in the RTC and NODA suggest that some CKD, at plausible application rates, contains sufficiently high concentrations of metals and dioxins to cause food chain risks. Based on these initial findings, EPA conducted a more detailed analysis of potential risks from use of CKD as an agricultural liming agent. A summary description of the agricultural use analysis and results of that analysis are presented in Section VI.—Standards for CKD Used as a Lime Substitute.

c. Waste Characteristics

While CKD itself does not exhibit the RCRA Subtitle C hazardous waste characteristic of corrosivity (40 CFR 261.22), EPA's data show that mixtures of CKD and water often exhibit the characteristic of corrosivity. [11] In particular, EPA data show that the pH level in run-off from precipitation that contacts CKD storage and waste piles typically exceeds 12.5 standard units, the standard for the corrosivity characteristic for hazardous wastes (40 CFR 261.22). In addition, EPA's analyses of CKD show that CKD does contain certain metals listed in Appendix VIII (''Hazardous Constituents'') Part 261 of RCRA. For many of the toxic metals, the total concentrations in kiln dust were not significantly different whether the dust was generated in kilns that burn or do not burn hazardous waste. Likewise, in terms of potential constituent solubility and release, leach test results show that no significant distinction can be made between CKD generated from kilns that burn hazardous waste and those that do not burn hazardous waste.

With respect to organics, volatile and semi-volatile compounds were generally not found in CKD. However, levels of 2,3,7,8-substituted dioxin, and 2,3,7,8-substituted dibenzofuran were detected, although the concentrations were generally low. The calculated 2,3,7,8-tetrachlorinated dibenzo-p-dioxins toxicity equivalence (TEQ) values for the facilities sampled by EPA ranged from non-detected to 9 ppt.

d. Adequacy of Existing Regulations

In making its regulatory determination, EPA evaluated State and Federal regulations pertaining to CKD waste and concluded that more stringent regulation of CKD is necessary based on current regulatory schemes. [12]

[10] Karst terrains are defined in this proposal at 40 CFR 259.16(b)(1) as areas where karst landscape, with its characteristic hydrogeology and/or landforms are developed.

[11] EPA hazardous waste identification rules do not include a characteristic or definition for solid corrosives.

[12] Supporting documentation for this analysis can be found in Chapter 7 of the RTC—*Existing Regulatory Controls on CKD Management.*

The Agency also determined that current practices are inadequate to limit contaminant releases and associated risks. CKD is now managed primarily on-site in non-engineered landfills, piles, and ponds. Many piles and landfills lack liners, leachate controls, or run-on/run-off collection systems. In addition, while dust suppression measures exist at many facilities, it appears that they are generally ineffective at controlling airborne releases of CKD. The Agency believes the following factors warrant additional environmental controls for CKD: (1) the general lack of current regulations applicable to contaminant discharges to ground water for protection of human health and the environment; (2) the general lack of ground-water monitoring systems at CKD disposal units; and (3) the existence of damages to ground water and air that are persistent and continuous, and for which no requirements exist to address the risks posed via these pathways.

4. New Analyses

a. Population Risk

Subsequent to the Regulatory Determination, the Agency calculated population risks for individuals living in the vicinity of cement manufacturing plants that manage CKD onsite. The assessment included population risks from indirect, or foodchain, exposure pathways and population effects from exposure to airborne particles, but not potential population risks from beneficial use of CKD. This work builds on earlier CKD analyses focusing on the health risks to maximally exposed individuals, presented in the RTC on CKD and supporting documentation, the 1994 NODA on CKD, and a background document supporting the 1995 CKD Regulatory Determination. A detailed description of the population risk assessment is provided in the *Technical Background Document: Population Risks from Indirect Exposure Pathways, and Population Effects from Exposure to Airborne Particles from Cement Kiln Dust Waste* in the docket for this rule.

The assessment of population risks from indirect exposure estimates the number of cancer cases and the number of people living near cement plants that are potentially exposed above noncancer effect thresholds through the ingestion of vegetables, beef and milk, and fish. For this analysis, existing facility-specific individual risk estimates were combined with facility-specific data on populations potentially exposed via indirect pathways to derive facility-specific population risk estimates. As a first step, information on individual risk generated from a sample of 82 facilities was used to identify and eliminate from concern those facilities that have negligible potential for significant population risk. For remaining facilities, population risk for the vegetable ingestion pathway was calculated by combining prior estimates of individual risk with estimates of nearby farmers and backyard gardeners based on census data. For the final step, results from the 82 facilities for which facility-specific information was available were extrapolated to the total universe of 108 cement facilities. Population risk for the fish ingestion pathway was estimated using existing facility-specific individual risk estimates along with numbers of recreational fishers that could be exposed, calculated based on fish yield data from local streams. Facility-specific results were then extrapolated to the full universe of cement plants to obtain total population risk for this pathway.

The Agency estimates that exposures via indirect pathways occurring in populations within five miles of all cement plants nationwide potentially result in a total of 0.04 excess cancer cases over a 70-year period. That is, exposures would potentially lead to about 0.009 excess cancer cases in the subsistence farmer population, and about 0.03 excess cancer cases in the ''homegrown'' population. Cancer cases predicted for the recreational fisher population are negligible. The total population within five miles of all cement facilities nationwide is approximately 3.4 million.[13] Thus, the overall population cancer risk can be characterized as follows: a total of 0.0006 excess cancer cases per year could potentially occur within this population of 3.4 million due to indirect exposures.

For population noncancer effects, EPA predicts that, across all populations within five miles of all cement facilities nationwide, a total of about 1,040 people are potentially exposed via indirect exposure pathways to contaminant levels above the hazard index. That is, about 6 individuals from the population exposed to contamination from homegrown vegetables are exposed to contamination exceeding noncancer effects thresholds (i.e., hazard index greater than 1). About 37 individuals from the subsistence farmer population and about 1,000 individuals from the recreational fisher population are estimated to be exposed to contamination exceeding noncancer effects thresholds. The overall population noncancer effects can be characterized as follows: a total of about 1,040 people, or less than one-tenth of one percent, from among the population of 3.4 million within five miles of all cement plants nationwide is likely to be exposed via indirect exposure pathways to contamination exceeding noncancer effects thresholds.

The assessment of population effects from exposure to airborne particles estimates the number of people potentially exposed to fugitive CKD at levels above the National Ambient Air Quality Standards (NAAQS) for particulate matter (PM). Both the existing NAAQS for coarse particles and a new NAAQS proposed for fine particles were considered. New modeling of CKD emissions and downwind dispersion was performed for selected ''high risk'' cement plants, substantially improving on the previous work by using advanced modeling techniques, estimating emissions from all CKD handling stages rather than just final disposal as modeled previously, and considering the effect of terrain, among other refinements. The concentrations of airborne particles were then overlaid on census block grids to estimate populations potentially exposed above the $PM_{10}$ NAAQS. The Agency estimates that about 18 people may be exposed to airborne $PM_{10}$ concentrations in excess of the NAAQS around the 82 facilities for which facility-specific information is available.[14] As with the indirect exposures analysis, EPA derived a more complete picture of potential population effects due to PM exposures by extrapolating from results within the known universe to determine the potential population effects for the full universe of cement facilities. In sum, EPA estimated that, across all 108 facilities, a total of between 18 and 4,118 people living within 500 meters of the facility boundary may be exposed to airborne PM concentrations in excess of the NAAQS. It is not known what percentage of the population exposed above the NAAQS is likely to develop any morbid effects because the dose-response relationship for PM exposures is not well defined.

[13] This is an estimate based on site-specific data for 61 facilities and extrapolated data for the remaining 47 facilities.

[14] The estimate of 393 people is based on an evaluation of 52 of the 82 cement facilities; based on analyses conducted previously the remaining 30 facilities were determined to have zero or negligible effects in terms of PM exposures because they do not manage CKD on-site (see methodology and results presented in *Technical Background Document on Potential Risks of Cement Kiln Dust in Support of the Cement Kiln Dust Regulatory Determination*, January 31, 1995).

b. Additional Ground-Water Modeling

Because the available damage cases indicate the potential for impacts to ground water in areas of non-karst terrain (four of the 13 damage cases are located in areas of non-karst terrain), the Agency conducted additional ground-water modeling to evaluate the potential subsurface transport of metals in non-karst terrain. The additional modeling occurred in two phases. In Phase I, the Agency tested the sensitivity of the modeling by incorporating the same assumptions used in the modeling to support the Report to Congress in EPACMTP, a ground-water model used by EPA to conduct national assessments. The intent of this exercise was to determine whether model selection significantly influenced the conclusions regarding the subsurface transport of constituents to receptor locations. In Phase II, the Agency evaluated the sensitivity of EPACMTP to assumptions regarding the speciation and adsorption of metals. In this analysis, the Agency revised the isotherms generated by MINTEQA2, a geochemical speciation model,[15] to reflect higher pHs (as found in CKD leachate), more appropriate ions in the leachate, and a lower dissolved organic carbon concentration in the leachate.

In Phase I of the additional ground-water modeling, EPA evaluated the sensitivity of its previous model selection by estimating constituent concentrations at well locations with EPA's regional ground-water model, EPACMTP. The results from this analysis were then compared with the results generated by the previous modeling, which used MMSOILS. EPACMTP combines a finite source methodology with a metal-specific procedure (using MINTEQA2) for handling geochemical interactions that affect the subsurface fate and transport of metals. A complete description of this methodology is available in *EPA Composite Model for Leachate Migration with Transformation Products: Background Document for Metals*, which has been placed in the RCRA docket in support of this proposed rule.[16] The analysis incorporated the same data and assumptions used to support the ground-water modeling for the EPA's 1993 Report to Congress.

In general, the revised modeling using EPACMTP predicted lower concentrations of metals in ground water for antimony, arsenic, chromium, cadmium, and thallium and higher concentrations for barium and beryllium. At all facilities, the risk from contaminated ground water predicted by EPACMTP was negligible. Leaching of lead was negligible in both modeling exercises (the MMSOILS model predicted that lead would reach the water table at only one modeled facility). From this analysis, the Agency concluded that the selection of ground-water models was not the most significant reason for the inability of the modeling to predict elevated metal concentrations in ground water.

In Phase II of the additional ground-water modeling, EPA evaluated the sensitivity of the ground-water modeling results to changes in assumptions regarding the speciation and adsorption of metals in CKD leachate. Specifically, EPA revised the assumptions about pH, presence of leachate organic acids, and ions present in CKD leachate to generate new partitioning coefficients ($K_d$s) for five metals: barium, beryllium, cadmium, chromium, and lead. The Agency then used the same modeling protocol for EPACMTP described above to evaluate the effects on ground-water fate and transport of these five metals. A more detailed description of the revisions to the MINTEQA2 isotherms and the caveats associated with these analyses are available in the technical support document *Examination of Metals Transport under Highly Alkaline Conditions*, which has been submitted to the docket in support of this proposed rule.

This additional analysis indicates that migration of the metals may be sensitive to the pH of the leachate and the buffering capacity of the unsaturated and saturated zones. Under highly alkaline conditions with little or no buffering, cadmium, chromium, lead, barium, and beryllium are predicted to be more mobile. In general, these metals displayed a greater tendency to move through the unsaturated zone and reach the ground water. For example, the analysis indicated that at four of the five modeled facilities, elevated levels of barium, beryllium, cadmium, chromium, and lead were found in the ground water within 10 meters of the disposal unit. At four of the modeled facilities, concentrations of lead exceeded EPA's action level for lead of 0.015 mg/L within 10 meters and at one facility, chromium exceeded its maximum concentration limit (MCL) of 0.1 mg/L by less than a factor of 10. In addition, modeling indicated that beryllium, cadmium, and chromium would have concentrations within a factor of 10 of their respective MCLs at four facilities, one facility, and two facilities, respectively.

c. New CKD Waste Characteristics Data

In an effort to further understand the influence of hazardous waste burning on CKD composition, EPA has undertaken analyses of two new sources of data on toxic metals in CKD. In June 1996, as part of a RCRA § 3007 data request, EPA collected information on constituent concentrations in CKD from seven cement plants within Region VII that burn hazardous waste, to the extent available for each of the five years 1991 through 1995. In October 1996, new CKD constituent data from 15 cement plants that do not burn hazardous waste, collected during July and August 1996, were submitted to the Agency by the Non-Hazwaste Burner CKD Coalition (NHBCC).

The EPA Region VII data set consists of analytical results from a substantial number of CKD samples, varying by plant, by constituent, and by year from a few dozen to a few hundred per year. All of these data reflect CKD generated by the seven plants while burning hazardous waste. The NHBCC data set consists of analytical results from six to 32 CKD samples from each non-burning plant. Although both data sets have their individual nuances, the Agency believes these data sets together accurately reflect constituent values in CKD for both types of kilns, and tend to complement one another. Both data sets are available in the RCRA docket for this rule.

The NHBCC, Environmental Technology Council (ETC), and local citizen groups have asserted to EPA staff that these new data demonstrate statistically significant differences in the concentrations of total metals between CKD from kilns that burn conventional fossil fuels (''non-hazardous waste burner CKD'') and CKD from kilns that burn RCRA hazardous waste (''hazardous waste burner CKD''). The NHBCC argues that these differences affect the potential risk associated with the disposal of CKD and that non-hazardous waste burner CKD exhibits only isolated elevated concentrations of toxic constituents, hence relatively low risk compared to hazardous waste burner CKD. As explained in Section III.C. below, the NHBCC believes these differences justify EPA imposing a regulatory distinction between hazardous waste burner CKD and non-

[15] U.S. EPA, 1996a. Background Document for Metals. EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP). Volume 1: Methodology. U.S. EPA, Office of Solid Waste, Washington, DC 20460.

[16] U.S. EPA, 1996b. EPA Composit Model for Leachate Migration with Transformation Products (EPACMTP) Background Document. U.S. EPA, Office of Solid Waste, Washington, DC 20460.

hazardous waste burner CKD, a so-called ''two-dust approach.''

EPA has considered the NHBCC's assertion of statistical differences between hazardous waste burner and non-hazardous waste burner CKD, but at this point based on available data does not accept their assertion of lower risk for non-hazardous waste burner CKD relative to hazardous waste burner CKD for the following reasons. First, when hazardous waste burner and non-hazardous waste burner CKD data sets are compared, for some toxic metals the statistical distribution of concentrations in each group significantly overlap. For example, for the constituent arsenic, CKD from ten out of 15 non-hazardous waste burner plants have mean total concentrations in excess of the mean concentration of arsenic in hazardous waste burner CKD averaged from the seven hazardous waste burning plants in EPA Region VII (1995 data); and CKD from seven out of 15 non-hazardous waste burner plants have mean arsenic concentrations higher than the mean concentration reported for hazardous waste burner plants in the EPA NODA. Similarly, for chromium, CKD from four out of 15 non-hazardous waste burner plants have mean total concentrations in excess of the mean concentration for chromium in hazardous waste burner CKD averaged from the seven hazardous waste burning plants in EPA Region VII (1995 data). Because of this overlap, EPA does not believe that all non-hazardous waste burner CKD poses less potential hazard than hazardous waste burner CKD. Furthermore, a comparison of means suggests constituent concentrations for all toxic metals are within the range of data reported in the EPA NODA. EPA believes that the new information supports the Agency's previous conclusion that metals levels in CKD are not substantially different, whether generated by kilns that burn hazardous waste or kilns that do not burn hazardous waste.

Second, concentrations of the toxic constituent thallium in non-hazardous waste burner CKD are consistently higher than in hazardous waste burner CKD. The mean concentration for thallium in non-hazardous waste burner CKD from the 15 NHBCC plants (180.5 mg/kg)[17] is over three times higher than the mean concentration for 31 non-burning plants reported in the EPA NODA (52.3 mg/kg), and 47 times higher than the mean concentration in hazardous waste burner CKD from the seven EPA Region VII plants (3.8 mg/kg). The NHBCC has argued that relatively higher concentrations of thallium in non-hazardous waste burner CKD are not caused by fuels but by CKD recirculation and, therefore, non-hazardous waste burner CKD should not be regulated because this material is never disposed. The Agency believes recirculation of CKD back into the cement manufacturing process is beneficial because recirculated CKD would never be disposed. Forty-seven out of 88 non-hazardous waste burner plants, however, reported wasting CKD in 1995, so the Agency remains concerned that disposal of CKD with elevated levels of thallium could still pose a potential hazard to human health and the environment.

Third, the NHBCC data have not addressed the cases of environmental damage or $PM_{10}$ risks that form the basis of the EPA's Regulatory Determination. The Agency finds no basis for changing the Regulatory Determination to regulate only CKD from hazardous waste burning kilns. The damage cases resulted from on-site management of CKD in non-engineered landfills, piles and ponds, at plants that largely do not or did not burn RCRA hazardous wastes. In addition, CKD, regardless of fuels burned, contains particles 10 microns in size and smaller, and could potentially pose risks to human health if released through fugitive emissions.

EPA requests additional data on hazardous waste burner and non-hazardous waste burner CKD. If new information warrants such action, the Agency would re-evaluate its current position on the appropriate levels of control for hazardous waste burner and non-hazardous waste burner CKD.

*D. Beneficial Use of Cement Kiln Dust*

It is likely that even with advances in recycling technologies, some CKD will need to be removed from kiln systems. Because resources are lost when CKD is permanently disposed, and because disposal practices can be burdensome, finding alternative uses for waste CKD can help facilities avoid disposal costs and generate additional revenue, while at the same time reduce the amount disposed of in landfills. Currently, CKD is used beneficially for sludge-, waste-, and soil-stabilization, land reclamation, waste remediation, acid neutralization, agricultural applications, such as a fertilizer or lime substitute, and construction applications.[18] According to responses from the 1991 Portland Cement Association (PCA) Survey and RCRA section 3007 requests, about 780,000 metric tons (860,000 tons) of CKD were used beneficially in 1990, or 5.4 percent of the gross CKD generated in 1990, and about 19 percent of the net CKD generated for that year. This total represents 9.5 percent of the 8.2 million metric tons of CKD recycled directly back into the kiln or raw feed system in 1990. Of the 780,000 metric tons, about 71 percent (670,000 metric tons) was used for waste stabilization, 12 percent (111,000 metric tons) for soil amendment, 5.6 percent (53,000 metric tons) as liming agent, nearly three percent (25,000 metric tons) as materials additives, about one percent (11,000 metric tons) as road base, and eight percent (76,000 metric tons) for other uses.

The American Society for Testing and Materials (ASTM) standards advise that use of CKD should be undertaken only after the material's characteristics have been properly evaluated with respect to the intended application. ASTM also recommends frequent performance testing until the degree of variability has been established.[19] The manner and extent of CKD adaptation for beneficial applications is in constant flux as research and development of CKD use continue to grow.

Most current off-site uses, such as for waste stabilization or land application as fill material, are either currently regulated (under RCRA for hazardous waste stabilization, or under the Clean Water Act in the case of municipal sewage sludge) or appear to present low risk due to low exposure potential. As explained in the Regulatory Determination, in light of the low exposure potential, EPA believes that these uses constitute environmentally sound recycling and beneficial use. Therefore, the Agency is not proposing management standards for these beneficial uses of CKD or to list as a hazardous waste CKD used for such practices. We are proposing that beneficially used CKD is non-hazardous waste. Thus, with the exception of CKD used for agricultural purposes, EPA solicits comments on these and other potential uses that might constitute environmentally sound recycling or beneficial use.

As explained previously, the Agency's risk assessment data on the use of CKD as a lime substitute on agricultural fields indicates that some small percentage of CKD (roughly 5%) may

[17] The highest thallium values in CKD reported from the 15 NHBCC plants are associated with cement kilns that recycle over 90% of their CKD back into the manufacturing process.

[18] Bhatty, J.I., 1995, Alternative uses of Cement Kiln Dust. Portland Cement Association Publication RP327, 18p.

[19] ASTM, 1991. Standard Guide for Commercial Use of Lime Kiln Dusts and Portland CKDs. 1990 Annual Book of American Society for Testing and Materials Standards. Volume 11.04. Method Number D5050–90. pp. 172–174.

present risk to human health and the environment and, therefore, the agricultural use of CKD warrants controls. Accordingly, in today's rule, EPA proposes to limit concentrations for arsenic, cadmium, lead, thallium and chlorinated dibenzodioxins and dibenzofurans in CKD used for agricultural purposes. If used for agricultural purposes, CKD with concentrations of these substances in excess of today's proposed limiting concentrations would be considered a listed hazardous waste.

## III. Discussion of Options To Address Risks From Mismanaged CKD

Today's proposal presents several possible approaches, including the Agency's preferred approach for addressing the hazards presented by CKD. EPA invites commenters to address these approaches, so that EPA can evaluate the Agency's preferred approach not only on its own merits but also in comparison to these alternatives. If, when issuing the final regulation for CKD, EPA were to rely on a Memorandum of Understanding, regulation exclusively under Subtitle D of RCRA, the State-based approach, and the Two-Dust approach presented below, the Agency would have to revisit the Regulatory Determination.

The Agency would more favorably consider the State-based regulatory approach or MOU if: (1) there were more evidence that cement manufacturing facilities have made improvements to their CKD management practices; (2) there was greater agreement among all stakeholders regarding appropriate CKD management standards; (3) there was a strong level of support from industry, States, and other stakeholders for movement toward an MOU or State-based approach; and (4) the alternative adequately considered the interests of other parties with a stake in the Agency's CKD rulemaking. In making a final rule determination, EPA may consider some combination of the alternative approaches discussed.

### *A. State-Based Approach*

The American Portland Cement Alliance (APCA) has submitted a proposal to EPA for a State-based approach to cement kiln dust (CKD) management. The main components of APCA's proposed approach are listed below, in chronological order:

(a) EPA Would Complete Work on CKD Management Standards. EPA would complete internal work, already begun during discussions regarding APCA's proposed enforceable agreement, which is discussed above in Section III.A.—State-Based Approach, to refine the CKD management standards for issuance as guidance as provided below.

(b) EPA Would Publish Proposed Guidance and ''Backstop'' Regulatory Regime For Public Comment. APCA proposes that EPA would publish a Notice of Data Availability in the **Federal Register** which would have two separate components. The first component would describe and summarize the key components of the CKD management standards, and announce the public availability of a complete copy of the CKD management standards. APCA proposes that in the Notice, the Agency would announce its willingness to withdraw its earlier Regulatory Determination if all of the States in which CKD is land disposed developed an adequate CKD management program within two years. The second component would be a ''backstop'' proposed rule based on a ''conditional exclusion'' or ''contingent management'' approach in which RCRA Subtitle C authority would not be triggered unless the conditions of the exclusion were violated. APCA proposes that EPA would finalize the proposal only if one or more States in which CKD is land disposed do not have an adequate CKD management program within two years. EPA would solicit public comment on all aspects of the Notice.

(c) EPA Would Publish Final Guidance In Response To Public Comment. APCA proposes that one year after publishing the initial guidance and backstop proposal, EPA would publish its ''final'' guidance in a subsequent **Federal Register** notice in response to public comments. In this notice, EPA would also include an explicit time line for the remaining steps in the State-based approach.

(d) EPA Would Take Final Action Regarding Inadequate State Programs. Two years after publishing the initial proposed guidance and backstop proposal, APCA proposes that EPA would publish another **Federal Register** notice announcing its assessment of the adequacy of State CKD management programs. APCA proposes that if EPA finds that such State programs are adequate, the Agency would announce withdrawal of its 1995 Regulatory Determination. Conversely, if the Agency finds one or more States with inadequate CKD programs, APCA proposes that EPA issue a final rule that will be effective in those States. These regulations would be based on a conditional exemption approach in which RCRA Subtitle C authorities would not be invoked unless terms of the exemption were violated. For those States with adequate programs, EPA would withdraw its 1995 Regulatory Determination.

The technical standards in today's proposed rule reflect completed internal work on appropriate CKD management standards and could serve as the Notice that APCA suggests in (b) above. In our view, the Part 259 standards represent proposed final management standards for CKD management, and the standards proposed today under Part 261 could form a ''backstop rule.'' The Agency solicits comments on APCA's proposed State-based regulatory approach for CKD management and on the details of State programs affecting the management and beneficial use of CKD. Both APCA's proposed CKD management standards that were submitted to the Agency as part of the proposed enforceable agreement, and a full description of APCA's State-based approach are available in the RIC in support of this rule.[20]

### *B. Memorandum of Understanding*

Another option considered by the Agency, in lieu of a detailed regulatory scheme, would be to enter into a memorandum of understanding (MOU) with the cement industry. As with enforceable agreements, a MOU would include specific standards for the management of CKD. This approach is not unprecedented.

In January 1994, EPA and the American Forest and Paper Association (AF&PA) negotiated a MOU regarding the implementation of land application agreements among AF&PA member pulp and paper mills and the EPA.[21] The purpose of the MOU was to develop a stewardship program for the practice of land application of pulp and paper mill sludges. Each paper mill participating in the program signed a ''Land Application Agreement'' which established standards and land management practices for the mill's land application of sludge. The MOU also provided for annual materials monitoring reports to be submitted to EPA, AF&PA member outreach programs, and annual AF&PA member surveys. The individual ''Land Application Agreements'' specify, among other things, dioxin/furan concentration limits for land applied sludge and receiving soils, application rates, waste testing requirements, and recordkeeping and reporting requirements. MOU and ''Land Application Agreements'' do not

[20] The cement industry's proposed management practices (version 6/1/5), see RIC docket No. F–99–CKDP–S0031.

[21] For a copy of the MOU, see RIC docket No. F–99–CKDP–S0107.

provide for enforcement, including citizen suits. Moreover, EPA, to date, has not formally assessed the success of the Agreements.

The Agency could consider a similar approach to tailored management standards and for monitoring the management of CKD. The Agency solicits comments on the advantages and disadvantages of a program utilizing either an enforceable agreement, which is discussed above in Section III.A.—State-Based Approach, or memorandum of understanding to encourage environmentally-sound CKD management practices.

*C. Two-Dust Approach*

In meetings with EPA staff, the Non-Hazwaste Burner CKD Coalition (NHBCC) has argued that any proposed regulatory mechanism for CKD, should distinguish between CKD from kilns that burn conventional fossil fuels (non-hazardous waste burner CKD) and CKD from kilns that burn RCRA hazardous waste, both in oversight mechanisms and in the contents of any minimum management practices. The NHBCC has argued that EPA should reimpose the Bevill exclusion for non-hazardous waste burner CKD, supplemented where necessary and justified by an appropriate voluntary program or discretionary steps by the States. According to the NHBCC, EPA should regulate hazardous waste burner CKD in the least burdensome manner consistent with any relevant risks that the dust may present.

The NHBCC has cited several points in support of a two-dust approach. First, the NHBCC has argued that less stringent treatment for non-hazardous waste burner CKD is justified on the basis of new CKD waste characteristics data which shows low risk (see Section II.C.4.c.—New Waste Characteristics Data, above). Second, the NHBCC states that unit costs of managing stockpiled CKD would increase to prohibitive levels for some member companies which are small businesses as defined by the Small Business Administration. According to the NHBCC, these small businesses do not have any additional revenue streams, unlike cement facilities that burn RCRA hazardous wastes, to offset the additional costs of CKD management. Third, the NHBCC has expressed concern that Federal regulation of CKD under RCRA Subtitle C will discourage beneficial re-use by stigmatizing CKD as a hazardous waste. The NHBCC claims that such regulation would undermine public confidence in CKD as a material suitable for reuse, discourage the development of new markets for CKD waste, and force up compliance costs by compelling facilities which currently sell CKD to stockpile it instead. EPA solicits comment on the NHBCC's proposed two-dust approach and requests additional data on hazardous waste burner and non-hazardous waste burner CKD. If new information warrants such action, the Agency would re-evaluate its current position on the appropriate levels of control for hazardous waste burner and non-hazardous waste burner CKD.

*D. Develop Regulations Under Authority of Subtitle D*

Another option would be to issue standards such as those described in today's Notice solely as RCRA Subtitle D requirements, relying on authority in RCRA section 4004(a). Under this approach the standards would be enforceable by the public through citizen suits. EPA would additionally encourage States to adopt standards developed under Subtitle D as enforceable standards under State law, but the Agency could not compel them to do so. Such standards would not be directly enforceable by EPA under the enforcement authorities of sections 3007 and 3008. EPA could take enforcement action under section 7003, if there is a finding of substantial endangerment. In contrast, the Agency is today proposing a regulatory structure that would provide the opportunity for Federal enforcement against major violations of the proposed standards, where warranted (see § 261.4(b)(8)(ii)(A)). The Agency solicits comment on issuing today's proposed standards solely as RCRA Subtitle D requirements and views on the need for Federal enforcement of major violations of the proposed standards.

*E. Subtitle C Enforcement Without Listing CKD*

APCA has suggested that EPA could adequately regulate CKD not managed in accordance with today's proposed Part 259 standards using RCRA enforcement authorities without having to identify the mismanaged CKD as a RCRA hazardous waste. APCA asserts that as long as EPA specified that a violation of the Subtitle C backup standards in Part 266 constitutes a ''violation of the requirements of RCRA Subtitle C,'' then EPA and citizens could enforce against those violations under RCRA sections 3008(a) and 7002(a) respectively. Similarly, APCA asserts that EPA could enforce against violations under RCRA section 3008(d)(3) criminal enforcement authority. APCA's approach is more specifically set forth in a letter to EPA dated August 24, 1998, and is available in the RIC docket for this rule. EPA invites comment on APCA's approach.

*F. Tailored Standards Under Subtitle C*

Another option available to the Agency is to regulate all CKD under authority of Subtitle C, using the tailored standards proposed today (i.e., the standards that would apply to CKD which, under today's proposal, would become hazardous waste because it is being improperly managed). Under this approach, all CKD would be listed hazardous waste and would be regulated under the tailored standards proposed today in Part 266 which incorporates the standards proposed today in Part 259.

The Agency solicits comment on the option of regulating all CKD under authority of RCRA Subtitle C and whether certain provisions could be eliminated or whether additional provisions are needed.

*G. States Adopt Appropriate Programs*

Alternatively, States may come forth with appropriate programs for managing CKD. Such programs would have requirements similar to those listed in Sections IV., V., and VI. of today's proposal, and include standards for addressing risks posed by fugitive CKD, standards for addressing risks to ground water, standards for agricultural use of CKD, and requirements for monitoring, reporting, and corrective action. The Agency believes there may be no need to finalize a Federal program if States with cement facilities that dispose CKD adopt appropriate programs and standards for managing CKD. The Agency solicits comment on the option presented in this paragraph of States adopting appropriate programs.

*H. Today's Approach—Exclude Properly Managed CKD From Hazardous Waste Listing*

1. Develop Management Standards and Exempt Properly Managed CKD From Classification as a Hazardous Waste (Management-based Listing)

Today's proposed rule would regulate CKD under RCRA to address the concerns identified in the RTC while avoiding unnecessary requirements. The approach taken is to establish management standards for CKD and make it clear that all CKD managed in accordance with those standards is not classified as a hazardous waste. CKD not managed in accordance with the standards, on the other hand, is proposed to be listed as a hazardous waste under 40 CFR 261.11.

The concept of regulating a waste if it fails to meet certain standards forms the

basis of many RCRA regulations. To provide added flexibility for implementation, EPA has previously proposed options for conditional exemptions from Subtitle C regulation for certain refining wastes,[22] and promulgated conditional exemptions for non-chemical military munitions.[23] Today's proposed rule would limit regulation of CKD under Subtitle C to that CKD which is mismanaged.

The DC Circuit Court of Appeals has expressly upheld EPA's authority under RCRA to establish a conditional exemption from Subtitle C regulation for wastes that, absent the exemption, would be hazardous (see *Military Toxics Project* v. *EPA, 146 F. 3rd. 948, D.C. Cir. 1998).* For a more detailed discussion of EPA's authority to establish a conditional exemption from Subtitle C regulation, see the discussion at 62 FR 6636–6637 of the Military Munitions Rule preamble.

Accordingly, EPA is today proposing to: (1) establish standards that define proper management of CKD waste; (2) exempt from classification as hazardous waste all CKD managed in accordance with specific standards proposed today; (3) list mismanaged CKD as a hazardous waste based on the criteria defined at 40 CFR 261.11(a)(3)(i–xi); and (4) provide tailored standards under Subtitle C for the proper management of CKD that has been mismanaged. The Agency's evaluation of mismanaged CKD against the listing criteria in § 261.11(a)(3) can be found in Appendix I of this preamble, while the associated evaluation of reportable quantities for releases of CKD can be found in Appendix II of this preamble. Under the proposed approach, CKD would only become hazardous waste subject to RCRA Subtitle C regulation when persons managing the waste commit egregious or repeated violations, such as failing to install controls designed to meet the performance standards, or failing to manage CKD in units that conform to specific default technology-based standards. CKD managed in accordance with today's proposed standards would be outside the scope of Subtitle C, and would not be considered hazardous waste. The Agency believes the CKD management standards proposed today will protect the public from human health risks and prevent environmental damage resulting from current CKD disposal practices. The standards are designed to prevent contamination of ground water and potable water supplies, and prevent human health risks from inhalation of airborne CKD and ingestion via food chain pathways.

In developing the proposed management standards for cement kiln dust, EPA considered several factors. First, and primarily, the Agency believes that subjecting waste CKD to the full RCRA Subtitle C program, while protective, would be prohibitively burdensome on the cement industry, and is not a feasible regulatory option under the factors cited in RCRA section 8002(o). The full Subtitle C regulatory program would be highly prescriptive and provides little tailoring for site specific conditions. Second, the CKD management standards proposed today are based on EPA's current knowledge of the cement industry and the human health and environmental risks posed by CKD. The Agency considers these technical standards to be sufficient to control the specific risks identified while eliminating unnecessary compliance costs. EPA believes that for CKD, imposing the additional requirements of full Subtitle C would add significantly to compliance costs without a reduction in risks (see the Regulatory Determination for CKD: Potential Costs and Impacts of Subtitle C Regulation, 60 FR 7371, February 7, 1995).[24] Third, the Agency desires to encourage the common industry practice of recycling of CKD waste back into the industrial process, and promote environmentally sound off-site beneficial use of this material. Most current off-site uses, such as for waste stabilization or general construction, are either currently regulated (under RCRA for hazardous waste stabilization, or under the Clean Water Act in the case of municipal sewage sludge) or appear to present low risk due to low exposure potential. Classifying all CKD as hazardous could prevent such uses because of the expense resulting from hazardous waste management requirements.

EPA emphasizes, however, that if persons mismanage CKD waste, depending on the nature in which it is mismanaged, the non-compliant waste may become subject to Subtitle C requirements which would include enforcement action for violations of the proposed management standards (see Section V. B.—Implementation of Part 259 and RCRA Subtitle C Backup Standards). The Subtitle C requirements applicable to such CKD would to some extent be tailored as appropriate to ensure proper management of CKD. For example, the proposed Subtitle C design requirements for CKD landfills are different from those under the generally-applicable Subtitle C regulations. However, other generally-applicable RCRA requirements would apply to persons managing listed CKD as hazardous waste. In particular, persons managing listed CKD would be required to obtain permits if they treat, store or dispose of hazardous CKD, and to manifest shipments of hazardous CKD. Certain generally applicable RCRA requirements would not be applied to hazardous CKD, under the authority of section 3004(x) of RCRA. These include land disposal restrictions, minimum technology requirements, and facility-wide corrective action requirements.

2. Alternative Management-Based Listing

Another approach EPA considered would be to list as a hazardous waste only CKD that is managed according to specific practices that are known to pose significant risks to human health and the environment. For example, the management of CKD in unlined landfills, under water or in direct contact with the ground-water table, without fugitive dust controls, or when used for agricultural purposes without proper controls, is likely to pose significant risks to human health and the environment. Under this approach, CKD mismanaged in these specified ways would be listed as hazardous waste. One disadvantage to this approach is that while it may prevent those poor management practices identified by the Agency at this time, such a listing would require the Agency to anticipate and identify all possible ways that CKD could be mismanaged. The Agency requests comments on the advantages or disadvantages of this approach over the approach proposed today, including comment on additional mismanagement practices that should be identified and considered if such an approach were adopted.

3. Characteristic CKD

CKD rarely exhibits a hazardous characteristic. Under the rule proposed today, characteristic CKD would, in most cases, be regulated in the same manner as other CKD. That is, it would be exempt from the definition of

[22] See 60 FR 57747, November 20, 1995, Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Petroleum Refining process Wastes; Land Disposal Restrictions for Newly Identified Wastes; and CERCLA Hazardous Substance Desigination and Reportable Quantities.

[23] See 62 FR 6621, February 12, 1997, Military Munitions Rule; Hazardous Waste Identification and Management; Explosives Emergencies; Manifest Exemption for Transport of Hazardous Waste on Right-of-Ways and Contiguous Properties; Final Rule.

[24] Supporting documentation for these cost analyses can be found in the Technical Background Document: Data and Analyses Addressing the Costs of CKD Management Alternatives, RIC Docket Nos. F–94–RC2A–S0018 and S0018.A),

''hazardous waste'' so long as it is managed in accordance with the specified standards; if not so managed, as described above, it would be subject to tailored Subtitle C requirements. The sole exception to this approach would be for CKD from kilns that burn hazardous waste as fuel, which would be subject to full (not tailored) Subtitle C requirements if it fails the two-part test in the Boiler and Industrial Furnace Rule (a prime component being a comparison to hazardous characteristic criteria for metals). This approach maintains in place the rules for CKD from hazardous waste burners that exist currently under 40 CFR 266.112.

4. Apply Tailored RCRA Subtitle C Standards to Improperly Managed CKD

As described previously, CKD that has been determined to be improperly managed and no longer a non-hazardous waste would be subject to Subtitle C standards that are tailored to address the risks presented by CKD. The management standards applicable to such CKD would be promulgated under EPA's general authority for setting management requirements for hazardous waste under sections 2002(a)(1), 3002, 3003, and 3004 of RCRA.

Subtitle C requirements that apply to hazardous waste generally, and are not expressly modified in these tailored standards, would apply to CKD or facilities managing CKD. For example, if a person managing CKD waste disposes of non-exempt CKD onsite, she or he would be required to obtain a RCRA permit. However, EPA has authority under section 3004(x) of RCRA to alter certain statutory requirements that would otherwise apply to all hazardous waste facilities, for wastes previously subject to the Bevill exclusion and newly being brought under Subtitle C regulation. In particular, EPA has authority to modify requirements relating to land disposal restrictions, minimum technology for landfill design, and facility-wide corrective action. EPA would rely on this authority to exempt CKD from land disposal restrictions, minimum technology requirements, and facility-wide corrective action requirements as we are proposing today. A more detailed discussion of the reasons for this approach under section section 3004(x) can be found in Section V.A.1.–3004(x)—Special Characteristics.

## IV. Proposed Management Standards

A key element of the regulatory system for CKD described above is the standards to be established for CKD management. As discussed above, as long as CKD is managed according to these standards, it would remain a non-hazardous waste. Furthermore, compliance with these standards would be required under the tailored RCRA Subtitle C requirements applicable to any CKD that is mismanaged.

Because these standards are a condition for maintaining non-hazardous status, EPA proposes to promulgate them at 40 CFR Part 259, separate from the regulations governing hazardous waste. The tailored RCRA Subtitle C regulations for hazardous CKD waste are proposed to be promulgated in 40 CFR Part 266; those regulations will incorporate the Part 259 proposed standards by reference, in addition to identifying the other Subtitle C requirements applicable to hazardous CKD.

### *A. Protection of Ground-Water Resources*

1. The Need for Ground-Water Protection Standards

As tabulated in the background document for today's proposed rule titled Technical Background Document on Ground Water Controls at CKD Landfills, EPA has identified 13 cases of ground water damage resulting from the migration of potentially hazardous constituents, including metals, from waste CKD.[25] These damages reflect CKD management practices from 1980 to 1995 at cement facilities across the United States. While the Agency acknowledges that CKD management practices may have changed at individual cement manufacturing sites, EPA believes certain practices which have led to damages to ground and surface waters have not stopped and occur today at other cement manufacturing facilities nation-wide.

The Agency considers damage to mean that metal constituents have contaminated ground water and/or surface water above a Federal or State standard (e.g., a maximum concentration limit). Constituents of concern from CKD that have been released to ground and surface waters include arsenic, chromium, and lead, among others. When ground-water exceedances do occur, the magnitude of the exceedance is usually within two orders of magnitude of the standard. Environmental damage generally affects the area in the immediate vicinity of the waste disposal site. Environmental damage has been identified both at facilities that burn and those that do not burn RCRA hazardous wastes.

As documented in Table 2–1 of the technical background document on ground water controls, the Agency finds that many factors have contributed to causing the release of CKD constituents to ground water or the subsurface environment at these damage case sites. Factors which are noted to have contributed to the release of CKD constituents into the sub-surface environment include: (1) CKD disposal below the natural water table or ground-water infiltration into the waste unit; (2) the lack of a bottom liner or leachate collection system, or both, to control leakage from the waste unit; (3) surface run-off or erosion transporting CKD constituents to surface water bodies and/or wetlands which can serve as a source of ground-water recharge; (4) the lack of an impermeable cover to control percolation of rain water and/or surface water run-off into the waste unit; and (5) the presence of a shallow ground-water flow system with conduit flow characteristics (e.g., karst aquifer or fractured bedrock aquifer). Notably, all of the damage cases are associated with CKD waste disposal units which did not have bottom liners, leachate collection systems, or impermeable covers in place during the active disposal period.

The cement industry, because it uses limestone, has a relatively high percentage of CKD disposal sites located in potential karst areas that is unique compared to other industries the EPA regulates. The Agency estimates that 78 out of 110 plants are underlain by limestone formations in areas of potential karst terrain. Based on additional analysis performed in support of today's proposed rule which is documented in the technical background document on ground water controls, the Agency has increased the estimate of the percentage of cement plant sites located in potential karst areas from about half to 71%.

The Agency believes these limestone formations may have conduits with hydraulic characteristics that potentially allow leachate to rapidly enter ground-water aquifers directly without substantial dilution or attenuation. As documented in the technical report supporting this rule titled Cement Kiln Dust Migration Pathway, modeling results for one CKD disposal site (Facility A) did not predict breakthrough of contaminants into the ground-water table within 130 years, even under highly alkaline conditions. Ground-water and surface water

[25] Detailed writeups for each of the 13 ground-water damage cases can be found in Chapter 5 of the RTC, the Technical Background Document:Additional Documented and Potential Damages from the Management of Cement Kiln Dust (F–94–RC1A–S0003 to S0015); and the Technical Background Document. Additional Documented Damages to Ground Water From the Management of cement Kiln Dust, which has been placed in the RIC docket in support of this proposed rule.

releases, however, which are described in the technical background document for this proposed rule titled Additional Documented Damages to Ground Water From the Management of Cement Kiln Dust, occurred at the same site in 1995, within 30 years of first receipt of waste. The faster ground-water migration time can be attributed to fractures in the limestone and an upper perched water table. These factors were not accounted for in the Agency's model, which assumed laminar ground-water flow in a homogenous granular bedrock. Nor did the Agency's model account for placement of CKD in direct contact with ground water.

Nine of the 13 cases of groundwater damage identified occurred at facilities located in karst terrain. The Agency believes the identification of additional documented damage cases further supports the qualification, noted in the 1995 Regulatory Determination, that available ground-water pathway modeling techniques are not applicable in areas of karst terrain. For example, in two documented damage cases, excessive discharges of CKD-contaminated waters can be attributed to ground-water flow through fractured bedrock. In another case, CKD disposal in caverns has resulted in the discharge of contaminated ground water into a nearby surface stream. This does not necessarily mean that ground-water contamination will occur at all such cement plants; however, it should be regarded as a significant qualification to the general findings in the RTC of low or negligible risk from the ground-water pathway risk modeling results. Also, as noted in Section II.C.4.b—Additional Ground-water Modeling, the conclusions on ground water modeling should be qualified by the additional analysis conducted by the Agency. In this analysis, the Agency concluded that the typical ions in CKD and the highly alkaline nature of the leachate are likely to mobilize metals, including lead, chromium, and beryllium, at levels greater than previously predicted. In addition to ground-water contamination, contamination of surface water and/or wetlands was also identified as being a concern at twelve of these damage case sites.

At many of these sites, environmental damages are persistent and continuing. The identification by the Agency of six additional cases of damage since the 1995 Regulatory Determination indicates that damage to ground-water resources near CKD disposal sites may be more common than originally thought in 1995. EPA's latest information indicates that remedial measures have been initiated at only seven of the ground-water damage case sites, such as removal of contaminated materials, installation of an impermeable cap, and/or construction of a seep/ground-water extraction and treatment system. In two cases, ground-water contamination has been found that corroborates the surface water damage cases which were reported in the 1993 RTC and associated NODA. This suggests that, at these CKD disposal sites, releases of contaminated water are pervasive. Many of these sites have been slow to implement remedial measures to control off-site migration of contaminants.

The Agency further believes ground-water controls are warranted because of the matrix in which constituents of concern are bound. As mentioned in Section II.C.4.b. (Additional Ground-water Modeling) of this proposal, more recent modeling of the highly alkaline conditions shows that, in general, these conditions increase the likelihood that some constituents of concern, including lead, chromium, and cadmium, may be more mobile than previously demonstrated. Specifically, the Agency has noticed enhanced transport and breakthrough to the water table for these metals. These new ground-water modeling results support the findings of increased leachability of toxic metals, as observed in the damage cases. As reported in the RTC, the highly alkaline nature of CKD-water mixtures is evident in TCLP results, which commonly show a resultant pH greater than 10 standard units, even after adding acid.

Current waste management practices appear to be inadequate to limit releases of at least some metal contaminants. According to a survey by APCA of 1995 CKD waste management practices, 65% of all respondents indicated that their landfills had liners, but only one respondent (1.5%) used a synthetic liner. Over 60% of respondents considered bedrock or native clay or shale materials to be liners. In 1990, only 17% of all CKD management units nation-wide had ground-water monitoring systems. The American Portland Cement Alliance reports that in 1995, 33 out of 94 cement manufacturing facilities had ''ground-water monitoring systems.'' EPA, however, could not verify whether the monitoring systems were capable of characterizing ground water beneath the active CKD management unit(s). EPA believes that a substantial portion of the cement industry relies on inadequate measures to control the release of contaminants to ground water, and that these practices have not changed substantially or have only marginally improved over the past several years.

Finally, as stated in the 1995 Regulatory Determination, the Agency believes there are no current Federal ground-water protection standards that are adequate to address the risks posed by CKD via the ground-water pathway. The Safe Drinking Water Act (42 U.S.C. 300 f–j) protects drinking water by setting maximum concentration limits (MCLs) for toxic contaminants, including metals. However, drinking water standards are only protective at the point of consumption. Public water supply wells, however, are protected through the wellhead protection program under the SDWA (41 U.S.C. 300h–7(e)).

2. Applicability

EPA is concerned that today's proposal might create an incentive for persons managing CKD waste to create unneeded ''units'' or unnecessarily large units prior to the effective date of the final rule so that such units would be deemed ''existing units'' and not be subject to certain requirements of today's proposed rule. To address this concern, today's proposed definition of ''existing unit'' specifies that expansions would have to be consistent with past operating practices, or operating practices modified to ensure good management. The Agency believes this added provision ensures that persons managing CKD waste will not create new units or unnecessarily enlarge their existing units to avoid compliance with portions of today's proposed rule, but at the same time, accounts for legitimate landfill enlargements or changes in facility operations resulting from additional waste volumes. EPA solicits comment on whether today's proposed regulatory distinction between lateral and vertical expansions would encourage owners and operators to expand existing landfills laterally prior to the effective date of the final rule to avoid meeting the requirements applicable to new units. EPA is proposing ground-water protection standards for all new and existing CKD waste landfill units, except units closed prior to the effective date of the rule. Today's proposed performance and technology-based standards would apply to new units, and any expansion of an existing CKD landfill unit, defined as any lateral expansion of the waste boundary of an existing landfill unit. Any lateral expansion would be considered a new unit and must meet the requirements applicable to new units. In contrast, any vertical expansion of an existing unit would be considered part of the existing unit and subject only to those requirements applicable to existing units. Under this

proposed definition, any new area of any existing unit that receives waste after the effective date of this rule is an expansion. All new and existing CKD landfill units (i.e., the existing landfill plus any expansion) must comply with ground-water monitoring and corrective action requirements proposed in today's rule.

With regard to surface impoundments, the Agency has found few facilities that engage in this CKD management practice. EPA solicits comment on whether wet handling of CKD in surface impoundments can be conducted in a manner that meets the performance standards contained in today's proposed rule. EPA continues to take the position that placement of CKD in a surface impoundment that is in direct contact with the ground-water table would not be protective of human health and the environment.

3. Location Standards

One set of standards for ground-water protection relates to facility location. EPA has identified locations that require special restrictions and may influence the location of landfills: sites below the natural water table, floodplains, wetlands, fault areas, seismic impact zones and unstable areas, particularly unstable areas in karst terrain. For other wastes, such as municipal solid wastes, the Agency has viewed these locations as needing special protection (see 53 *FR* 33314, August 30, 1988). Accordingly, EPA is proposing to impose location standards for CKD disposal sites to ensure protectiveness in the areas described above. With one exception which prohibits CKD disposal below the natural water table, the Agency is not proposing an absolute prohibition against siting CKD landfills at these locations; however, persons managing CKD waste would have to make a showing to the EPA Regional Administrator (or the State, in authorized States), on a case-by-case basis that their design is protective in these environments.

a. Disposal Below the Natural Water Table

Today's proposed rule includes a ban on management of CKD in new units located below the natural water table. The natural water table is defined as the natural level at which water stands in a shallow ground-water well open along its length and penetrating the surficial deposits just deeply enough to encounter standing water at the bottom. This level is uninfluenced by ground-water pumping or other engineered activities.

EPA believes that this stringent restriction is necessary to protect human health and the environment because of the potential damage caused by management of CKD at sites located below the natural water table. The Report to Congress, subsequent Regulatory Determination, and background documents to this proposed rule all describe damages to ground water and surface water resulting from management of CKD at sites (e.g., quarries) that subsequently filled with water after abandonment. As mentioned above, two of these sites were once listed on the NPL. In the Regulatory Determination, the Agency also identified surface water damages resulting from problems with run-on and run-off, but deferred to its authorities under the Clean Water Act to control surface water problems.

b. Floodplains

EPA is proposing that new and existing CKD landfill units may not be located in a 100-year floodplain unless a demonstration is made to the EPA Regional Administrator (or the State, in authorized States), that the landfill has been designed so that it does not restrict flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or result in the washout of solid waste so as to pose a hazard to human health and the environment. The Agency's rationale today is consistent with the similar rule regarding municipal solid waste landfill units (MSWLFs) (see 53 *FR* 33314, August 30, 1988). Specifically, floodplains may be adversely impacted by the disposal of solid waste through potential flooding damages including: (1) Rapid transport of hazardous constituents by flood water resulting in degradation of water quality downstream; (2) restriction of flood water flow, causing greater flooding upstream; and (3) reduction of the storage capacity of the floodplain, which may cause more rapid movement of flood water downstream, resulting in higher flood levels and greater flood damages downstream.

Today's proposal would require that new and existing CKD landfill units located in a 100-year floodplain be designed and operated to prevent the adverse effects described above. The intent of today's proposed rule is to require that CKD landfill units not cause significant impacts on the flow and water storage capacity of a floodplain experiencing a 100-year flood. Site-specific information should be used to evaluate whether a facility has met this standard.

Today's proposal defines the floodplain using the 100-year flood level.[26] This criterion would limit the chance for site inundation and resulting damages. The intent of this criterion is: (1) To require an assessment of any new or existing CKD disposal site or expansion of any existing site in a floodplain to determine the potential impact of the disposal site on downstream and upstream waters and land; (2) to prohibit such disposal activities if the site, as designed, may cause increased flooding during the 100-year flood; and (3) to require, if the disposal site is located in a floodplain, the use of available technologies and methods to protect against inundation by the base flood, and minimize the potential for adverse effects on water quality and on the flood-flow capacity of the floodplain.

c. Wetlands

Today's proposal provides that no new CKD landfill unit may be placed in wetlands,[27] unless the person managing CKD waste makes a specific demonstration to the EPA Regional Administrator (or the State, in authorized States), that the new unit: (1) will not result in ''significant degradation'' of the wetland as defined in the Clean Water Act section 404(b)(1) guidelines, published at 40 CFR Part 230; and (2) will meet other requirements derived from the section 404(b)(1) guidelines. Existing disposal units, including vertical expansions that are located in wetlands would continue to operate.

EPA believes that these restrictions are necessary to protect human health and the environment because of the special environmental significance of wetlands and the potential damage caused from siting CKD landfill units in wetlands. The 1993 Report to Congress and associated background documents describe the environmental damage that results by siting CKD landfill units adjacent to wetlands. One case study describes releases of toxic metals in excess of State standards for warmwater wildlife habitats, which potentially could damage the ecological integrity of wetlands adjacent to the CKD disposal site. Another case study describes

[26] To determine whether a CKD landfill unit is in the 100-year floodplain persons managing CKD waste should use flood insurance rate maps (FIRMS) developed by the Federal Emergency Management Agency.

[27] For purposes of this section, wetlands means those areas defined by 40 CFR 232.2(r): ''* * * areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.''

environmental releases of toxic metals into the nearshore waters of Lake Huron, which have filled in emergent wetlands and damaged sensitive aquatic habitats. Today's proposed rule would minimize wetland degradation by new CKD landfill units and expansions by allowing siting in wetlands only in cases where protective unit design has been demonstrated.

Today's proposed rule adopts four major requirements: (1) A practical alternatives test (§ 230.10(a)); (2) the assessment of compliance with other applicable laws (§ 230.10(b)); (3) the assessment of aquatic degradation (§ 230.10(c)); and (4) the assessment of steps taken to minimize the adverse effects of discharge (§ 230.10(d)). These requirements parallel those in the guidelines for wetlands protection under section 404(b)(1) of the Clean Water Act. The guiding principle is that discharges should not be allowed unless the persons managing CKD waste can demonstrate that such discharges are unavoidable and will not cause or contribute to significant degradation of wetlands.

Accordingly, to satisfy the four requirements mentioned above, before a CKD landfill unit may be sited in a wetland the persons managing CKD waste must make the following five demonstrations to the Regional Administrator (or the State in authorized States). First, alternative sites for the proposed landfill which are located outside of wetlands must be considered. An alternative site is defined as one which does not involve wetlands. For a person managing CKD waste to site a CKD landfill in a wetland, he must clearly rebut the presumption that a practical alternative is available. Second, a demonstration must be made that siting in a wetland does not violate any of the provisions of the following applicable laws: (1) Any applicable State water quality standard; (2) any applicable toxic effluent standard under section 307 of the Clean Water Act; (3) the Endangered Species Act of 1973; and (4) the Marine Protection, Research, and Sanctuaries Act of 1972. Third, a demonstration must be made that siting the landfill in a wetland will not cause or contribute to significant degradation of wetlands. Fourth, if siting in a wetland is still considered after the first three demonstrations discussed above, then an additional demonstration must be made that appropriate and practical steps have been taken to minimize the potential for adverse effects of the landfill on wetlands. Finally, it must be shown that sufficient information is available for making reasonable determinations with respect to these demonstrations; otherwise, the person managing CKD waste cannot make the demonstrations necessary to qualify for the waiver to the ban. In today's proposed rule, EPA has not set a structure or time frame for approval by the EPA Regional Administrator (or the State in authorized States), in order to give the regulatory authority maximum flexibility in setting schedules.

Today's proposed rule addresses only RCRA requirements. Nothing in today's proposed rule affects any requirements that facilities may have to comply with under other programs, such as section 404 of the Clean Water Act which affects disposal in wetlands.

d. Fault Areas

EPA proposes today that no new CKD landfill units may be sited within 60 meters (200 feet) of a fault that has had displacement in Holocene time, unless a demonstration is made to the EPA Regional Administrator (or the State, in authorized States), that an alternative setback distance of less than 60 meters will prevent damage to the structural integrity of the CKD landfill unit, and will be protective of human health and the environment. The Holocene is the most recent epoch of the Quaternary Period, a period of geologic time that extends from the end of the Pleistocene Epoch to the present and includes approximately the last 10,000 years. Regional geologic maps of Holocene age faults are published by the U.S. Geological Survey. EPA believes that motion along faults may adversely affect the structural integrity of CKD landfill units, and that a 60-meter buffer zone is necessary to protect engineered structures from seismic damages.[28]

Earthquakes present a threat to public safety and welfare in a significant portion of the United States. Damage and loss of life in earthquakes occur as a result of surface displacement along faults and ground motion, as well as secondary effects of the shaking such as ground or soil failure. Faults also present concerns relating to failure of containment structures for CKD landfills. Today's proposed standard is designed to protect CKD landfill units from deformation (i.e., bending and warping of the earth's surface) and displacement (i.e., the relative movement of any two sides of a fault measured in any direction) of the earth's surface that occur when a fault moves.

Available information collected in support of the MSWLF rule suggests that structural damage resulting from earthquakes is most severe for structures located within 60 meters of the fault trace, and decreases with increasing distance away from the fault. However, EPA believes that for some geologic formations the 60 meter setback distance may be overprotective. Therefore, the Agency has allowed in today's proposed rule the opportunity for demonstrations to be made to the EPA Regional Administrator (or the State, in authorized States), that an alternative setback distance of less than 60 meters will prevent damage to the structural integrity of the CKD landfill unit. The Agency requests comment on both the general concept of a location restriction based on fault areas and the specific 60-meter setback requirement.

e. Seismic Impact Zones

Today's proposal would require that any new CKD landfill unit located in a seismic impact zone be designed to resist the maximum horizontal acceleration in lithified material for the site. The design features affected include all containment structures (i.e., liners, leachate collection systems, and surface water control systems). Seismic impact zones are defined as areas having a ten percent or greater probability that the maximum expected horizontal acceleration in lithified material for the site, expressed as a percentage of the Earth's gravitational pull (g), will exceed 0.10g (i.e., 98.0 centimeters per second per second) in 250 years. The term ''lithified material'' refers to any consolidated or coherent, relatively hard, naturally occurring aggregate composed of one or more minerals (e.g., granite, shale, marble, sandstone, limestone, etc.). This definition explicitly excludes loose, incoherent masses such as soils or regolith, and man-made materials such as fill, concrete or asphalt. EPA's rationale today is consistent with the similar rule regulating MSWLFs, and the Agency solicits comment regarding whether it is appropriate to use the same approach for CKDLFs.

EPA believes that the adverse impact of siting CKD landfill units in seismic areas justifies the need for a comprehensive standard to prevent releases from these facilities. Types of failure that may result from ground motion are: (1) Failure of structures from ground shaking; (2) failure of containment structures due to soil liquefaction, liquefaction-induced settlement and landsliding, and soil slope failure in foundations and embankments; and (3) landsliding and

[28] A fault is defined as a fracture or a zone of fractures in any material along which strata on one side has been displeased relative to strata on the other side. See United States Geological Survey, 1978, Preliminary Young Fault Maps, Miscellaneous Field Investigation (MF) 916.

collapse of surrounding structures.[29] The background document supporting this section of the rule provides examples of the potential adverse effects on CKD landfill units that may occur in seismic impact zones. The Agency believes that these failures may result in contamination of air, ground water, surface water and soil. Therefore, in order to protect human health and the environment, all containment structures must be designed to withstand the stresses created by peak ground acceleration at the site from the maximum earthquake based on regional studies and site-specific analyses.[30]

The process designing earthquake-resistant components may be divided into three steps: (1) Determining expected peak ground acceleration at the site due to a maximum quake, based on regional studies and site-specific seismic risk analysis; (2) determining site-specific seismic hazards (e.g., soil liquefaction); and (3) designing the facility to withstand peak ground accelerations. Various methods for accomplishing the above tasks appropriate to individual CKD landfill units should be selected by the person managing CKD waste, subject to regulatory agency approval.

f. Unstable Areas

EPA is also proposing that persons managing CKD waste in new and existing CKD landfill units located in unstable areas must demonstrate the structural integrity of the unit to the EPA Regional Administrator (or the State, in authorized States). This demonstration must show that engineering measures have been incorporated into the unit's design to mitigate the potential adverse structural impacts on the structural components of the unit that may result from subsidence, slope failure, or other mass movements in unstable areas. For purposes of this section, structural components include liners, leachate collection systems, and final covers.

EPA is particularly concerned with CKD landfill units located in areas of karst terrain. For purposes of this section, karst terrain means an area where karst landscape, with its characteristic hydrogeology and/or landforms is developed. In karst terrain, ground-water flow generally occurs through an open system with both diffuse and conduit flow end member components, and typically has rapid ground-water flow velocities which exceed Darcian flow velocities.[31] Composed of limestone, dolomite, gypsum and other soluble rock, karst terrain typically has well developed secondary porosity enhanced by dissolution. Landforms found in karst terrain include, but are not limited to, sinkholes, sinking streams, caves, springs and blind valleys. Karst terrains always include one or more springs for each ground-water basin, and underground streams except where ground-water flow is diffuse or the host rock has megaporosity.

The regulatory definition of karst terrain in today's proposal expands beyond the obvious landform features typically associated with mature karst topography (e.g., sinkholes and caves). Not all waste disposal sites overlying carbonate aquifers exhibit mature features of well-developed karst, but, nevertheless, may overlie karst aquifers with well developed conduit systems in which turbulent flow regimes dominate. Karst systems are commonly mantled by thick regolith, or partially covered by caprock which may exhibit a topography that is not characteristic of a traditional karst setting. If the regulatory definition of karst relies solely on apparent karst landform features, persons managing CKD waste at facilities situated in karst settings with no apparent on-site karst features could claim that their facilities are not in karst terrain and, therefore, do not overlie a karst aquifer. EPA solicits comment on today's proposed definition of karst terrain and the proposed approach for identifying karst hydrology within and around facility property.

The fundamental hydrologic difference between karst and non-karst terrain is ground-water flow velocity in excess of velocities that are typical of porous media (i.e., Darcian flow velocities). A well developed karst aquifer usually has a ground-water flow velocity orders of magnitude greater than a porous media aquifer. The most important aspect of open karst systems is that the dominant basin-wide component is rapid turbulent ground-water movement, that is non-Darcian flow, through conduits to one or more springs that can vary in magnitude based on the size of the basin and seasonable ground-water conditions. The magnitude of the springs are largely a function of the size of the ground-water basin and aquifer recharge.

Accordingly, before a CKD landfill unit can be sited in a potential karst terrain, a person managing CKD waste must first verify and certify that the facility is situated in a karst terrain based on the revised definition of karst terrain pursuant to § 259.16(b)(1). Today's rule proposes that prior to construction of a CKD landfill in carbonate terrain, a karst ground-water investigation must be conducted to define the direction of ground-water flow, and points of discharge for the karst ground-water basin(s) the facility may affect. The karst ground-water investigation shall include a dye tracer study to identify springs which are hydrologically related to the karst ground-water basin potentially affected by the unit. The verification of a karst terrain may include, but not necessarily be limited to, a review of the available literature. If the literature fails to provide conclusive evidence that the facility does not overlie a karst terrain, a basin-wide field study should be implemented, even if the discharge points of the basin exist beyond the facility boundary, to identify all potential springs from which ground water passing beneath the CKD landfill unit may discharge. Certification may be obtained from an independent professional ground-water scientist, from the EPA Regional Administrator, or from the State, in authorized States.

After verification, the person managing CKD waste must locate background and intermediate sampling locations, and downgradient springs or ground-water monitoring wells for detection monitoring pursuant to § 259.44(a) and § 259.45(b) for assessment monitoring. The person managing CKD waste must establish a ground-water monitoring system pursuant to § 259.41(a) that incorporates spring monitoring. The Agency believes that this will generally necessitate: (1) a field study to conduct an inventory of karst features and locate springs; (2) quantitative tracer studies to verify flow path, time-of-travel, and duration of the dye plume; (3) the regular monitoring of chemographs and hydrographs of springs and monitoring wells; and (4) the development of a sampling strategy based on the unique fate and transport characteristics of the toxic constituents in CKD and hydrology of the karst aquifer, that is capable of detecting releases from the CKD landfill unit.

EPA believes it is important to include quantitative dye tracer studies in any analysis of karst in order to

[29] See Livermore Associated Research Group, Inc. 1982. Seismic Location Standards. Prepared for U.S. Environmental Protection Agency, Office of Solid Waste, Washington, D.C.

[30] To determine whether a CKD landfill unit is in a seismic zone, persons managing CKD waste should look at maps depiciting the potential seismic activity across the United States that have been prepared by the United States Geological Survey (Open File Report 82–1033).

[31] Darcian flow means ground-water flow which follows Darcy's law, where the specific discharge is proportional to the hydraulic gradient. Darcian ground-water flow is typically linear and laminar, travels from $1 \times 10^{-11}$ to $1 \times 10^{2}$ centimeters per second, and is characteristic of ground-water flow through granular porous media.

determine the time of travel and duration of the dye plume. Such data are essential inputs to construction of a model of contaminant migration through the aquifer. The contaminant model is predicated on the dye behaving similarly to a contaminant in its dissolved phase or in suspension adsorbed to colloids. Information on the time of travel and duration of the dye plume would be compared to data from the storm hydrograph and chemograph to identify optimum sampling intervals. The Agency solicits comments on practical difficulties with dye studies and characterizing karst terrain, and whether there are other alternative approaches to ensure protection of human health and the environment.

Some areas of karst terrain may be prone to subsidence because of natural subsurface conditions. Limestone and dolomite are slightly soluble in water, and the solution process can enlarge existing fractures, joints and other voids creating sinkholes and caves. Potential caverns and karst pinnacles in the soil and bedrock may eventually lead to collapse or puncture of the landfill liner due to excessive overburden or settling. Accordingly, today's rule proposes that the ground-water investigation shall also include an inventory of karst features within and around facility property to identify areas prone to surface subsidence or mass movement.

4. Performance-Based Standard for the Protection of Ground Water

a. Overview

To provide maximum flexibility while ensuring protectiveness, EPA is proposing two types of standards relating to groundwater protection: a traditional technology standard, specifying landfill design and other technical requirements, and a more flexible performance-based standard for facilities that wish to utilize a design or technology that they believe will meet the performance standard. To ensure that it is complying with the standards, a person managing CKD waste may choose either to propose an alternative approach to the EPA Regional Administrator (or the State, in authorized States), or may implement the technology standards. EPA may approve the alternative if the Agency concludes the alternative will meet a more general performance standard described below.

With respect to ground water protection, EPA is proposing that the unit design must ensure that exceedances of a ground-water protection standard not occur at the relevant point of compliance. This standard would apply to the metal constituents listed in Appendix VIII of Part 261 (antimony, arsenic, barium, beryllium, cadmium, chromium (total), lead, mercury, selenium, silver, and thallium). For each constituent, the standard would be as follows: (1) if available, the maximum contaminant level (MCL) established under section 1412 of the Safe Drinking Water Act (see 40 CFR Part 141); (2) for constituents with concentration levels lower than background, the background level; and (3) for constituents with no MCLs, an alternative risk-based number or, (in an unauthorized State) other appropriate level established by the EPA Regional Administrator. The Agency solicits comment on the adequacy of using MCLs to define limits for metals in ground water at the point of compliance, and whether or not health-based numbers (HBNs) rather than MCLs should be used as a primary groundwater protection standard. While, EPA's Subtitle D groundwater protection standards are based on MCLs, the Agency's hazardous waste listing determinations are traditionally based on HBNs. The primary difference between MCLs and HBNs is that HBNs are derived based solely on health effects whereas several factors in addition to health effects are considered in the development of MCLs. Development of MCLs requires an evaluation of: (1) The availability and cost of analytical methods; (2) the availability and performance of technologies and other factors relative to feasibility and identifying those that are ''best'; and, (3) an assessment of the costs of the application of technologies to achieve various concentrations. Therefore, MCLs may be more or less conservative than HBNs corresponding to the Agency's hazardous waste listing risk range of 10E–4 to 10E–6 for carcinogens and an HQ of 1 for non-carcinogens.

EPA is proposing today that facilities that wish to propose a design to comply with the performance standard must submit a proposed plan to implement the performance standard for approval by a regulatory agency. EPA will provide such oversight in unauthorized States. Authorized States, on the other hand, may be more stringent and are not required to adopt today's proposed performance standard approach. If a State chooses not to provide such review, compliance with the technology standards would be required (since there is no mechanism for approving an alternative approach). EPA strongly urges States to provide the option of a performance standard. Such a standard would protect human health and the environment and minimize the cost of compliance by allowing facilities to tailor ground-water controls to site-specific conditions.

b. Performance Standard and the Point of Compliance

The MCL is the maximum permissible level of a contaminant in water which is delivered to any user of a public water system, and is a standard for evaluating the potability of water. It is the traditional measure used by the Agency to protect the nation's public drinking water supplies (see 40 CFR Parts 141–143 National Drinking Water Regulations). MCLs would be measured at the point of compliance (POC), defined as the closest practical distance from the unit boundary, or at an alternative point chosen by the EPA Regional Administrator (or the State, in authorized States). The alternative POC must be on facility property and be no more than 150 meters from the unit boundary. In allowing for an alternative POC, the Agency's rationale is to allow greater flexibility for a State to set design requirements based on the site-specific factors (for example, see § 257.3–4(b)(1)(i) through (vii)).

5. Technology-Based Standards for the Protection of Ground Water

EPA is proposing that design criteria similar to those for MSWLFs under the Subtitle D program (Solid Waste Disposal Facility Criteria, 56 FR 50978, October 9, 1991) be adopted with certain modifications for ground-water monitoring (see § 259.40) and remediation. For facilities complying with the technology-based standards for the protection of ground water, any new CKD waste management unit or lateral expansion of an existing unit must be constructed with a composite liner and a leachate collection and removal system (LCS) that is designed and constructed to maintain less than a 30 cm depth of leachate over the liner. The composite liner must consist of two components: an upper flexible membrane liner (FML) with a minimum thickness of 30-mil, and a lower component consisting of at least two feet of compacted clay with a hydraulic conductivity of no more than $1 \times 10^{-7}$ cm/sec. In selecting this uniform design, EPA's goal was to identify one that would provide adequate protection in all locations.

The Agency believes the technology-based standards proposed in today's rule will be protective of ground-water resources. Liners will prevent leachate from seeping from the landfill and entering the aquifer. The FML must

have a minimum thickness of 30-mils and be installed in direct and uniform contact with the lower clay component to ensure adequate liner performance, including being able to withstand the stress of construction (see U.S. EPA RREL, Lining of Waste Containment and Other Impoundment Facilities EPA/600/2–88/052. September 1988). Compacted clay liners must be at least two feet thick to ensure a high probability of having a hydraulic conductivity of 1 x $10^{-7}$ cm/sec. Functionally, both the FML and lower clay component are necessary to retard the migration of contaminants into the subsoil. The FML component would provide a highly impermeable layer to maximize leachate collection and removal. The compacted clay liner would adsorb and attenuate pollutants in the event of FML liner failure.

A LCS is necessary to relieve the hydraulic pressure within the landfill which could drive leachate migration through the base of the landfill. LCS design normally consists of a permeable material placed on a sloping surface so as to allow leachate to be removed and collected. Large units may also have a pipe drainage system. Sloping the LCS towards a sump minimizes any downward flow, and reduces the amount of leachate leaving the LCS.

The Agency seeks comments on the effectiveness of various liner thicknesses and materials in preventing the migration of the hazardous constituents of CKD to groundwater. Of particular interest to the Agency is the effectiveness of use of CKD as a liner or cap material. CKD may be a suitable material for use as a liner or cap material because of its cementitious properties. Studies on CKD obtained by the Agency suggests that very low hydraulic conductivities (less than $1 \times 10^{-7}$ cm/sec) are readily achievable in the laboratory, and in field trials using heavy equipment to compress CKD to high densities.[32] However, the Agency also has contravening information from one site visit and two case studies where CKD has been used as a cap material[33] which suggests that compaction control is difficult to maintain over an area that is acres in size. Nevertheless, EPA is not proposing today that CKD be banned from use as a liner or cap material. Rather, it can be used as part of a unit design if the person managing CKD waste can demonstrate that the design meets the performance standard for ground water, including establishing that the material will maintain integrity over long periods of time and, therefore, has a low potential for release of contaminants.

6. Requirements for Ground-water Monitoring

EPA is proposing that ground-water monitoring be required for all new and existing CKD management units, to detect the presence of regulated constituents in the ground water. The ground-water monitoring and corrective action requirements proposed today are based on requirements promulgated under Part 258 for MSWLFs and hazardous waste regulations under Part 264—Subpart F for Solid Waste Management Units. The ground-water monitoring system must include at a minimum one up gradient and three down gradient wells. The down gradient wells must be located not farther than 150 meters from the unit boundary at the relevant POC specified by the EPA Regional Administrator (or the State, in authorized States). The ground-water monitoring system must be capable of ascertaining the quality of background ground water that has not been affected by releases from the unit, and assessing the quality of ground water passing the relevant POC, as certified by a qualified ground-water scientist. The ground-water monitoring program must include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of ground-water quality at the background and down gradient wells.

For facilities located in karst terrain, EPA is also proposing that the ground-water monitoring strategy include, where necessary, springs which are the ultimate discharge points of the karst ground-water basin in which the facility is situated. In karst terrain, point-of-compliance ground-water monitoring wells may not detect a point source release from a CKD management unit based on failure of the monitoring wells to intersect the conduit through which the contaminant plume passes. While monitoring wells are appropriate, they are not fail-safe. Consequently, discharge points of the karst ground-water basin should be incorporated into the overall monitoring strategy to detect a release. In today's rule, EPA is proposing that the EPA Regional Administrator (or the State, in authorized States), in addition to specifying the relevant POC, may also specify ground-water monitoring at discharge points of the karst ground-water basin potentially affected by releases from the CKD waste management unit.

EPA is proposing two types of monitoring: detection monitoring and assessment monitoring. Under proposed § 259.44, persons managing CKD waste in a CKD waste management unit will be required to undertake a ground-water detection monitoring program, similar to that described under § 258.54 of the MSWLF rule. In a departure from the MSWLF rule, EPA is proposing to require detection monitoring only for the following parameters: pH, conductivity, total dissolved solids, potassium, chloride, sodium, and sulfate. These detection parameters are easily measured and should provide a reliable indication of inorganic releases from the CKD waste management unit to ground water. The Agency solicits comment on the adequacy of these detection parameters for monitoring releases and whether metal constituents are necessary.

If detection monitoring indicates a statistically significant increase over background for one or more of the detection parameters listed above, under proposed § 259.45, a person managing CKD waste is required to implement an assessment monitoring program, similar to that described in § 258.55 of the MSWLF rule. In another proposed departure from the MSWLF rule, today's proposed rule does not require a scan for the hazardous constituents listed under part 258, Appendix II. Instead persons managing CKD under today's proposed rule would be required to sample and analyze the ground water for only the inorganic constituents listed in Appendix VIII of Part 261 (antimony, arsenic, barium, beryllium, cadmium, chromium (total), lead, mercury, nickel, selenium, silver, and thallium).

Because this proposal requires ground-water monitoring at new and existing CKD landfill units, today's action effectively prohibits the location of such units in areas where subsurface conditions prevent monitoring of subsurface contaminant migration from the landfill unit. EPA anticipates that the Regional Administrators (or authorized States) will not issue an operating permit for CKD landfill units located in areas where subsurface monitoring is impossible. Geologic

[32] See Todres, H.A., 1992. Cement Kiln Dust: Field Compaction and Resulting Permeability. Research and Development Bulletin RD106T, Portland Cement Association, Skokie, Illinois. 47p; and, Todres, H.A., Mishulovich, A., and Ahmed, J. 1992. Cement Kiln Dust Management: Permeability. Research and Development Bulletin RD103T, Portland Cement Association, Skokie, Illinois. 9p.

[33] See Spectra Engineering, P.C., 1995. Lehigh Portland Cement Company, Alsen Dust Disposal Facility, Closure Certification Report. Prepared for Lehigh Portland Cement Company, Cementon Plant, Cementon, New York. See also letter from Thomas M. Polasek, P.E., Michigan Department of Environmental Quality, to Frank Davis, Lafarge Corporation, re: Consent Judgment Compliance, October 10, 1996.

settings that could preclude effective ground-water monitoring include areas of limestone bedrock in mature karst settings, with complex networks of conduits, fractures, and joints which impede accurate prediction of ground-water flow. The Agency considers it the responsibility of the persons managing CKD waste to prove that a landfill can be effectively monitored.

7. Corrective Action

Today's proposal establishes corrective action steps similar to § 258.56 of the MSWLF rule. Within 90 days of finding that any of the part 261 inorganic constituents (see previous section) have been detected at a statistically significant level exceeding the ground-water protection standards as defined under § 259.45(h), the persons managing CKD waste must initiate an assessment of corrective measures. Such an assessment must be completed within 90 days, or within an alternative period of time decided by the EPA Regional Administrator, in accordance with § 259.46. Today's proposal allows for swift remediation of a ground-water problem, yet provides flexibility for selecting and implementing the corrective remedy.

Under proposed § 259.47 and § 259.48, the selection of a remedy and implementation of the corrective action program must be completed in accordance with those procedures which are similar to those enumerated in 40 CFR 258.57 and 258.58 for MSWLFs. These requirements only apply to those hazardous constituents that are likely to be present in CKD as previously described. An exceedance of today's proposed ground-water protection standards would not immediately result in classification of such CKD as mismanaged. If a person managing CKD waste, however, failed to take the necessary corrective action after detecting an exceedance, CKD would be considered mismanaged and, therefore, hazardous waste. The Agency solicits comment regarding the time periods in which remedial activities must be initiated, and whether or not today's proposed minimum time periods are appropriate given the widely varying circumstances likely to be encountered at facilities requiring corrective action.

In today's rule the Agency is not proposing facility-wide corrective action standards for the management of CKD. Instead, EPA proposes to require corrective action at units which are actively managing CKD. EPA believes that the costs associated with requiring corrective action at all solid waste management units that may happen to be located at a CKD facility make it inappropriate to impose such a requirement. Where releases from such units have occurred, other state law authorities and the Federal imminent hazard authorities under section 7003 of RCRA or section 106 of CERCLA, will be adequate to address any threats to human health and the environment. (The handling of corrective action at facilities that become subject to today's proposed Subtitle C standards is discussed in Section V.B.—Implementation of part 259 and RCRA Subtitle C Backup Standards.)

*B. Standards for Fugitive CKD Emissions*

1. The Need to Limit Fugitive CKD Emissions

In the Agency's follow-up work leading to the September 1994 NODA (see 59 FR 47133, September 14, 1994), EPA found evidence of possible risk to human health due to the fine particulate nature of inhaled dust. Particulate matter is of health concern because fine particles such as CKD can penetrate into the sensitive regions of the respiratory tract and cause respiratory illness. Negative effects associated with exposure to particulate matter include premature death, hospital admissions from respiratory ailments, and increased respiratory symptoms such as persistent coughs, phlegm, wheezing, and physical discomfort. Long-term exposure to particulate matter may increase the rate of respiratory and cardiovascular illness and reduce life span. Although the Agency's direct inhalation exposure modeling studies described in the RTC did not indicate significant risk from inhaled chemical constituents in CKD, subsequent screening-level modeling on five case study plants indicated that windblown dust from uncontrolled CKD waste management units (uncovered and dry CKD piles) could exceed EPA's health-based $PM_{10}$ fine particulate (10 microns or less) National Ambient Air Quality Standard(NAAQS)[34] at plant boundaries, and potentially at nearby residences.

Results from a subsequent extension of this work to a larger sample of 52 cement plants suggest that 28 of the plants could exceed NAAQS $PM_{10}$ standards at plant boundaries, if the plants do not have effective dust control mechanisms in place. The Agency recognizes that dust from mining and quarry operations could contribute to the particulate emissions from a cement plant; however, other evidence (i.e., damage cases) indicates that fugitive CKD emissions are a substantial contributor to environmental damages in the form of air quality degradation.

Additionally, particulate emissions of fugitive dust are the major contributor of CKD to EPA's indirect foodchain pathway model. The Agency's quantitative modeling of ''indirect'' food chain pathways, both aquatic and agricultural, indicates potential human health effects, both cancer and non-cancer. A wide range of chemical constituents, including arsenic, cadmium, chromium, barium, thallium, lead, and dioxins, were indicated as constituents of concern at various plants. Because some CKD disposal units are located near, and in some instances immediately adjacent to, farm fields, rural residences with gardens, or surface waters containing fish, there is potential for indirect risk from the consumption of CKD-contaminated beef, vegetables and fish, as well as ingestion of CKD-contaminated water during recreational swimming.

Although quantitative risks presently can not be estimated, these initial modeling results relating to fine particulates suggest cause for concern and argue for further attention to this source of fugitive dust. Consequently, the Agency believes it is necessary to impose additional controls on fugitive emissions under authority provided by RCRA section 3004(n).

2. Applicability

EPA is proposing air protection standards to limit fugitive CKD emissions for all new and existing CKD waste landfill units, except units closed prior to the effective date of the final rule. Any expansion of an existing CKD landfill unit, defined as any lateral or vertical expansion of the waste boundary of an existing landfill unit, must meet today's proposed requirements. Under this proposed definition, any area of any existing unit that receives waste after the effective date of this rule is an expansion. EPA is also proposing that interim storage units, such as containers or buildings which contain CKD destined for recycling or sale, must comply with the air performance standards.

[34] The level of the national primary and secondary 24-hour ambient air quality standards for $PM_{10}$ is 150 micrograms per cubic meter $\mu g/m^3$), and 65 $\mu g/m^3$ for $PM_{25}$, 24-hour average concentration. The standards are attained when the expected number of days per calendar year with a 24-hour average concentration above 150 $\mu g/m^3$ for $PM_{10}$, and above 65 $\mu g/m^3$ for $PM_{25}$, as determined in accordance with Appendix K to 40 CFR part 50, is equal to or less than one. The level of the national primary and secondary annual standards for $PM_{10}$ is 50 micrograms per cubic meter ($\mu g/m^3$), and 15 $\mu g/m^3$ for $PM_{25}$, annual arithmetic mean. The standards are attained when the expected annual arithmetic mean concentration, as determined in accordance with Appendix K to part 50, is less than or equal to 50 $\mu g/m^3$ for $PM_{10}$ and 15 $\mu g/m^3$ for $PM_{25}$.

Consistent with controls proposed today for ground water, the Agency is not proposing to require fugitive dust controls for the old, inactive portions of existing CKD landfills. However, EPA solicits comment on applying air controls to the entire active unit, including any inactive area of a CKD landfill with an expansion.

These proposed standards could be met in one of two ways. First, a person managing CKD waste could obtain a determination from the EPA Regional Administrator (or from the State, in authorized States), that a management practice or design meets the performance standard, providing adequate assurance that the unit is managed to control wind dispersal of particulate matter. Second, the person managing CKD waste could design units according to technology-based standards outlined below, so as to obviate the need for such a demonstration.

3. Performance Standard for the Protection of Air

Under today's proposal, unit design must ensure that wind dispersal of particulate material (PM) is controlled. The specific performance standard for air is that the persons managing CKD must cover or otherwise manage the unit to control wind dispersal of CKD waste. This standard would apply to solid PM that becomes airborne directly or indirectly as a result of CKD handling procedures. The most common sources of PM at cement manufacturing facilities to which this standard applies includes vehicular traffic on unpaved roads or on CKD waste management units, and wind erosion from waste management units. This standard would not apply to CKD emitted from an exhaust stack.

The Agency understands that methods for controlling fugitive dust will vary depending on factors such as geographic location, climate, facility design, and CKD management method. While the technology-based standards of conditioning CKD, using covers, watering, and use of tanks, containers, or buildings for temporary storage, meets the performance standard, other techniques and technologies may be as or more effective. Therefore, today's proposal provides persons managing CKD waste, working with regulatory agencies, with substantial flexibility to determine the appropriate method to control fugitive emissions based on facility-specific conditions.

To demonstrate compliance with the performance standard for the protection of air, EPA is proposing that persons managing CKD waste in new and existing CKD landfills, temporary storage areas, and trucks provide cover or otherwise manage the CKD such that equivalent control exists to that provided by daily cover of the landfill unit. Additionally, if landfill units, roads, temporary storage areas, and trucks are managed with no visible fugitive emissions of CKD, the Agency would view that the performance standard is met. The Agency solicits comment regarding the effectiveness of various fugitive dust control methods in demonstrating compliance with the performance standard for air so that EPA can provide comprehensive guidance to persons managing CKD and to staff at regulatory agencies who would implement today's proposed rule.

4. Technology-Based Standards for Fugitive Dust Control

a. Conditioning

For facilities complying with the technology-based standards, EPA is proposing that CKD managed in landfills must be emplaced as conditioned CKD. For purposes of this section, conditioned CKD means cement kiln dust that has been compacted in the field at appropriate moisture content using moderate to heavy equipment to attain 95% of the standard Proctor maximum dry density value according to ASTM D 698 or D 1557 test methods. Such conditioning can be achieved by mixing the CKD with water on a continuous or batch basis, such as pug-milling, followed by compaction. The material should be spread in lifts of uniform thickness and compacted to the required density with appropriate equipment (e.g., a heavy sheep-foot roller). The compaction of moist CKD, coupled with the waste's natural cementitious properties, enables individual waste particles to bond together, thus greatly reducing the availability of particulate material for air dispersal, and, therefore, this standard is protective for fugitive dust from landfills. In addition, the bonding can serve to decrease the leaching of contaminants from CKD.

b. Covers

The Agency is also proposing that disposed CKD be covered with material at the end of each operating day sufficient to prevent blowing dust. EPA believes that cover material applied at the end of each operating day over the active face of the CKD landfill will prevent the entrainment of fugitive dust, and is a more effective practice for dust suppression than frequent wetting and watering.[35] The cover must be constructed of materials that have appropriate physical and chemical properties, and sufficient strength and thickness to prevent failure due to physical contact with CKD, climatic conditions, the stress of installation, and the stress of daily operation. Similarly, EPA is proposing that CKD transported in trucks on or off the facility be covered to minimize fugitive emissions of CKD. Alternative materials or actions may be approved by the EPA Regional Administrator (or the State, in authorized States), as long as the person managing CKD waste makes a demonstration that the alternative meets the performance standard.

c. Wetting

Wetting of CKD on roads is not required in today's proposed performance-based standards. EPA believes, however, that consistent wetting and watering of unpaved roads, when used in conjunction with other air control technologies, can reduce releases of fugitive emissions from facilities that manage CKD. Data from an EPA study of fugitive dust emissions from cement plants and potential control measures indicates that fugitive dust emissions from unpaved roads can be significantly reduced by increasing the moisture content of the dust. However, the wetting of roads by itself will not meet today's proposed performance standard for air.

The Agency solicits comments on the effectiveness of these and other methods for controlling fugitive emissions of CKD.

d. Temporary Storage

The Agency today is proposing that CKD destined for temporary storage prior to recycling, sale, or disposal not be placed in land-based units, but in tanks, containers, or buildings. CKD would not be considered a hazardous waste provided the storage that precedes sale or recycling provides adequate control of fugitive dust. An acceptable containment unit must be a man-made structure with a foundation constructed of non-earthen materials, have walls (which may be removable), and have a roof suitable for diverting rainwater away from the foundation. In considering these criteria for containers and buildings, EPA is placing special emphasis upon practical considerations, such as the need to transport materials in and out of the unit in a reasonable fashion. The Agency would not require that these units meet full Subtitle C

[35] Although wetting and watering is a common fugitive dust suppression practice at CKD landfills, the persistent releases of fugitive CKD reported in the RTC suggest that frequent wetting alone is not sufficient to prevent blowing dust.

requirements for storage of hazardous wastes as outlined in parts 264 and 265 subparts I and J.

*C. Closure*

In today's proposed rule, EPA is requiring that new and existing CKD landfill units, including expansions be closed in accordance with specified standards, and that units be monitored and maintained after closure. Closure and post-closure plans describing these activities are to be prepared to comply with a minimum set of procedural requirements. As described in the damage cases supporting this rule, improperly closed CKD landfills have the potential for contaminating the environment due to inadequate controls to contain the waste. For example, in one damage case, CKD wastes remained exposed due, in part, to failure to install a proper cap or insulate the waste from the erosive wave action of Lake Huron.

EPA proposes that all persons managing CKD waste in CKD landfill units must install a final cover designed to minimize infiltration and promote drainage from its surface while minimizing erosion. It must also be designed so that settling and subsidence are accommodated to minimize the potential for disruption of continuity and function of the final cover. The Agency believes that placement of a final cover over closed portions of a CKD landfill is necessary to minimize the infiltration of rainwater, minimize the dispersal of CKD waste through physical interaction, and minimize the need for further maintenance at the facility through the post-closure period and beyond. The infiltration layer must be a minimum of 18 inches of earthen material that has a hydraulic conductivity of less than or equal to the bottom liner system, or no greater than $1 \times 10^{-5}$ cm/sec, whichever is less. The erosion layer must have a sufficient thickness to sustain native plant growth. Alternative final cover designs may be approved by the EPA Regional Administrator (or the State, in authorized States), if the cover layers achieve the same objectives as the specified design in this proposed rule.

*D. Post-Closure Care*

Today's proposed rule also requires that post-closure care be conducted for a period of 30 years after the closure of each CKD landfill unit. Post-closure care consists of maintaining the effectiveness of the final cover and continuing ground-water monitoring and leachate management to control the formation and release of leachate into the environment. Routine maintenance of the integrity and effectiveness of the final cover is necessary to prevent liquids from penetrating into the closed landfill and creating the potential for leachate migration.

EPA is proposing in today's rule to give the EPA Regional Administrator (or the State, in authorized States), discretion to reduce or extend the length of the post-closure period based on site-specific demonstrations. The Agency is concerned that 30 years may be excessive or insufficient to detect releases at some landfills. Therefore, the Agency wants to ensure that any potential release will be detected regardless of when it occurs.

Required activities in today's proposed rule include repairs to the final cover to correct the effects of settling, subsidence, and erosion, and preventing run-on and run-off from damaging the cover. Cover maintenance also includes periodic cap replacement, which is necessary to remediate the effects of routine deterioration. The Agency believes that these activities will minimize liquids in CKD landfills and are the minimum steps necessary to protect human health and the environment in the long term.

Today's proposal under § 259.50 also requires ground-water monitoring and maintenance of the ground-water monitoring system during the post-closure care period. The fundamental purpose of monitoring during the post-closure care period is to detect ground-water contamination in a timely fashion should the CKD waste containment structure fail, and to trigger corrective action activities as soon as contamination occurs. Long-term monitoring is essential to detect releases due to catastrophic failure or design and installation errors (e.g., tearing of liners due to ground movement).

*E. Closure/Post—Closure Planning Requirements*

Today's proposed rule also requires preparation of closure and post-closure plans describing activities that will be undertaken to close each CKD landfill unit properly and maintain them after closure. These plans must be prepared and placed in the facility operating record no later than the effective date of this rule, or the date of initial receipt of the waste, whichever is later.

The closure and post-closure care standards also include certain procedural requirements. First, prior to closing of each landfill unit, the EPA Regional Administrator (or the State, in authorized States) must be notified and the notification must be placed in the facility operating record. Second, closure of the landfill unit must begin within 30 days after the date of final receipt of CKD waste and closure complete within 180 days of receipt of the last shipment of waste. Extensions to these deadlines may be approved for good cause by the EPA Regional Administrator (or the State, in authorized States). Third, following closure of the facility, a notation in the deed to the property must be recorded that indicates the property has been used for CKD disposal. Finally, the EPA Regional Administrator (or the State, in authorized States) must be notified and a certification must be placed in the facility operating record that verifies that closure and post-closure activities have been conducted in accordance with closure and post-closure plans. The certification must be signed by an independent registered professional engineer, or approved by the EPA Regional Administrator (or the State, in authorized States).

*F. Financial Assurance*

In today's proposed rule, a demonstration of financial assurance is required for the costs of conducting closure, post-closure care, and, if applicable, corrective action for known releases. The proposed financial assurance requirements are patterned after the financial assurance provisions for municipal solid waste landfill facilities (MSWLFs) under Subtitle D. (see §§ 258.71 to 258.75).

The purposes of financial assurance are to ensure that the owner or operator of a CKD landfill unit adequately plans for the future costs of closure, post-closure care, and corrective action for known releases, and to ensure that adequate funds will be available when needed to cover the costs if the owner or operator is unwilling or unable to do so. To demonstrate to the EPA Regional Administrator (or the State, in authorized States) that it has planned for future costs, written cost estimates must be prepared. These cost estimates would serve as the basis for determining the amount of financial assurance that must be demonstrated.

EPA is proposing that persons managing CKD waste in new and existing CKD landfill units, including expansions, be required to demonstrate financial responsibility for closure, post-closure care, and corrective action for known releases in an amount equal to the cost of a third party conducting these activities. The ''third party'' provision ensures that adequate funds will be available for the regulatory agency to hire a third party to conduct closure, post-closure care, and corrective action in the event that the person managing CKD waste fails to fulfill these obligations.

The cost estimates must be based on the cost of closing the CKD landfill unit at the point of the landfill's active life when the extent and manner of its operation would make closure the most expensive. Similarly, cost estimates for post-closure care must include estimates for both annual and periodic activities, and account for the most expensive costs of routine post-closure care. EPA is proposing that the cost estimates be updated annually for inflation and whenever design changes cause changes in the costs at the CKD landfill unit. Cost estimates may be reduced provided a justification for the reduction is placed in the operating record and the EPA Regional Administrator (or the State, in authorized States) is notified. The Agency solicits comment on whether cost estimates need prior approval by the EPA Administrator.

In today's proposal, any person managing CKD waste who is required to undertake a corrective action program would be required to prepare an estimate of the cost of an appropriate corrective action program (for example, by multiplying the total annual costs of remedial actions by the number of years required to complete the corrective action program).

Today's proposed rule includes a list of specific financial mechanisms that may be used to demonstrate financial responsibility, as well as criteria for judging whether other mechanisms are acceptable. The rule permits the use of a trust fund with a pay-in period, surety bond, letter of credit, insurance, State-approved mechanism, and State assumption of responsibility.

Today's proposed rule would also allow private owners or operators of cement kiln dust landfills (CKDLFs) that meet certain financial and recordkeeping and reporting requirements to use a financial test to demonstrate financial assurance for CKDLF closure, post-closure care and corrective action costs up to a calculated limit. (Costs over the limit must still be assured through a third-party mechanism such as a surety bond or trust fund, or, in authorized States, through other appropriate mechanisms the State determines to meet the performance standard proposed at § 259.64(l)). The financial test allows a company to avoid incurring the expenses associated with the existing financial assurance requirements which provide for demonstrating financial assurance through the use of third-party financial instruments, such as a trust fund, letter of credit, surety bond, or insurance policy. With the financial test, private persons managing CKD waste may demonstrate that they are capable of meeting their financial obligations at their CKDLFs through ''self insurance.''

In addition, today's proposed rule allows persons managing CKD waste to comply with financial responsibility requirements for CKDLFs using a guarantee provided by another private firm (the guarantor). Under such a guarantee, the guarantor promises to pay for or carry out closure, post-closure care, or corrective action activities on behalf of the person managing CKD waste in a CKDLF if the person fails to do so. Guarantees, like other third-party mechanisms, such as letters of credit or surety bonds, ensure that a third party is obligated to cover the costs of closure, post-closure care, or corrective action in the event that the person managing CKD waste goes bankrupt or fails to conduct the required activities. At the same time, a guarantee is an attractive compliance option for persons managing CKD waste because guarantees are generally less expensive than other third-party mechanisms.

Today's proposed rule releases persons managing CKD waste from financial responsibility for closure, post-closure care, or corrective action when the EPA Regional Administrator (or the State, in authorized States), is notified that a certification has been placed in the facility operating record that the specific activities (i.e., closure, post-closure care for a period, corrective action) have been completed in accordance with the appropriate plan. The certification must be signed by a professional engineer, approved by the EPA Regional Administrator (or the State, in authorized States).

EPA is also considering requiring persons managing CKD waste in CKD landfill units to demonstrate financial assurance for third party liability to compensate injured third parties. Such liability requirements are currently required under RCRA Subtitle C for hazardous waste management facilities (see 40 CFR 264.147). Financial assurance for third-party liability potentially benefits the public health by providing the incentive of lower insurance premiums resulting from improved facility design and operation.

Under § 264.147, an operating land disposal facility must have both coverage for sudden accidental releases in the amount of $1 million per occurrence and $2 million annual aggregate plus nonsudden coverage. This nonsudden accidental coverage is for an additional $3 million per occurrence and $6 million annual aggregate. Thus, were the Agency to require the same level of liability coverage for CKD landfills as for hazardous waste land disposal owners and operators, they would need at least $4 million and $8 million in total.

For municipal solid waste landfill facilities, EPA has deferred the development of third party liability requirements under part 258. EPA's decision to defer these requirements was based upon two issues. The first was that the Agency had insufficient data to set appropriate levels for third party liability coverage. Second, the Agency was concerned that owners and operators of MSWLFs would encounter difficulty in obtaining financial assurance mechanisms to fulfill this requirement. (For more information on these points please see the Appendix to the final regulation establishing the Solid Waste Disposal Criteria at 56 FR 51108.)

The Agency, however, believes that the risks from CKD landfill are closer to those for from MSWLFs than from hazardous waste treatment, storage, and disposal facilities (TSDFs). Therefore, the types of liability requirements for hazardous waste TSDFs may be inappropriate for CKD landfills. Further, the amounts of coverage that EPA should require may also differ. EPA has limited data at this time to specify the amount of liability coverage that would be appropriate for a CKD landfill unit. Another consideration is the cost of implementing such a requirement. EPA is reluctant to directly adopt the levels of coverage required for Subtitle C facilities without further analysis comparing the risks and resultant third party claims from CKD landfill units and other Subtitle C hazardous waste facilities. The Agency, therefore, requests comment on whether or not to require financial assurance for third-party liability for CKD landfill units. In particular, EPA requests information on the risks to third parties from these facilities, the amount of claims, and the availability of liability coverage to assist it in setting appropriate levels of liability coverage.

*G. Implementation*

Except as provided in proposed § 259.40, existing CKD management units, including vertical expansions would be required to be in compliance with the groundwater monitoring requirements proposed under § 259.40 within two years after the effective date of the final rule. New CKD management units, including lateral expansions must be in compliance with the ground-water monitoring requirements proposed under § 259.41 before CKD can be placed in the unit. Ground-water monitoring shall be conducted throughout the active life and post-

closure care period of the CKD management unit as proposed under § 259.51.

A unit design which causes an exceedance of the groundwater protection standard will be considered as being in compliance with today's proposed rule if appropriate corrective action is taken. As explained below, if a person managing CKD waste does not initiate corrective action to correct the source of contamination within 270 days (unless an alternative schedule for compliance is set by the EPA Regional Administrator under § 259.47(e)), the CKD managed in such a unit will be considered a Subtitle C waste, and subject to standards under 40 CFR part 266.

1. Notification, Recordkeeping, and Reporting

Record reviews are one of the ways EPA can ascertain whether a facility is in compliance with today's proposed standards. Accordingly, in § 259.23 of today's proposal, EPA has included a recordkeeping requirement to ensure that a historical record of CKD landfill performance is maintained. The person managing CKD waste would be required to maintain the following records: (1) Any required demonstration, certification, finding, monitoring, notification, testing, or analytical data proposed today under Subpart E of part 259; (2) required inspection records, training procedures, and regulatory agency notification procedures as proposed under § 259.20; (3) required closure and post-closure care plans and any monitoring or analytical data proposed under §§ 259.50 and 259.51; and (4) any required cost estimates and financial assurance documentation proposed under subpart G of today's proposal. The required information would be recorded as it becomes available, and maintained by the persons managing CKD waste in new and existing CKD landfill units. EPA requests comment on the timing of regulatory agency notification and whether specific time requirements (e.g., 14 days from a finding) should be specified for placement of documents in the operating record.

In today's rule, EPA is proposing that information would be retained in an operating record near the facility, or in an alternative location approved by the State (or in unauthorized States, by the EPA Regional Administrator). In addition, today's rule proposes that all information contained in the operating record must be publicly available. EPA believes that these requirements would ensure the availability of basic types of information that demonstrate compliance with the requirements of today's proposal, but requests comment on the operating record being kept near the facility or in an approved alternative location and whether limitations should be placed on this requirement (i.e., distance the record can be kept from the facility, access to the record or public availability issues with the record being off-site.).

2. Permitting Requirements

EPA is proposing to modify the requirements in 40 CFR part 270 by adding § 270.68 specific to the permitting of cement manufacturing facilities which manage CKD. Part 270 of the hazardous waste regulations contains specific requirements for permit applications, permit conditions, changes to permits, expiration and continuation of permits, interim status and special forms of permits. Facilities that choose not to follow, or fail to maintain the management standards for cement kiln dust waste proposed today in part 259 may be required to obtain a permit under rules proposed today under 40 CFR 270.68. This Subtitle C permit would provide for the operation of the facility in accordance with 40 CFR part 259, and may include such additional requirements as the EPA Regional Administrator deems necessary to protect human health and the environment, including, but not limited to requirements regarding monitoring, operation, financial responsibility, closure and remedial action. In States with an authorized RCRA program, all references to the EPA Regional Administrator should be read as referring to the State Director, or other State official responsible for implementing the State Subtitle C solid waste permit program. Today's proposed rule would also allow for Federal oversight and enforcement of requirements under Subtitle C.

The Subtitle C permit proposed today under § 270.68 is different from other part 270 permits. Generally applicable standards under 40 CFR part 270 and part 124 for permit application, issuance and modification, apply to facilities that are fully subject to the Subtitle C regulations, including requirements for facility-wide corrective action. Under today's proposal, however, CKD facilities subject to a permit to allow operation in accordance with part 259 regulations are not subject to certain regulations applicable to most Subtitle C facilities. For example, these facilities would not be subject to facility-wide corrective action and would not be required to submit information to support a facility wide corrective action program (see existing § 270.14(d)). The Agency, therefore, solicits comment on today's proposed approach, and whether the full range of requirements normally imposed under part 270 should be required for cement manufacturing facilities which manage CKD. To address portions of part 270 and 124 that would not apply for these CKD facilities, proposed § 270.68 allows the EPA Regional Administrator (or the State, in authorized States), consistent with the protection of human health and the environment, to modify or waive permit application and permit issuance requirements in parts 124 and 270, except for procedures regarding public participation.

EPA anticipates that few facilities will be required to seek permits to operate in lieu of the terms of today's proposed part 259 standards and is proposing today's standards under § 270.68 rather than detailed procedures or modifications of existing part 270 for the establishment of these permits. This approach is consistent with that taken for the Research, Development and Demonstration permits found in § 270.65. In today's rule, only those facilities that fail to comply with either the performance standards or the technology-based standards under 40 CFR part 259 will be subject to RCRA Subtitle C regulations, and thus will require permits proposed under § 270.68.

*H. Applicability of the Boilers and Industrial Furnaces Rule*

On February 21, 1991, the Agency promulgated a final rule for burning of hazardous waste in boilers and industrial furnaces (BIF rule) (see 56 FR 7134). The BIF rule expanded controls on hazardous waste combustion to regulate air emissions from burning hazardous waste in boilers and industrial furnaces. The rule also subjected owners and operators of these facilities to the general facility standards applicable to hazardous waste treatment, storage and disposal facilities (40 CFR part 264) and subjected hazardous waste storage units at regulated burner facilities to part 264 permit standards.

Three types of facilities that burn or co-combust hazardous waste that are affected by the BIF rule are: (1) Boilers burning primarily coal or other fossil fuels, (2) industrial furnaces processing primarily ores and minerals, and (3) cement kilns processing primarily raw materials. Because residues from these processes were covered by the Bevill exclusion until special studies were completed to determine whether they should be regulated under Subtitle C (see section 3001(b)(3)(A)(i-iii)), the BIF

rule requires owners and operators to apply a two-part test to determine whether the Bevill exclusion continues to apply. Using the test, owners and operators are required to determine on a site specific basis whether co-combustion of hazardous waste has significantly affected the character of the residue. The residue is considered to be significantly affected if both: (1) Concentrations of toxic (Appendix VIII) compounds in the waste-derived residue are significantly higher than in normal residue (i.e., without burning/processing hazardous waste); and (2) toxic compounds are present in the waste-derived residue at levels that could pose significant risks to human health. (For metals, these are set at the RCRA toxicity characteristic level defined in Appendix VII to part 266.) If the test demonstrates that the waste-derived residue is significantly affected, or the persons managing CKD waste fail to obtain data adequate to demonstrate that the residue has not been significantly affected, then the derived-from residues are subject to RCRA Subtitle C hazardous waste regulations. Such residues are deemed to be from treating hazardous waste rather than from burning fossil fuels, processing ores or minerals, or manufacturing cement (see 56 FR 7196, February 21, 1991, Section XIII for a discussion of the basis for the two-part test).

One of the effects of today's proposal is to replace the exemption of CKD from hazardous waste regulation under the Bevill exemption with specific management standards applicable to CKD. As a result, the two-part test would be meaningless since, in the absence of the Bevill exemption, all waste-derived CKD would be hazardous under the derived-from rule (see 40 CFR 261.3(c)(2)(i)), whether or not it exhibits a hazardous characteristic. However, the Agency believes subjecting waste-derived CKD that does not exhibit a hazardous characteristic to full Subtitle C requirements would create excessive burdens and be unnecessary. EPA believes that applying the regulations proposed today under § 261.4(b)(8) to such waste will be protective. It should be noted that characteristically hazardous waste-derived CKD is already subject to Subtitle C regulation under 40 CFR 266.112 and is not within the scope of this rulemaking.

The Agency, therefore, still believes it is necessary for persons managing CKD waste at facilities burning hazardous waste as fuel to test whether their CKD exhibits a hazardous characteristic under 40 CFR 266.112, and when the CKD tests hazardous, to manage the CKD as a hazardous waste under full Subtitle C requirements. EPA believes that subjecting characteristically hazardous CKD from hazardous waste burning kilns to RCRA Subtitle C regulations will provide an incentive for cement kiln owners and operators to reduce metals levels in their CKD to remain eligible for the tailored standards. EPA notes that cement manufacturing facilities that burn hazardous waste and generate waste-derived CKD are subject to RCRA permitting regardless of the content of the CKD they generated, including the requirement to conduct facility-wide corrective action under 40 CFR 264.90, 264.101, and part 264, subpart S. To the extent that CKD has higher levels of toxic metals due to the combustion of hazardous wastes, facilities may need to do more to achieve today's proposed performance standards.

EPA is proposing that the two-part test for waste-derived CKD and Subtitle C requirements for characteristically hazardous residues should continue to apply to waste-derived CKD as described in the BIF rule, but with a revision. EPA is proposing elimination of part one of the two-part test, as set forth in 40 CFR 266.112(a)(1) because the Agency knows of no case where CKD has passed the second test, but failed the first. The Agency today solicits comments on the need for part one of the two-part test, and solicits information on whether there is any CKD that passed part one, but failed to pass part two, the comparison with health-based limits. Additionally, the Agency proposes that waste-derived CKD that does not test hazardous will be subject to today's proposed performance standards and management standards.

*I. Exemption From the Definition of Hazardous Waste*

1. Waste-Derived Clinker

As discussed in the RTC, CKD is often re-introduced into the kiln as a substitute for raw material in clinker production. In the absence of the Bevill exemption, under certain regulatory scenarios clinker produced from re-introduced CKD could be considered a hazardous waste under the derived-from rule (40 CFR 261.3(c)(2)(i)). As part of the regulations proposed today, EPA is also proposing to exclude clinker from regulation as a derived-from hazardous waste when CKD is reintroduced to the cement manufacturing process. When reintroduced, CKD does not contribute any constituents to clinker production that are not already present in the production process. Furthermore, at this time, EPA has no indication that such clinker poses unacceptable threats to human health or the environment.

2. Light-Weight Aggregate Kiln Dust

As mentioned in the Phase IV Land Disposal Restrictions Final Rule on Mining and Mineral Processing Wastes (see Land Disposal Restrictions—Final Rule to Phase IV: Clarification of Bevill Exclusion for Mining Wastes, Changes to the Definition of Solid Waste for Mineral Processing Wastes, Treatment Standards for Characteristic Mineral Processing Wastes, and Associated Issues, 63 FR 28556, May 26, 1998), EPA has decided to defer any decision on the Bevill status of air pollution control dusts and sludges generated from light-weight aggregate kilns (LWAKs) pending completion of an evaluation of issues related to CKD and light-weight aggregate dust handling and use. Light-weight aggregate pollution control dust and sludge, like CKD, are produced as the result of combustion of raw materials within a kiln. Like CKD, light-weight aggregate dust is usually not characteristically hazardous because it seldom fails the Toxicity Characteristic Leaching Procedure (TCLP). In addition, if a LWAK burns RCRA hazardous waste during light-weight aggregate production, it is subject to the BIF rule, and the aggregate and associated products could be considered hazardous wastes under the derived-from rule (40 CFR 261.3(c)(2)(i)).

The Agency is considering providing tailored standards for LWAK dust that are equivalent to those being proposed for CKD. Under that scenario, LWAK dust would not be a hazardous waste when it is reintroduced to the production process, recycled, or used for beneficial purposes other than agricultural use. With little or no LWAK dust disposed, it may be unnecessary to apply the disposal conditions for CKD to LWAK dust. The Agency, however, solicits comment on the appropriateness of applying all proposed provisions for CKD to LWAK dust. Accordingly, EPA solicits information on: (1) The chemistry of aggregate dust and sludges from LWAKs that burn and do not burn RCRA hazardous waste (both total and leachable concentrations of toxic metals); (2) potential danger to human health and the environment posed by the management of LWAK dust and sludges; and (3) the current and potential utilization of LWAK dust and sludges.

3. Use of CKD in Removal and Remediation Actions

In some situations CKD has been used safely and beneficially to absorb and stabilize hazardous wastes, oily wastes,

and sludges. When used to stabilize or solidify wet wastes, CKD reacts very much like Portland cement, especially when silica (sand) is present. This reaction serves to chemically immobilize any toxic metals present in both the CKD and the waste. Depending on the nature of the waste and how much CKD is used, the appearance of the final product can be anything from a monolithic slab to a dried sludge.

Federal On-Scene Coordinators (OSC's—see 40 CFR part 300) have used CKD on a variety of emergency response sites since the inception of the Superfund removal program. After the CKD is thoroughly mixed with waste, the mixture is usually transported to an off-site disposal facility. However, significant amounts of CKD/waste mixture may be left on site after a removal action is complete. This can occur when CKD is used to treat large amounts of low hazard sludge in open lagoons, large amounts of waste-water, or large amounts of minimally-contaminated soil.

In all cases, the OSC ensures that the immediate threat has been abated. If an OSC must leave CKD on-site after the completion of the removal action, he or she will conduct post-treatment sampling and analysis to ensure that the constituents of concern have been immobilized and the mixed material will not pose a threat to human health or the environment.

CKD is also used to solidify Sewage Treatment Plant (STP) sludge and to stabilize oily sludges and other non-hazardous wastes. Treatment of sewage sludge is currently regulated under the provisions of 40 CFR part 503. In most cases, the volumes involved are small and the CKD is thoroughly mixed with the waste to ensure effective treatment. Accordingly, EPA is proposing that nothing in today's rulemaking would prevent, restrict, or regulate the beneficial use of CKD as a stabilizer or solidifier during RCRA cleanups under sections 3004(u), 3004(v) and 3008(h), Superfund response actions that are carried out in accordance with the requirements of 40 CFR part 300—the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), or when the EPA Region or, in an authorized State, the State agency, finds that the use of CKD in remediation is protective of human health and the environment. By statute or regulation, CERCLA and RCRA cleanups must be protective of human health and the environment. Therefore, use of CKD in these situations would satisfy the protectiveness requirements of RCRA Subtitle C. Such use would fall within the general exemption for beneficial uses, but to avoid any uncertainty with regard to remedial uses, a specific exemption is also being proposed.

*J. Final Rule Effective Date*

EPA is today proposing that the record-keeping, closure and post-closure planning, CKD listing, agricultural application standards, and fugitive dust emission standards become effective 90 days after publication of the final rule in the **Federal Register**. The remaining criteria, including landfill design, ground-water monitoring, corrective action, and financial assurance requirements would become effective 24 months after their promulgation.

EPA is proposing to make the record-keeping, closure and post-closure planning, CKD listing, agricultural application standards, and fugitive dust emission standards effective 90 days after publication because these requirements can be implemented within this time frame and an early effective date would be more protective of human health and the environment. First, the planning and record-keeping requirements are self-implementing and, thus, lend themselves to a more immediate effective date. Second, 90 days is the standard amount of time provided by EPA to implement hazardous waste listings under RCRA Subtitle C. Third, laboratories capable of testing CKD are readily accessible, so significant additional capital would likely not be required to test CKD or implement today's proposed agricultural application standards. Moreover, EPA believes that significant additional capital is not required to fund facility changes needed to implement today's proposed fugitive dust controls, such as the compaction and daily cover requirements for CKD landfills. The Agency, however, solicits comment on whether there are technical factors which make the 90 day period for implementation of today's proposed fugitive dust emission standards difficult to comply with.

The 24 month effective date would be limited to those requirements that include interactions with or determinations by the EPA Regional Administrator (or the State, in authorized States), including landfill design, ground-water monitoring, corrective action, and financial assurance requirements. EPA believes the proposed 24 month period would provide persons managing CKD waste sufficient time to perform the studies and other actions (e.g., conduct a karst inventory, install ground-water monitoring wells, implement corrective action measures) necessary to bring their facilities into compliance.

EPA today is also distinguishing between those CKD landfill (CKDLF) units that stop receiving CKD waste prior to the date of today's proposed rule and those that stop receiving CKD waste in the window between the date of today's proposed rule and the effective date of the final rule. CKDLFs in the former category will remain outside the scope of today's proposed rule. EPA, however, is today proposing that CKDLFs in the latter category have a final cover installed according to provisions specified today under § 259.50. The Agency is proposing that the final cover must be installed within six months of the last receipt of CKD waste or the unit will be subject to all of the requirements of part 259—Management Standards for Cement Kiln Dust Waste.

EPA has decided to distinguish between the two categories of closed CKDLFs for several reasons. First, the Agency does not intend to include within the scope of today's rulemaking inactive CKDLFs that stopped receiving waste prior to the date of today's proposed rule. Second, the Agency believes that some regulatory requirements for CKDLFs that stop receiving waste between the date of today's proposed rule and the effective date of the final rule would help prevent releases of CKD waste. Today's proposed cover requirement would restrict the introduction of rainwater and surface water into the CKDLF unit, thereby limiting the production of leachate. If closed without the benefit of a cover, the CKDLFs would continue to be exposed to precipitation and wind, which could result in the increased production of leachate and fugitive dust.

## V. Subtitle C Backup Standards

In developing the Subtitle C standards that would apply to CKD that is mismanaged (or ''backup standards''), EPA, consistent with the CKD regulatory determination, scrutinized specific RCRA Subtitle C components to develop a tailored approach for CKD generated from non-hazardous waste burning kilns, and non-characteristically hazardous CKD from kilns that burn RCRA hazardous wastes.

*A. Subtitle C Requirements for Hazardous CKD Waste*

EPA is proposing that persons managing CKD that fail to comply with the performance standards or the technical standards proposed today under 40 CFR part 259 shall be subject to: (1) The provisions applicable to generators of hazardous waste (40 CFR part 262); (2) the EPA administered waste permit program proposed today in

§ 270.68; (3) RCRA Subtitle C imminent hazard Sections of Subpart A (§§ 264.4 and 265.4); (4) the following Sections of subpart B (General Facility Standards): §§ 264.11 and 265.11 (Identification number), §§ 264.12 and 265.12 (Required notices), §§ 264.14 and 265.14 (Security), §§ 264.15 and 265.15 (General inspection requirements), §§ 264.16 and 265.16 (Personnel training), and §§ 264.19 and 265.19 (Construction quality assurance program); (5) RCRA Subtitle C manifest, recordkeeping and reporting requirements (subpart E—40 CFR parts 264 and 265); and (6) all applicable provisions for the management of CKD proposed in today's rule under 40 CFR part 259. EPA believes the provisions of parts 264 and 265 that are not included in today's proposed rule (e.g., subpart W—Drip Pads) appear to be either not relevant to CKD management or are already covered by standards proposed today under part 259. These requirements operate in lieu of requirements in 40 CFR parts 263–265, and 268 except where portions of those subparts are specifically cross-referenced.

1. 3004(x)—Special Characteristics

Section 3004(x) of RCRA authorizes EPA to modify certain Subtitle C requirements ''to take into account the special characteristics of such wastes, the practical difficulties associated with implementation of such requirements, and site-specific characteristics * * * so long as such modified requirements assure protection of human health and the environment.'' Accordingly, the Agency is today proposing to suspend land disposal restriction requirements (LDRs) under RCRA sections 3004(c), (d), (e), (f), and (g); minimum technology standards under RCRA section 3004(o); and facility-wide corrective action requirements under section 3004(u) for the following reasons. First, as long as CKD is disposed according to the technology-based standards EPA proposes today, the Agency considers such controls protective of human health and the environment. Therefore, requiring treatment in accordance with land disposal restrictions would not be necessary. Second, as explained in the background documents to today's rule, the minimum technological requirements under section 3004(o) for Subtitle C landfills (e.g., double liners; two leak detection systems) would not provide significant incremental benefits over the technology-based landfill design standards proposed in today's rule, and would add to the practical difficulties associated with implementation of such requirements. The technology-based standards proposed in today's rule for CKD landfills include a composite liner, leachate collection system, and daily cover. A second liner and leachate collection system, which are required for hazardous waste landfills under subpart N of 40 CFR part 264, are unnecessary. EPA believes the technical record supporting today's proposed standards demonstrates that today's proposed technology-based standards are sufficient to protect human health and the environment. The technology-based standards proposed today can be waived, but compliance with today's proposed performance standards means the alternative CKD landfill design is protective of human health and the environment. Third, as explained above, EPA believes that it is inappropriate to impose a requirement for facility-wide corrective action for old CKD disposal units, and that reliance on RCRA section 7003 or CERCLA sections 104 and 106 should be adequate to address any substantial threats to human health and the environment (see Section IV.A.7.—Corrective Action).

2. Facility-Wide Corrective Action Requirement

EPA invites comment on the option of requiring facility-wide corrective action at facilities that fail to maintain the terms of today's proposed rule. Under this option, these facilities would be required to address past and potential releases of hazardous waste and hazardous constituents at their facilities, including from solid waste management units not covered by today's proposed rule. Old cement kiln dust piles at CKD facilities are solid waste management units. Based on the 113 cement manufacturing facilities that were active in 1990, EPA estimates that there were 740 inactive CKD disposal piles nationwide and that approximately 90 million metric tons of CKD were stored in these piles. A complete description of this study is available from the docket in Chapter 7 of the Technical Background Document on Groundwater Controls at CKD Landfills. In addition, 11 out of 13 ground-water damage cases, which form the basis of the CKD regulatory determination and today's rulemaking, involve releases of toxic constituents from old inactive CKD disposal piles. Given the number of CKD disposal units and volume of associated CKD waste nationwide, the potential facility-wide corrective action responsibilities are substantial. Under this option, cement kilns that do not operate under the terms of today's proposed rule would fall into the universe of approximately 3500 facilities that are obligated to undergo RCRA facility-wide corrective action if necessary to protect human health and the environment. This universe presently includes approximately 18 cement manufacturing facilities that burn hazardous waste.

The 3500 facilities currently required to undergo facility-wide corrective action differ greatly in the amount and complexity of environmental contamination and site conditions. To accommodate this diversity, the corrective action program advocates flexible, site-specific approaches to corrective action. For example, although all facilities are ultimately held to final facility cleanup, EPA's current program management emphasis is on source control and protection of human and environmental receptors. If facility-wide corrective action were required, CKD facilities subject to corrective action would not necessarily be required to remove old piles. At many facilities, this type of activity would be prohibitively expensive and technically impracticable, and other remedies, such as emplacement of wind and water erosion controls, installation of ground-water removal and containment systems and supply of alternate drinking water supplies if necessary, would be more appropriate. The corrective action program can also accommodate technical and cost limitations by phasing in remedies. For more information on the flexibility inherent to the corrective action program, (see 61 FR 19432, May 1, 1996—Corrective Action for Releases From Solid Waste Management Units at Hazardous Waste Management Facilities).

EPA remains concerned about the cost implications if the flexibility provided by RCRA section 3004(x) is not fully exercised. Imposing additional LDRs or the landfill design requirements specified in RCRA section 3004(o) would create substantive compliance burdens on the regulated community. Corrective action requirements would also increase costs, although as discussed above, that program allows the use of cost-saving measures. The Agency's regulatory determination under RCRA section 3001(b)(3)(c) that additional control of CKD is warranted was based on a balancing of the factors specified under RCRA section 8002(o), including cost. That determination assumed that any regulation imposed under RCRA could be designed so as to limit the cost burden while regulating the risks of concern. While the determination under RCRA section 3004(x) is separate from that under RCRA section 3001(b)(3)(c), and is based

on somewhat different factors, EPA would likely re-evaluate the underlying regulatory determination if RCRA section 3004(x) were not interpreted to allow the degree of modification proposed today. The Agency, however, interprets RCRA to provide the degree of flexibility proposed today and views the resulting regulatory system as fully consistent with its regulatory determination. EPA seeks comment on this option in general and on the use of facility-wide corrective action authority for CKD that is mismanaged. EPA seeks comment in particular on likely cost, incurred as a result of facility-wide corrective action, taking into account the flexibility that the corrective action program allows.

3. Manifest, Recordkeeping, and Reporting Requirements

EPA is proposing in today's rule that manifest, recordkeeping, and reporting requirements established in parts 262, 264, and 265 apply to hazardous cement kiln dust that is subject to provisions proposed under part 266-subpart I. The principal purpose of the manifest system is to track hazardous waste from its point of generation, through its trip with the transporter, to final disposition off-site at a treatment, storage, and disposal facility. Part 262 also contains general requirements for facilities that manage hazardous waste on-site. Subpart E of parts 264 and 265 specifies requirements concerning the return of the manifest to the facility which generated the waste. These requirements form the information loop designed to assist the CKD waste generator, who is responsible for ensuring that hazardous CKD waste actually arrives at the intended facility for disposal.

Subpart E of parts 264 and 265 also includes requirements for recordkeeping and reporting. The purpose of these requirements is to ensure that the regulated community complies with hazardous waste regulations by providing the enforcement agency with sufficient information to monitor facility operations. Together with the manifest system, these requirements are designed to minimize the likelihood of damage case incidents resulting from improper tracking and waste disposal. In addition, the Agency believes that the various records, reports, and signatures of transporters, treaters, and disposers are necessary to allow enforcement officials to assign responsibility and, ultimately, liability in cases where problems arise.

*B. Implementation of Part 259 and RCRA Subtitle C Backup Standards*

Today's proposed standards for the proper management of CKD are contained in part 259 of the RCRA Subtitle D regulations. Subtitle D of RCRA establishes a framework for Federal and State cooperation in controlling nonhazardous solid wastes. As discussed above, so long as CKD is managed according to the standards of part 259, CKD would be managed in a way that is protective of human health and the environment and would not be considered hazardous waste. In proposing standards under part 259, EPA is providing minimum standards for protecting human health and the environment from the hazards of CKD. The actual planning and direct implementation of the standards under part 259, however, remain outside the RCRA Subtitle C framework, so long as a facility remains in compliance with the standards and thereby maintains compliance with today's proposed rule.

As discussed earlier, EPA is today proposing that the EPA Regional Administrator (or the State, in authorized States) be allowed to review and consider alternative CKD landfill designs and make determinations whether or not they meet today's proposed performance standards. The performance standards in today's proposed rule are structured to allow flexibility to consider numerous location specific factors in tailoring facility requirements.

Similarly, EPA is also proposing that facility plans for ground-water monitoring, corrective action, closure and post-closure care, and financial assurance be reviewed and approved by the EPA Regional Administrator (or the State, in authorized States). Because EPA does not directly regulate non-hazardous solid waste under RCRA, today's proposed rule would not create enforceable requirements for CKD management, but only conditions for avoiding Subtitle C regulation. However, EPA expects that when States adopt the part 259 standards they will likely adopt them, not only as conditions, but also as directly enforceable requirements in Subtitle D programs. In that case, the Subtitle D program would be the primary means for regulating CKD.

In authorized States, EPA anticipates that there will be a high degree of cooperation between State RCRA Subtitle D programs (which will most likely implement the part 259 standards) and State RCRA Subtitle C programs. For example, because failure to comply or take appropriate corrective action within the time frames proposed today under §§ 259.41, 259.44, 259.45, 259.46, and 259.47 to ensure compliance with any of the standards proposed today under part 259 would mean that the CKD is mismanaged, and considered a hazardous waste. If a State uses its RCRA Subtitle D program to conduct inspections or oversight of cement kilns, violations of the standards and/or failure to take appropriate corrective action within the specified time frames should be reported to the RCRA Subtitle C program, as well.

1. Enforcement

Although the Part 259 standards proposed today would likely be adopted as a matter of State law, Federal inspection authority would still be available for facilities regulated under those standards. Because significant violations of the standards would constitute mismanagement of CKD and would result in designation of such CKD as hazardous waste, EPA (as well as State RCRA Subtitle C programs) would have authority to inspect such facilities to determine whether they were handling hazardous waste (i.e., mismanaged CKD waste). In today's proposed regulatory structure EPA has included the list of violations that would cause CKD to be designated as hazardous waste in § 261.4 (Exclusions). In this section the Agency has clarified that all CKD managed in compliance with today's proposed Part 259 standards remains a non-hazardous waste. CKD becomes a listed hazardous waste if it fails to comply with the provisions of § 261.4(b)(8)(ii)(A) and (B) which are described below. Thus, if the person CKD waste is managing CKD inconsistently or in a manner that does not comply with the Part 259 standards, it would be subject to Federal enforcement under regulations proposed today in § 261.4(b)(8)(ii), to compel compliance with RCRA Subtitle C requirements proposed today in Part 266. EPA solicits comment on whether it would be more appropriate to list the provisions in another section of the Code of Federal Regulations such as § 261.3 (Definition of Hazardous Waste).

In general, EPA believes that facilities should not necessarily be fully subjected to RCRA Subtitle C for every violation of today's proposed management standards. Therefore, EPA distinguishes between significant violations which should cause the facility to be regulated under RCRA Subtitle C, and other violations which should not have that result if they are promptly corrected. Proposed § 261.4(b)(8)(ii)(A) enumerates the ''egregious'' violations that would trigger RCRA Subtitle C regulation immediately which would include: (1) Failure to make any applicable demonstration requirements for new CKD landfills as specified under

§§ 259.11(a), 259.12(a), 259.13(a), 259.14(a), 259.15(a) and 259.16(a); (2) failure to manage CKD destined for sale or beneficial use in a suitable containment structure, as specified under § 259.20, within two years after the effective date of the final rule, unless granted approval by the EPA Regional Administrator (or the State, in authorized States) under § 259.20(c) to implement alternative measures for fugitive dust control; (3) failure to cover or dispose of CKD in a conditioned state by 90 days after the effective date of the final rule, as specified under § 259.22, unless granted approval by the EPA Regional Administrator (or the State, in authorized States) under § 259.22(d) to implement alternative measures for fugitive dust control; and (4) failure to install a composite landfill liner or ground-water monitoring system, as specified by §§ 259.30 and 259.41, by two years after the effective date of the final rule, unless granted approval by the EPA Regional Administrator (or the State, in authorized States) for a unit design under the provisions of § 259.30(h), or a finding is made of no potential for migration under § 259.40(b); (5) failure to undertake appropriate corrective action within the time frames specified under §§ 259.41, 259.44, 259.45, 259.46, and 259.47; and (6) failure to comply with any requirement identified in a notice received from the Regional Administrator (or State) because of repeated violations of Part 259, other than those specified in subparagraphs (1) through (5) of this paragraph.

Under proposed § 261.4(b)(8)(ii)(A)(7), EPA will also consider repeated violations of Part 259's lesser requirements as a significant violation. Under this provision, if EPA determines that a person managing CKD waste repeatedly violates one or more lesser requirements under Part 259, the Agency can send notice to that person informing him or her that the next violation of such lesser requirements will constitute a violation of § 261.4(b)(8)(ii)(A), thereby causing any managed CKD to be considered mismanaged and a hazardous waste. EPA believes this provision is warranted because it provides the appropriate incentive for facilities to comply with all of Part 259 requirements, including notice and recordkeeping requirements.

In proposed § 261.4(b)(8)(ii)(B), violations of any standards of Part 259 other than those listed in § 261.4(b)(8)(ii)(A), will only trigger Subtitle C regulation if the person managing CKD waste fails to comply with those standards within 30 days of receiving a written notice of non-compliance from the Regional Administrator (or State). This provision gives the regulatory agency an intermediate enforcement response mechanism for violations of lesser Part 259 requirements that have not risen to a level that would trigger notice under § 261.4(b)(8)(ii)(A)(7).

As an alternative to allowing 30 days after receiving a written notice, EPA solicits comments on adopting a minimum period (for example, 90 days) to correct violations as a matter of enforcement policy. Under the enforcement policy approach, EPA would generally not commit to take any enforcement action that would result in RCRA Subtitle C regulation for a period of 90 days after the date of violation, unless there were unusual or aggravating circumstances. If the violation is corrected in that period of time (or, in the case of a violation that cannot be corrected, if steps are taken to prevent recurrence), EPA would not take enforcement action.

Under the regulatory approach, if a State adopted today's proposed approach, EPA would not have jurisdiction to bring an enforcement action for a lesser violation (that is, a violation not listed in § 261.4(b)(8)(ii)(A)) until 90 days had passed from the date of violation. Under the enforcement policy approach, EPA would have jurisdiction to bring an enforcement action, but would commit not to do so. EPA's enforcement policy would not bind the State, but EPA would encourage States to adopt a similar approach. (In this respect, the two approaches are similar: if EPA adopted today's proposed approach, it could not preclude a State from adopting regulations that did not allow the 90-day window to correct lesser violations.[36]

EPA seeks comment on these two approaches as well as on the general approach of distinguishing between lesser and egregious violations. In particular, EPA asks commenters to address the issues of regulatory jurisdiction, appropriate incentives to discover and correct violations, what constitutes egregious and lesser violations (e.g., whether certain paperwork violations, such as the failure to notify the regulatory authority of a violation, should be considered egregious), and the handling of cases where violations are discovered well after they occurred. The Agency also seeks comment on the question of whether or not the proposed enforcement structure, with the two regulatory categories of egregious and lesser violations, provides an incentive for persons managing CAD waste to inform the Regional Administrator of violations. If not, the Agency seeks comment on alternative structures; for example, on whether there is a category of violations intermediate between egregious and lesser. Additionally, the Agency also seeks comment on the proposed 90 day time frame to correct lesser violations before CKD is considered mismanaged.

As with all environmental issues, citizens are encouraged to be involved. Where citizen's bring a concern to EPA's attention, the Agency will respond on a case-by-case basis. In addition, RCRA authorizes citizens to enforce requirements pursuant to section 7002(a)(1)(A): ''any person. * * * to be in violation of any permit, standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant to this Act''. This provision allows citizens to enforce both Subtitle C and Subtitle D requirements. Therefore, citizens could commence a civil action to enforce the Subtitle C requirements applicable to CKD that is not managed in compliance with today's proposed Part 259 standards.

Where a violation occurs that can be corrected, the Agency believes a person managing CKD waste who promptly corrects the problem should not necessarily be subjected to hazardous waste requirements on a permanent basis. In some cases, the nature of the violation may be such that it only affects a distinct batch of waste. For example, if a person managing CKD waste failed to manage a particular truckload of CKD according to the transportation requirements proposed today in Part 259, that truckload would become non-exempt and would have to be managed as a hazardous waste (e.g., manifested and sent to a landfill meeting the tailored Subtitle C requirements of Part 266 for final disposal). However, if the practice did not continue, the person managing CKD waste would not have to manifest other shipments or have the facility become permitted under Subtitle C. Other types of violations could result in the CKD becoming subject to Subtitle C generally.

2. Removal of a Hazardous Waste Designation

EPA believes that in some cases it may be appropriate for CKD that has been mismanaged to be again

[36] Under either version, today's proposed rule would provide the opportunity to implement corrective action for releases to ground water. An exceedance of ground-water standards by itself would not cause be considered mismanaged; only if a person managing CKD waste failed to meet the corrective action requirements in the rule would it become subject to Subtitle C regulation.

considered non-hazardous waste. For example, if a person managed CKD waste in a landfill that released metals enough to raise levels in ground water above appropriate MCLs, but later repaired the landfill and did not have other violations of the standards, requiring a RCRA Subtitle C permit might not be warranted. For these cases, EPA today proposes a procedure in § 266.121 under which the designation as hazardous waste would be removed. Under this process, if any CKD waste becomes mismanaged (i.e., loses the exclusion under § 261.4(b)(8)) and becomes subject to § 266.120, the person managing such waste may apply to the Regional Administrator (or the State, in authorized States) for removal of the hazardous waste designation for such CKD. The application must include: (1) A statement that the CKD waste is now being managed in accordance with § 259; (2) a statement explaining the circumstances of the non-compliance; and, (3) a demonstration that the non-compliance is not likely to recur and that removal of the hazardous designation would not pose a threat to human health and the environment. The Regional Administrator may reinstate the § 261.4(b)(8) exclusion if the Regional Administrator finds that the person managing CKD waste has satisfactorily explained the circumstances of the non-compliance, has demonstrated that the non-compliance is not likely to recur and that removal of the hazardous waste designation will not pose a threat to human health or the environment. The Regional Administrator may reinstate the § 261.4(b)(8) exclusion with additional conditions if the Regional Administrator finds that such additional conditions are necessary to ensure protection of human health and the environment.

Removal of the hazardous designation is not automatic, but the Agency is today proposing that if the Regional Administrator does not take action on the application within 60 days, then the application for removal of the hazardous waste designation is deemed granted, retroactive to the date of the application. However, the Regional Administrator may terminate a removal (i.e., a reinstatement of the § 261.4(b)(8) exclusion) by default under this subsection if the Regional Administrator finds that the removal of the hazardous waste designation is not appropriate based on analysis of the factors included in the application.[37] Today's proposed approach is patterned on that adopted in the conditional exemption for military munitions, promulgated February 12, 1997 (see 62 *FR* 6637–38, February 12, 1997, Military Munitions Rule: Hazardous Waste Identification and Management; Explosives Emergencies; Manifest Exemption for Transport of Hazardous Waste on Right-of-Ways on Contiguous Properties; Final Rule). EPA solicits comment on whether this procedure should be provided for CKD, and under what circumstances (and for what violations) it should or should not be available. For example, EPA would want to assure that the procedure could not be used repeatedly by a person managing CKD waste who was making no serious effort to comply until violations were called to its attention by inspectors.

EPA notes that releases from a CKD disposal unit do not, under today's proposed rule, automatically constitute a violation of the Part 259 standards. If the unit was designed and constructed in accordance with the design requirements, but a release nevertheless occurs, the CKD remains exempt so long as it complies with the corrective action requirements in the Part 259 standards. In implementing today's proposed rule in authorized States, EPA anticipates there will be a high level of cooperation between State Subtitle D and State Subtitle C programs. Based on conversations with State environmental representatives, the Agency anticipates that State D programs will generally take the lead in assuring compliance with today's proposed standards by conducting inspections of CKD landfills and their associated facility operating records. If a violation of today's proposed standards is documented as a result of a State inspection, or a facility reports to the State that a release of contaminants to the environment has occurred, under provisions of § 259.46, today's rule would allow persons managing CKD waste 90 days to assess corrective measures. Under § 259.47, the person managing CKD waste must select a remedy within 90 days of completing the assessment, and specify a schedule for initiating and completing remedial activities. Under regulations proposed today in § 259.47(e), the State would have flexibility to set an alternative schedule for compliance.

Once a State program makes a final determination of non-compliance, (that is, after allowing a minimum of 270 days from the date of violation or notification of the State for the person managing CKD waste to begin implementation of corrective measures, the State program director makes a determination that a person managing CKD waste has mismanaged CKD), the CKD managed at such a facility would be hazardous waste, and subject to the proposed provisions of Part 266. Accordingly, responsibility for implementation and enforcement of the provisions of today's rule shifts to the hazardous waste program authority (either the EPA Regional Administrator or, in an authorized State, the State Subtitle C program). The EPA Regional Administrator (or the State, in authorized States) would review and approve Subtitle C permits under 40 CFR 270.68, assure compliance with the hazardous waste generator requirements of 40 CFR Part 262, and assure compliance with the hazardous waste manifest, recordkeeping, and reporting requirements of 40 CFR Parts 264 and 265.

3. Alternative Approach to Structuring the Performance Standards

Today's proposed standards are generally written in the form of performance standards. In complying with the performance standards, a person managing CKD waste would have to develop an approach, make a demonstration to the Regional Administrator (or the State in authorized States) that the intended approach will achieve today's proposed performance standards, and receive approval by the regulatory authority prior to implementing the approach. Representatives from the cement industry have suggested an alternative regulatory structure in which the Agency would establish a general performance standard to be achieved by the person managing CKD waste without a requirement that the approach receive prior approval by the Regional Administrator. The Agency seeks comment on the appropriateness and specifics of such an approach.

Stakeholders have expressed concerns about the industry's suggested alternative structure regarding the uncertainty of the public participation process, specifically about whether and how the affected public would be able to participate in decisions made by persons managing CKD waste regarding compliance with today's proposed performance standards. EPA believes that the public has a vital role to play in decisions that affect their health and the environment. Additionally, when appropriate, the Agency has been supportive of self-implementation because such an approach can lead to regulatory compliance within a shorter time frame than might otherwise be

[37] If a person managing CKD waste submits a petition for reinstatement that is subsequently revoked, it would be Agency policy to consider such a default reinstatement to be prospective; that is, beginning at the point the decision is made.

possible. Thus, EPA is soliciting comments on alternative regulatory structures that would allow persons managing CKD waste to implement pollution controls designed to meet the performance standards without the procedural burden of seeking approval from the regulatory authority. The Agency is interested in information on how such an alternative structure would allow persons managing CKD waste to demonstrate their design is adequate to meet today's proposed performance standards, while ensuring opportunities for the public to participate in the deliberations and decision making undertaken by the persons managing CKD. EPA believes that a process which expeditiously identifies and resolves compliance issues prior to construction is in the best interest of all parties.

The Agency is aware of one such approach. In 1995, as part of its proposed approach to establishing an enforceable agreement (see Section II.C.2—Proposed Enforceable Agreement), the cement industry submitted to EPA a draft plan for site-specific public participation. Their plan was designed to allow self-implementation of the provisions of the enforceable agreement with citizen input, but without the time-consuming process of permitting (or seeking approval by the Regional Administrator or the State). The industry's comment and appeal process included the following elements: (1) Notification of citizens when a person managing CKD has prepared a design plan and intends to submit a certification to the regulatory authority that their proposed design plan will meet a specific performance standard; (2) a 45 day comment period in which the public could submit relevant comments to the facility (for example, comments germane to the performance of the proposed design); (3) preparation by facility representatives of a document responding to the substance of all relevant comments; (4) announcement by facility representatives of the availability of the final design plan and comment response document; (5) opportunity for appeal to the appropriate regulatory authority within 30 days after the date of announcement of the final design plan; (6) arbitration by the regulatory authority affording both the commenter and facility representatives an opportunity to present their positions, and a final determination by the regulatory authority, no more than 60 days after facility representatives have filed a response to the commenter's appeal on whether the commenter has demonstrated that the proposed design plan would fail to provide for compliance with the performance standard; and (7) opportunity for judicial review of the regulatory authority's decision in federal district court.

Representatives of local citizen groups criticized this public participation process as being inadequate, both structurally and substantively. Their comments on the public participation process include the following: (1) All significant decisions regarding design, monitoring, and cleanup are left to facility owners and operators; (2) public comments and appeal rights are limited in both time and scope; (3) access to documents is limited only to the design plan and not to other important information such as data used to support the design plan, monitoring data, and inspection reports; and (4) involvement by the regulatory authority's staff is limited to a 60 day time period and consideration of comments specific to the design plan.

A second alternative regulatory structure would be similar to EPA's approach proposed in today's rule, but would establish a time frame for design approvals within which the regulatory authority must make a determination of the appropriateness of the technical approach proposed by the person managing CKD waste. A time frame of six months might be sufficient, and would add a degree of certainty to the process of prior approval. If the regulatory authority failed to take action within the specified time frame, the proposed approach for controlling CKD waste would be presumed adequate to ensure compliance with the performance standard. The Agency is seeking general comment on these two alternative regulatory structures and on other potential approaches to protecting human health and the environment while minimizing procedural burdens that could delay implementation of appropriate means of controlling risks posed by CKD.

## VI. Standards for CKD Used as a Lime Substitute

### *A. Summary*

EPA is proposing to exclude from regulation under RCRA CKD that is used as a liming agent on agricultural fields provided that such CKD meet specified levels for concentrations of certain hazardous constituents. As explained in Section II.D. (Beneficial Use of Cement Kiln Dust) in this preamble, CKD is currently being used as a substitute for agricultural liming agents. Liming materials are added to agricultural soils to maintain optimum pH for crop production and offset the effects of fertilizers that lower soil pH. EPA encourages environmentally sound beneficial use of production process waste streams, including CKD. However, the benefits associated with the recycling of CKD must be balanced against the potential hazards which the use of CKD in this manner may also present. CKD contains toxic metals and chlorinated dioxins and furans which can, at high exposure levels, present adverse human health effects. In an effort to determine whether use of CKD for pH adjustment on agricultural soil presents a potential threat to human health and the environment, the Agency conducted an assessment of the risk to individuals from the use of CKD as a liming agent. A summary of the risk analysis and results is provided below. Further description of the risk assessment is presented in the technical background document titled Risk Assessment for Cement Kiln Dust Used as an Agricultural Soil Amendment in the docket for this rule.

Based on the risk analysis, EPA calculated concentration limits that are protective of human health for hazardous constituents in CKD that is used as an liming agent on agricultural fields and home gardens. The numerical limits derived from the exposure assessment models are designed to protect human health and the environment from reasonably anticipated adverse effects. The Agency calculated risk-based protective limits for all hazardous metals and dioxins present in CKD. By comparing the risk-based concentrations derived for each constituent with data on the composition of CKD, EPA identified constituents that may be present in CKD above levels that may pose risk to human health. Those constituents are arsenic, thallium, lead, cadmium and chlorinated dioxins and furans. EPA's analysis showed that all other toxic constituents in CKD are present at concentrations that are well below protective levels. Based on these findings, EPA is today proposing to limit the concentrations of arsenic, thallium, lead, cadmium and chlorinated dioxins and furans that can be present in CKD that is used agriculturally for pH adjustment. In other words, EPA is proposing standards to limit the concentrations of arsenic, thallium, lead, cadmium, and dioxins that can be contained in CKD that is used as a substitute for agricultural lime because the Agency's risk analysis indicates that these compounds are present in CKD in

excess of levels that may pose risk to human health when CKD is applied at rates necessary to attain the desired increase in pH. The Agency is concerned that unregulated use of CKD as an agricultural liming agent may cause adverse effects on human health.

*B. CKD Agricultural Use Risk Assessment*

1. Risk Assessment Methodology

This section describes the methodology used to evaluate human health risk to individuals from use of CKD as an agricultural liming agent. EPA's risk analysis evaluated exposures to metals and dioxin congeners in CKD for the following receptor scenarios; farmer, fisher, home gardener, and child of farmer. The assessment includes a preliminary sensitivity analysis to identify risk-driving parameters, a deterministic analysis to estimate central tendency and high end risk, and a quantitative uncertainty analysis. Initial estimates of potential risk from agricultural use of CKD were estimated using the deterministic method, which produces point estimates of risk to individuals based upon single values for input parameters (e.g., waste stream characteristics, environmental fate and transport properties, exposure assumptions, etc). The deterministic risk estimates for this analysis were derived using a double high-end risk assessment methodology. In this method, the input parameters are varied between the central tendency (50th percentile) value and the high end (90–95th percentile) value both individually and in combination of any two independent variables to produce a series of point risk estimates. The point estimate in which all variables are set at central tendency is assumed to be the central tendency risk estimate and the highest risk estimate for any combination of double-high-end variables is assumed to be the high end estimate (approximately 95th percentile) of risk. High-end risk descriptors are plausible estimates of the individual risks for those exposed persons at the 90th percentile or greater end of the risk distribution. High-end risk is intended to depict the risks that are expected to occur in 10 percent or less of the exposed population.

The Agency also conducted a probabilistic analysis of uncertainty/variability in support of the deterministic analysis. The Agency has long acknowledged the importance of adequately characterizing variability and uncertainty in fate, transport, exposure and dose-response assessments for human health risk assessment as indicated in EPA's May 15, 1997 policy memorandum on Use of Probabilistic Techniques in Risk Assessment. The probabilistic analysis undertaken for this analysis has been conducted in accordance with the guidance set forth in the May 15, 1997 memorandum. The first step of the probabilistic analysis is a sensitivity analysis using the deterministic methodology to determine the risk-driving parameters. Results of the sensitivity analysis are provided in the technical background document for this assessment. After the risk-drivers are determined, the quantitative uncertainty/variability analysis is conducted by performing a Monte Carlo simulation by randomly varying the risk-driving parameters. A more detailed discussion of parameters that were included in the Monte Carlo analysis and selection of data distributions for each parameter is provided in the technical background document describing the risk assessment supporting this rule.

2. Human Health Criteria and Effects

The risk analysis uses chemical composition data collected and used for the 1993 Report to Congress on CKD, the 1994 NODA on CKD and background document supporting the 1995 CKD Regulatory Determination. Individual constituents of concern evaluated in the assessment included dioxins and the following metals: antimony, arsenic, barium, beryllium, cadmium, chromium, lead, nickel, mercury, selenium, silver and thallium. These constituents were evaluated based on chemical specific health based levels established and/or verified by EPA using prescribed methodologies for evaluating human effects data. The human health toxicity benchmarks used in this analysis include Agency-verified oral reference doses (RfDs) and reference concentrations (RfCs) for noncancer effects and oral cancer slope factors (CSFs) and inhalation unit risk factors (URFs) for carcinogenic effects. Agency-verified RfDs, RfCs, CSFs, and the bases for these values are presented in the EPA's Integrated Risk Information System (IRIS). The benchmarks for the dioxin and furan congeners are based on the Toxicity Equivalent Factor (TEF) for 2,3,7,8-tetrachlorodibenzo dioxin (TCDD2). The methodology for calculating TEFs for dioxin and furan congeners is presented in the 1994 EPA publication entitled Estimating Exposures to Dioxin-Like Compounds. (EPA publication number EPA/600/6–88/005Ca)

3. Agricultural Use Practice Assumptions

Agricultural use practices (i.e., application rate and frequency) used in the analysis are determined based on chemical and physical properties of soil and CKD that influence use of CKD agriculturally as well as economic considerations that affect CKD use. The quantity of liming material required per acre to raise the pH to an acceptable level is determined by several factors including desired change in pH, buffering capacity of the soil, chemical composition of the liming agent and particle size of the liming material. When these factors are considered, the rate of application is usually 2 to 5 tons per acre and the application frequency is once every 2 to 5 years for all liming agents, including CKD. EPA solicits comment on the appropriateness of using this rate and frequency of application as assumptions in its analyses.

4. Fate and Transport of Chemical Constituents in the Environment

The application of CKD as a liming agent is assumed to occur only in areas with initial soil pH of less than 6 and areas that are near active cement kilns generating large quantities of CKD. Based on these criteria, three sites, Holly Hills, South Carolina, Alpena, Michigan, and Ravena, New York were selected for modeling. Site specific meteorologic and soil properties data from these locations were used in both the deterministic and uncertainty analysis. While meteorologic conditions were evaluated in the sensitivity analysis and were not shown to be a primary risk driver, the three locations modeled represent a range of meteorologic conditions.

The Agency relied on the following models to simulate movement of pollutants into and through the environment. Speciation of metals in CKD applied agriculturally was determined through MINTEQ modeling using available site specific soil and meteorologic data identified for each geographic setting. Equations developed by Jury, *et al.*, were used in a spreadsheet calculation model to determine contaminant loss from CKD due to degradation, volatilization, leaching, and rainwater runoff of dioxins and metals. The model tracks the average annual soil concentration and the annual mass of contaminant volatilized for a period of 100 years followed by 40 years of inactive use. While the Agency assumed that CKD can be applied to a field over a period of 100 years, modeling indicates that the system will reach steady state concentrations over a period of 40 to 50 years for persistent chemicals such as

most metals and dioxins. The Universal Soil Loss Equation (USLE) as modified by EPA's Offices of Solid Waste and Research and Development was used to estimate soil erosion and overland transport of sediment from agricultural fields amended with CKD across intervening areas to nearby water bodies. Air emissions from CKD due to wind erosion were estimated using methods and equations from EPA's Compilation of Air Pollutant Emission Factors, Volume I: Stationary Point and Area sources, Fifth Editions (commonly referred to as AP–42). Air dispersion of particulates was modeled using the EPA's Industrial Source Complex Short Term, version 3 (ISCST3).

5. Uptake of Contaminants in Plants and Animals

Plants may absorb contaminants through air-to-plant biotransfer and through soil-to-plant uptake through the roots. Air-to-plant movement of dioxins was estimated using constituent-specific biotransfer factors specifically developed for dioxin congeners by EPA's Office of Research and Development (ORD). Plant-to-soil bioconcentration factors were used to account for root uptake of constituents from the soil. The bioconcentration factors for metals were obtained from the assessment conducted for EPA's Standards for the Use or Disposal of Sewage Sludge. EPA recognizes that these biouptake factors were developed based on field studies of sewage sludge application and pertain specifically to sewage sludge. Uptake of metals is particularly sensitive to soil pH and the degree of binding to the sludge matrix. The sewage sludge values may not, therefore, be appropriate for evaluating plant uptake of metals from CKD. The Agency requests comment on whether the use of these biotransfer values is appropriate for assessing risks from agricultural use of CKD. Biotransfer factors not available from the sewage sludge assessment were obtained from the published literature. Empirical correlations were used to estimate transfer of dioxins from the soil to plant tissue using the methodology developed for dioxins by ORD. Metals, dioxin, and furan concentrations in beef and dairy fed on vegetation amended with CKD were estimated using constituent specific beef and milk biotransfer factors available in the literature.

6. Receptor Scenarios and Exposure Pathways

Receptor scenarios evaluated for this assessment include farmer, fisher, home gardener, and child of farmer. Exposure pathways evaluated for each receptor scenario are as follows. For the child of farmer, pathways evaluated include incidental ingestion of contaminated soil, ingestion of plants grown on amended soil and ingestion of products from animals raised on feed from CKD amended fields. Pathways evaluated for the farmer include those evaluated for the child of farmer and, in addition, direct inhalation of vapors and particulates during application of CKD to the field. For the home gardener, pathways include incidental ingestion of contaminated soil and ingestion of plants grown on amended soil. Exposure from ingestion of contaminated fish is evaluated for the fisher receptor scenario. The groundwater exposure pathway (i.e., ingestion of contaminated groundwater) was not evaluated for this analysis based on the results of the previously conducted analyses of risk from storage and disposal of CKD waste. Previous ground-water modeling results indicated limited potential for the transport of constituents bound in a CKD matrix. Although new ground-water modeling indicates that metals, including lead, barium, beryllium, chromium, and cadmium, may be more mobile under highly alkaline conditions, the Agency does not believe these conditions will occur in CKD-amended soils. CKD is added to raise the pH of acidic soils to neutral pHs. A pH range of 6.0–7.2 is optimal for most crops. Highly acidic or highly alkaline soils, on the other hand, have been associated with phytotoxicity and/or nutrient imbalance. Consequently, highly alkaline conditions are unlikely to occur in CKD-amended agricultural soils. Furthermore, the ground-water analyses conducted in support of the Report to Congress and the Regulatory Determination analyzed risks from the storage, management and disposal of CKD. Under neutral pHs, the groundwater risks associated with the management of large volumes of CKD in non-karst areas was estimated to be low. The volume of CKD applied in agricultural soils is far less than the volume typically managed in a disposal unit. Therefore, EPA believes that the risks from the ground-water pathway will be negligible based on the typical pH of CKD-amended soils and the limited volume of CKD applied to soils.

The exposure factors used in this risk analysis are from the Draft 1996 Exposure Factors Handbook. This is one of the first EPA risk assessments to use these factors in either a deterministic or probabilistic analysis. Therefore, the Agency used conservative consumption and exposure distributions in instances where there was uncertainty regarding how the data presented in this document should be used. The Agency specifically requests comment on the exposure factors used in this analysis.

7. Lead Risk Assessment

The human health risk assessment conducted for lead is unique. The primary indicator of exposures to lead is elevated blood lead levels. Therefore, exposure to lead is estimated based on comparison of predicted blood lead level in exposed individuals to a target blood lead level. In addition, evaluation of lead exposure focuses specifically on young children (birth to 7 years of age) because this age group is known to be highly sensitive to lead exposure. Given the unique nature of lead, EPA developed the Integrated Exposure Uptake Biokinetic Model (IEUBK) to evaluate child lead exposure from birth to age 7. EPA used the IEUBK model to assess lead risks from agriculturally applied CKD. This model integrates lead exposures from diet, soil, dust, drinking water, and air and considers elimination of lead from the body to predict blood lead levels. For the CKD agricultural use analysis for lead, estimates of risk to children are determined by comparing total blood lead level estimated by the IEUBK model with a threshold value of 10 μg Pb/dL. Adverse health effects from lead exposure have been observed to occur at or above this level.

For this analysis, blood lead levels were estimated using the default soil intake rates provided in the IEUBK model. Default IEUBK soil ingestion rates differ from those used elsewhere in this analysis to estimate risk from other hazardous constituents in CKD. Soil ingestion rates used for lead are presented in Section 6.0 of the technical background document. Soil ingestion rates used for other constituents are presented in Section 5.0 of the background document. With the exception of soil ingestion rates, EPA used the same model inputs (e.g., constituent concentrations, dietary ingestion rates, application rates) to estimate risks from exposures to both lead and other hazardous constituents in CKD.

8. Ecological Risk and Phytotoxicity

The Agency did not conduct a separate assessment of potential ecological risks or phytotoxic effects posed by use of CKD as a liming agent on agricultural fields. Rather, EPA relied on the assessment conducted by EPA's Office of Water for the Standards for the Use or Disposal of Sewage Sludge (40 CFR Part 503 et al.) as a basis for evaluating potential risks to ecological

receptors and/or toxic effects on plants resulting from land application of CKD. For this analysis, the range of soil concentrations for metals in soil estimated in the CKD risk analysis is compared to the phytotoxicity and soil organism benchmarks reported in the Technical Support Document for Land Application of Sewage Sludge—Volume I (NTIS publication number PB93–110575). Values for ecological benchmarks are only available for 4 constituents in CKD, lead, nickel, chromium, and cadmium. Results of this analysis are provided in the Risk Assessment for Cement Kiln Dust Used as an Agricultural Soil Amendment in the docket for this rule. In summary, a comparison of these ecological benchmarks to the constituent concentrations in CKD amended soil estimated by the CKD risk analysis shows that the CKD soil concentrations are well below these benchmarks in all cases. The Agency requests comment on whether phytotoxicity and ecological risk are adequately addressed by this analysis.

9. Risk Assessment Results

The results of the risk assessment show an estimated high-end individual lifetime cancer risk of $3\times10^{-5}$ due to arsenic and an exceedance of the non-cancer effect threshold or hazard quotient for thallium for a farmer and child of farmer consuming products from animals raised on feed grown on CKD-amended fields. Based on these findings, EPA believes there is a need to establish standards to protect public health and the environment from adverse effects of certain constituents that may be present in CKD used agriculturally.

*C. Approach to Establishing Limiting Concentrations*

1. Risk-based Approach—Proposed Limiting Concentrations for Cadmium, Lead, and Thallium

The Agency used the exposure assessment modeling methodology described above to establish constituent-specific numerical limits for hazardous constituents (metals and chlorinated dioxins and furans) in CKD that is used in lieu of agricultural lime. As a first step, potential human health risks from exposure to hazardous constituents were evaluated for specified exposure scenarios using the constituent concentrations, toxicity data, exposure assumptions, soil property data and fate and transport models outlined in the previous section. The limiting concentrations for individual constituents were then derived using a point estimate approach as follows. All application parameters (rate, frequency, depth of incorporation) were set at constant at high end values (i.e., values that are at the upper end of the distribution of application practices). CKD was assumed to be applied over a period of up to 100 years. The Agency believes this to be a reasonably conservative assumption based on consultation with agricultural experts knowledgeable in the use of soil amendments. All other variables (e.g., exposure parameters) were varied between central tendency and high end values one or two at a time in order to obtain the highest risk value for each hazardous constituent. The highest risk value was then used to back calculate maximum constituent concentrations at which adverse health effects from any single constituent do not exceed a $1\times10^{-5}$ individual lifetime cancer risk or a non-cancer hazard quotient of 1 for any potential human exposure route (e.g., air, food chain, etc.). For lead the maximum constituent concentration was back-calculated based on a target blood lead level of 10 μg Pb/dL.

EPA conservatively assumed a high rate and frequency of CKD application (within the range of application rates and frequencies that are considered to be agronomically viable) to set regulatory limits for hazardous constituents in CKD. The Agency assumed that CKD application will not exceed a high-end rate of 5 tons per acre every 2 years, and that CKD may be applied continually over a period of 100 years. EPA believes these assumptions ensure that limiting concentrations are protective given standard agricultural practices used for application and reasonably expected long term repeated applications of CKD.

Additionally, the Agency believes that establishing concentration limits that are protective at plausible high end application practices will make implementation of regulatory limits less burdensome on both the regulated community and EPA. Use of high end application assumptions allows the Agency to establish a single concentration that is considered to be protective for all reasonably expected application parameters.

As an alternative approach, the Agency could have established limiting concentrations that would vary based on the rate and frequency of CKD application. This approach would have resulted in higher (i.e.,less stringent) cut-off concentrations in some cases, depending on application practices employed. However, under this approach, the Agency would have to impose tracking and recordkeeping requirements as a means of ensuring compliance with limits that would vary based on varying application rates. Such additional requirements would significantly increase the complexity of the proposed regulations and the implementation burden on the regulated community. By using conservative assumptions regarding application practices, the Agency will substantially reduce the recordkeeping burden associated with the implementation of today's proposal. Furthermore, the Agency believes that the constituent concentration limits so established will not unduly restrict the beneficial use of CKD for agricultural purposes (i.e., based on EPA's data, most CKD meets the proposed regulatory cut-off levels). In selecting this approach, the Agency also considered the fact that use of a less conservative methodology (in which application parameters were set at central tendency values) would still result in limits that, while higher or less restrictive, are still exceeded in some CKD for these five constituents. In essence, use of the conservative risk assessment methodology described above to establish maximum regulatory constituent concentrations enables EPA to reduce the recordkeeping and economic burden associated with regulation of agricultural use of CKD but does not result in levels that are so stringent that they prohibit substantial beneficial use of CKD as a substitute for agricultural lime. For these reasons, EPA chose to develop a single set of constituent concentrations that are protective at high-end application rates. The Agency recognizes that this approach represents a trade-off that favors reduction of recordkeeping and reporting burden over establishment of less restrictive standards. The Agency requests comment on the proposed approach.

Today's proposed rule assumes that CKD will be applied at rates needed to attain the required pH adjustment and will not be applied in excess of such rates. Based on consultation with agricultural experts, review of the literature, and considering physical and chemical properties of soil and CKD, EPA believes that application of 5 tons of CKD per acre every 2 years constitutes the maximum rate of agronomically viable application necessary to properly control pH in agricultural soils. Therefore, EPA's analysis assumes that CKD use will not exceed 5 tons per acre every two years. Given the inherent limitations on the amount of CKD that can be applied beneficially for the purpose of pH control, EPA is not proposing to impose

regulatory controls on the agronomically viable application of CKD. However, agronomic use of CKD to control pH in excess of 5 tons of CKD per acre every 2 years will be considered a form of waste disposal subject to RCRA regulation, rather than a legitimate beneficial use exempted under today's proposal.

As previously noted, a comparison between the risk-based limits established by the Agency using the above methodology and the concentrations of hazardous constituents known to be present in CKD indicates that four metals, arsenic, thallium, lead and cadmium, may be present in CKD at levels that pose unacceptable human health risk (adverse health effects in excess of a $1 \times 10^{-5}$ individual lifetime cancer risk or non-cancer hazard quotient of 1 in certain instances). Therefore, EPA is proposing to establish regulatory limits for cadmium, lead, thallium, and arsenic in CKD that is applied to agricultural soil for purposes of pH adjustment. EPA is proposing to use the methodology described above to set protective limiting concentrations for cadmium, lead, and thallium. EPA is proposing to use a different methodology to establish a limit for arsenic, as explained later in this section. The Agency is not proposing limits for those constituents for which maximum concentrations in CKD are below concentrations determined by EPA to be protective of human health.

The proposed risk-based concentration limits for cadmium, lead, and thallium are: 22 mg/kg for cadmium, 1500 mg/kg for lead, and 15 mg/kg for thallium. Under today's proposal, CKD that exceeds the proposed concentration limits for these constituents cannot be used as a liming agent on agricultural soils. Based on EPA's data on the composition of CKD, most CKD meets the risk-based protective levels being proposed for these metals and would therefore not be prohibited from agricultural use based on the proposed limits.

2. Risk-Based Approach—Proposed Limiting Concentration for Chlorinated Dioxins and Furans

The process used for setting risk-based limiting concentrations for chlorinated dioxins and furans (hereafter referred to as dioxins) is similar to that used for metals. However, unlike metals, dioxins are comprised of multiple individual dioxin and furan congeners. Therefore, in order to derive a single limiting concentration for purposes of this regulation, the risks from individual dioxin and furan congeners were estimated using the TEF methodology referenced above (see Section VI.B.2—Human Health Criteria and Effects) and the risks from specific dioxin and furan congeners were summed to produce a single concentration in terms of 2,3,7,8-TCDD toxicity equivalents (TEQ). Based on EPA's risk modeling using the methodology described above, the estimated total indirect cancer risks for the farmer scenario from the average North American soil background concentrations of dioxins in the environment is approximately $1 \times 10^{-5}$. The average TEQ background concentration of dioxin and furan congeners in soil is 8 parts per trillion (ppt).

Therefore, to ensure that agricultural use of CKD does not pose risks from dioxins in excess of a $1 \times 10^{-5}$ individual lifetime cancer risk, EPA used a target soil concentration of 8 ppt TEQ to derive risk-based limiting concentrations of dioxins in CKD. The Agency back-calculated maximum TEQ levels for dioxins in CKD used as a lime substitute that, when mixed with soil, would result in dioxin levels in soil levels at or below 8 ppt TEQ. For this analysis, the distribution of congeners in CKD was assumed to be the same as the congener composition or congener profile of background soil. This is essentially a default assumption because, based on available data on levels and distributions of dioxin congeners in CKD, there is no ''typical'' distribution of dioxin and furan congeners in CKD. Additionally, consistent with the methodology used to develop limiting concentrations for metals, EPA fixed all application parameters at high-end values in setting limiting concentrations for dioxins. In this manner, a limiting TEQ concentration for dioxins in CKD was established so that when CKD is applied at high application rates and frequency, soil concentrations do not exceed 8 ppt TEQ. Assuming high-end application parameters, the maximum TEQ concentration of dioxins in CKD that will result in soil concentrations at or below 8 ppt TEQ was determined to be 0.04 parts per billion (ppb). Based on this analysis, EPA is proposing to set protective limiting concentrations for dioxins in CKD that is used as a liming agent at 0.04 ppb TEQ. Under today's proposal, CKD that exceeds the proposed concentration limit for dioxins cannot be used as a liming agent on agricultural soils. Based on available data on dioxins in CKD, the Agency does not believe that the proposed limiting concentrations will significantly restrict use of CKD as a liming agent. EPA requests comment on the methodology and assumptions used to develop the risk-based limiting concentration for dioxins in CKD that is used as a substitute for agricultural lime.

3. Comparison to Agricultural Lime—Proposed Limiting Concentration for Arsenic

The Agency is not proposing to use the limit derived for arsenic using the risk-based methodology outlined above. Instead, EPA is proposing an alternative limit for arsenic based on arsenic concentrations found in commercially available agricultural liming materials. Total arsenic concentrations in agricultural lime range from < 1 to 13 mg/kg.[38] Based on this information, EPA is proposing a limiting concentration of 13 mg/kg for arsenic in CKD that is applied agriculturally to adjust soil pH.

Use of the risk-based approach results in a cut-off level for arsenic that is below concentrations typically found in agricultural lime and is in fact at or below background concentrations for arsenic in soils in many parts of the country. EPA believes that it is impractical and illogical to prohibit the use of a CKD as a liming agent if it contains levels of arsenic at lower concentrations than agricultural lime because such use would not increase any risks faced by anyone who uses CKD as a substitute for agricultural lime.

Agricultural limestone (aglime) is finely pulverized, naturally occurring, relatively pure limestone or dolomitic limestone. Aglime is added to agricultural soils to maintain optimum pH for crop production and is needed to offset the effects of fertilizers that lower soil pH. Aglimes are produced and sold throughout the United States. States typically regulate aglime by setting standards for minimum calcium carbonate equivalent and particle size but not for other properties such as metal concentrations. Since CKD is used as a substitute for aglime (i.e., it is used to control pH for production of crops), EPA is proposing to use arsenic levels typically found in agricultural lime as a basis for setting a regulatory limit for arsenic in CKD that is used in lieu of agricultural lime. The Agency believes that this approach provides a practical, common sense means of minimizing the risk from arsenic used as an agricultural liming agent. The alternative would be

[38] Kanare, H.M., 1997 Comparison of Trace Metal Concentrations in Cement Kiln Dust, Agricultural Limestone, Sewage Sludge, and Soil. Report to the American Portland Cement Alliance by Construction Technology Laboratories, Inc., Skokie, Illinois. 15p.

to effectively preclude the use of CKD as a liming agent without any reduction in environmental risk. The Agency requests comment on its proposed approach for setting regulatory limits for arsenic in CKD that is used as a substitute for agricultural lime. EPA also requests comment on whether it should consider setting limits for arsenic that are based on existing background concentrations of arsenic in areas where the CKD is applied.

4. Peer Review of the Risk Assessment

An external peer review of the agricultural use risk analysis and the methodology used to establish protective constituent concentration was conducted prior to publication of today's rule. The peer review was conducted by the United States Department of Agriculture's W–170 Committee, which is comprised of nationally known experts on agricultural use of soil amendments. Unfortunately, the Agency did not have time to revise the assessment based on peer review comments prior to publication of the CKD proposal. The committee's review is available in the docket for this rule for public review and comment. The Agency also requests public comments on all aspects of the risk assessment including the pathways evaluated, exposure assumptions, assumptions used regarding agricultural practices, etc.; and on all aspects of the methodology used to establish protective levels for hazardous constituents in CKD used agriculturally. EPA anticipates undertaking revisions to the risk assessment based on recommendations received through the peer review process as well as comments received from the public. The Agency also requests information on other existing and/or potential agricultural uses of CKD that may need to be evaluated. EPA requests comment on whether CKD used for other agricultural purposes should be subject to the same standards as those proposed for CKD used as an agricultural liming agent.

*D. Implementation of Controls for the Agricultural Use of CKD*

In today's proposed rule, § 259.17 defines agricultural use of cement kiln dust as use of CKD as an agricultural lime substitute for the purpose of amending the soil to optimize pH or to promote the growth of crops or other foodstuffs. The Agency restricts this definition of use to CKD produced for use by the general public and not for the exclusive use of the owner or operator of the facility which generates the CKD waste. EPA believes that when an owner or operator applies CKD solely to his own land, the practice is actually disposal.

The Agency intends to ensure there is a high degree of confidence that any CKD sold for purposes as an agricultural lime substitute complies with today's proposed standards. Therefore, today's rule also proposes that for CKD sold for agricultural use, the persons managing CKD waste (e.g., the owner or operator of the facility which generated the waste) shall place in the operating record a notation listing the amount of CKD shipped as an agricultural lime substitute and a letter of certification signed by a company representative verifying compliance with the limiting concentrations specified under §§ 259.17(a) and (b). In today's rule, EPA is not proposing to impose regulatory limits or recordkeeping requirements on the rate and frequency of application of CKD used as an agricultural lime substitute because the Agency believes that today's proposed standards are protective across the range of anticipated, agronomically viable application parameters.

Today's rule also proposes that CKD destined for agricultural use be sampled and analyzed by the person managing the CKD waste whenever such CKD waste is destined for shipment. Such CKD waste must be tested prior to shipment to determine whether it has concentrations of toxic constituents in excess of the limiting concentrations proposed in § 259.17(a). EPA believes that CKD waste destined for agricultural use must be analyzed prior to shipment for the person managing the CKD waste to determine whether or not such waste can be used for pH adjustment. The Agency is not specifying a sampling frequency in today's proposed rule. If the sampling frequency is less often than on a daily basis, however, and subsequent analysis determines that the CKD fails the test, then the Agency considers that all CKD transported for agricultural use since the previous successful analysis to have been mismanaged, and, therefore, would be hazardous waste absent documentation otherwise.

*E. Alternative Standard to Limit Chlorinated Dioxins and Furans in CKD*

As part of EPA's development of air emission standards for the Portland cement industry, the Agency has proposed operational and monitoring methods for cement kilns that burn hazardous waste (see 61 FR 17358, Hazardous Waste Combustors; Revised Standards; Proposed Rule, April 19, 1996 and 62 FR 24226, Revised Technical Standards for Hazardous Waste Combustion Facilities; Proposed Rule, May 2, 1997) and standards for hazardous air pollutants for cement kilns that do not burn hazardous waste (see 63 FR 14182, March 24, 1998, National Emission Standards for Hazardous Air Pollutants; Proposed Standards for Hazardous Air Pollutants Emissions for the Portland Cement Manufacturing Industry). These standards for air emissions include uniform technology-based standards for chlorinated dioxins and furans, and reflect the performance of Maximum Achievable Control Technologies (MACT) as specified under the Clean Air Act.

To limit the emission of these compounds, EPA has proposed in both rules a baseline air emission level for all cement kilns of 0.20 ng TEQ/dscm of chlorinated dioxins and furans, or 0.4 ng TEQ/dscm, and temperature at the inlet to the air pollution control device of less than or equal to 400°F. The Agency believes temperature control to 400°F or lower is an appropriate baseline control at the air pollution control device because: (1) The optimum temperature window for surface-catalyzed formation of chlorinated dioxins and furans is 450–750°F; and (2) Below 350°F, kiln gas can fall below the dew point which can increase corrosion in ESPs and fabric filters and reduce performance of the air pollution control devices. Available air emissions data from cement kilns show all but one data point of dioxins and furans at or below 0.2 ng TEQ/dscm at the air pollution control device when operating the device at temperatures less than or equal to 400°F. Thus, EPA believes a standard of 0.20 ng TEQ/dscm, or 0.4 ng TEQ/dscm and temperature at the inlet to the air pollution control device of less than or equal to 400°F is both reasonable and readily achievable.

The Agency solicits comment regarding whether the emission standards for dioxins and furans proposed for the cement industry are adequate to control the formation of dioxins and furans on CKD destined for agricultural use, and consequently whether dioxin and furan standards for CKD used for agricultural purposes are necessary.

## VII. Relationships Between This Action and Other Regulatory Programs

*A. Stormwater Regulations*

As stated in its Regulatory Determination, the Clean Water Act, through existing effluent limitations guidelines, NPDES permits, water quality standards, and existing storm

water permits, provides considerable authority to control risks associated with the contamination of surface waters by the management of CKD. EPA's multisector stormwater general permit under the National Pollutant Discharge Elimination System (NPDES) program (see 60 FR 50804, September 29, 1995) contains limits to control effluent discharges specific to the cement industry (among other industries) and requires each plant to develop facility-specific pollution prevention plans and demonstrate best management practices (BMPs) to minimize the contact between storm water runoff and CKD or other pollutant sources, or else remove CKD (or other constituents) before the stormwater is discharged. These permits will be in addition to previously issued and effective storm water baseline general permits that were issued in 1992 by EPA and between 1991 and 1993 by the 40 States with authorized NPDES programs. The Agency believes that once the storm water permits are fully implemented, no further water permits or regulations will be needed to address CKD releases to surface water.

*B. Clean Air Act*

On the Federal level, air quality has been improved through implementation of controls on releases of CKD through kiln stacks and via fugitive dust emissions. Under the New Source Performance Standards (NSPS) for cement plants, a facility must comply with specific emission limitations for particulate matter. Prevention of Significant Deterioration (PSD) review also is required before a cement plant can be built in a geographic area that is classified as an attainment area. In addition, cement plants are subject to Nonattainment Review if they are located in an air quality control area that is not in compliance with the National Ambient Air Quality Standards (NAAQS) for a given pollutant (e.g., particulate matter or sulfur dioxide). Today's proposed rule augments regulations applicable to cement manufacturing facilities that have been issued under Clean Air Act mandates by addressing fugitive emissions from CKD storage areas, transportation, and disposal sites.

The NSPS for Portland cement plants in 40 CFR part 60, subpart F apply to plants that were constructed or modified after August 17, 1971.[39] Components of cement plants (referred to as ''facilities'') specifically affected are kilns, clinker coolers, raw mill systems, finish mill systems, raw mill dryers, raw material storage facilities, clinker storage facilities, finished product storage facilities, conveyor transfer points, and bagging and bulk-loading and unloading systems. For these plants, EPA has established performance standards that reflect the degree of emission limitation achievable through application of the best available control technology.[40]

In accordance with the NSPS, no Portland cement plant owner or operator may cause an affected facility to exceed the particulate matter emission limits. Owners or operators must monitor each kiln and clinker cooler stack using a continuous opacity monitoring (COM) system (or a certified visible emissions observer when a COM is not technically feasible). In all cases, each owner or operator must submit semi-annual reports of excess emissions, defined as all 6-minute periods during which the average opacity exceeds the standard, and of equipment malfunctions. The emission standards for these facilities are listed in of 40 CFR part 60, subpart F (Standards of Performance for Portland Cement Plants). In addition, owners or operators must record daily production rates and kiln feed rates and monitor the opacity of emissions.

The 1990 Clean Air Act Amendments established a program to regulate emissions of 189 toxic air pollutants through technology-based standards (the National Emission Standards for Hazardous Air Pollutants (NESHAPs)).[41] EPA is currently developing NESHAPs for Portland cement plants that will address stack emissions and fugitive emissions for the same facilities as listed under the NSPS. The NESHAPs, however, will not apply to transportation, storage, or disposal of CKD. Fugitive emissions from CKD landfills, trucks and storage piles are subject to today's proposed rule.

In its 1995 Regulatory Determination, EPA stated that it would use as appropriate the various authorities under the Clean Air Act to improve regulations for CKD to limit releases to the air (61 FR 7375, February 7, 1995). EPA did consider the use of its authorities under the Clean Air Act in its rulemaking approach to address the air pathway of potential contaminant release. However, existing Clean Air Act regulations do not fully address emissions from CKD piles. Accordingly, EPA is proposing to establish RCRA requirements to address emissions from transportation, storage, and disposal of CKD. To this extent, EPA is proposing to modify the conclusions of the 1995 Regulatory Determination, and solicits comment on that change. However, the Agency is not reversing the 1995 CKD Regulatory Determination entirely. EPA will continue to rely on its authorities under the Clean Air Act to control CKD emissions from stacks and pollution control devices (e.g., electrostatic precipitators and baghouses). Subsequent examination, however, revealed that current implementation of these authorities, do not specifically address CKD waste management.

Particulate emissions from cement manufacturing facilities are potentially subject to requirements adopted as part of a State Implementation Plan (SIP), adopted by States in order to achieve or maintain attainment of the NAAQS for PM, which are national standards applicable on a regional area basis.[42] However, SIPs do not routinely address emissions from landfills and storage piles and, thus, would likely not prevent local $PM_{10}$ exceedances such as could result from fugitive CKD emissions. EPA believes that the risks from fugitive CKD from landfills, piles, and transportation, warrants control. Accordingly, EPA is today proposing to establish air emission requirements for CKD under its RCRA authorities.

As mentioned earlier, cement kilns that burn hazardous waste currently are regulated under RCRA, and implementing regulations found at 40 CFR Part 266, Subpart H. The Clean Air Act Amendments of 1990 require EPA to develop technology-based emission standards for sources listed by the Agency, including cement manufacturing plants. In April 1996, the Agency proposed revised stack emission standards and controls for cement kilns that burn hazardous waste. This proposal, which the Agency anticipates finalizing in late 1998, will require cement kilns to control stack emissions of mercury and dioxins and furans, as well as other hazardous air pollutants. The new emission standards, however, will not apply to transportation, storage, or disposal of CKD.

EPA believes that today's proposed rule will improve air quality and reduce health risks at and near CKD

[39] A ''modification'' is any physical or operational change to an existing facility that results in an increase in the emission rate of any air pollutant to which the standard applies.

[40] ''Best Available Control Technology'' (BACT) is defined as the best system of emission reduction determined by EPA to have been adequately demonstrated.

[41] 42 U.S.C. 7412(b)(1); The Act lists 189 pollutants, but the Agency has since delisted one.

[42] Under the revised NAAQS for particulate matter, States which currently are in attainment regarding existing PM standards must submit to EPA for approval a new SIP which meets newly adopted standards for PM (See 62 FR 38651, July 18, 1997).

management units by reducing fugitive emissions of CKD from these facilities.

## VIII. State Authority

### *A. Statutory Authority*

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) After receiving authorization, the State has primary enforcement responsibility, although EPA retains enforcement authority under RCRA sections 3007, 3008(a)(2), 3013, and 7003.

As mentioned above, although the Part 259 standards proposed today would likely be adopted as a matter of State law, Federal inspection authority would still be available for facilities regulated under those standards. Because significant violations of the standards would result in CKD being considered mismanaged and, therefore, hazardous waste, EPA (as well as State RCRA Subtitle C programs) would have authority to inspect such facilities to determine whether they were handling hazardous waste (i.e., mismanaged CKD waste). If the person managing CKD waste is managing CKD inconsistently or in a manner that does not comply with the Part 259 standards, it would be subject to Federal enforcement under regulations proposed today in § 261.4(8)(ii), to compel compliance with RCRA Subtitle C requirements proposed today in Part 266.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities located in a State with permitting authorization. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent and no less stringent authority within specified time frames. These new Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law and received authorization to implement the new requirements.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time as they do in unauthorized States, if the new requirements are more stringent than the previous requirements. EPA implements these new requirements until the State is authorized for them.

Authorized States are required to modify their programs only when EPA promulgates Federal standards that are more stringent than existing Federal standards. Section 3009 of RCRA allows States to impose standards more stringent than those in the Federal program (see 40 CFR 271.1(I)). Federal (both HSWA and pre-HSWA) regulations that are considered less stringent are optional for the authorized States to adopt, and do not go into effect in authorized States until those States adopt them and are authorized to implement them.

### *B. Effect of Today's Proposed Rule*

The RCRA sections of today's proposal are promulgated in part pursuant to pre-HSWA, and in part pursuant to HSWA. Pursuant to pre-HSWA authority, the proposal modifies the rule exempting CKD from hazardous waste regulation under § 261.4(b)(8), exempts from Subtitle C CKD that is either (a) managed in accordance with certain standards, or recycled or used for certain other beneficial purposes (§ 261.4(b)(8)), and lists as hazardous waste CKD that is not managed in compliance with the proposed standards. The proposal also includes tailored Subtitle C regulations for nonexempt CKD (noncharacteristic CKD and characteristic CKD from kilns burning non-hazardous waste which do not meet the proposed management standards) under Subpart I of 40 CFR Part 266. Characteristic CKD from kilns burning hazardous waste is not affected by this proposed rule and still is subject to full RCRA Subtitle C requirements as set forth in 40 CFR 266.112. The tailored Subtitle C standards are promulgated in part based on EPA's general pre-HSWA authority to set management standards for facilities that manage hazardous waste, and in part on the authority in section 3004(x), a HSWA provision, to modify certain requirements that would otherwise apply to any hazardous waste.

The portion of this proposal that lists nonexempt CKD as hazardous waste is more stringent than the current Federal requirements. Section 271.21(e)(2) of EPA's State authorization regulations (40 CFR Part 271) requires that States with final authorization modify their programs to reflect Federal program changes and submit the modifications to EPA for approval. The States must modify their programs and obtain authorization to include CKD requirements that are equivalent and not less stringent than the EPA's requirements for CKD. The procedures and time frames for State program modifications are described in 40 CFR 271.21. The deadline by which the States must modify their programs to adopt this proposed regulation, if it is adopted as a final rule, will be determined by the date of promulgation of the final rule in accordance with § 271.21(e)(2). Once EPA approves the modification, the State requirements become RCRA Subtitle C requirements.

Because the tailored regulations promulgated under both pre-HSWA and HSWA authorities are less stringent than full RCRA Subtitle C, States are not required to adopt the tailored regulations. While HSWA aspects of a rule usually become effective immediately, the only effect of the tailored regulations here is to relax full RCRA Subtitle C requirements for CKD failing to meet management standards in States authorized to regulate CKD. The flexibility provided by these tailored regulations is irrelevant until the States revise their programs and become authorized to regulate CKD.

Although the States do not have to adopt the tailored regulations proposed today under Part 259, EPA strongly encourages States to do so. The tailored regulations would contribute to more efficient State programs because they minimize the cost of compliance while providing sufficient protection of human health and the environment.

States seeking authorization under Subtitle C do not have to adopt new laws and regulations before submitting their authorization package to EPA for approval. States may use their existing laws and regulations, such as their solid waste laws,[43] as long as those laws and regulations cover all of the required elements for regulating CKD as part of the RCRA Subtitle C program.

## IX. Regulatory Requirements

### *A. Regulatory Impact Analysis Pursuant to Executive Order 12866*

Under Executive Order No. 12866 (58 FR 51735, October 4, 1993), EPA must determine whether a regulatory action is ''significant.'' The Order defines a ''significant'' regulatory action as one that ''* * * is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the

[43] Because the listing of mismanaged CKD is more stringent than the current Federal hazardous waste regulations, States with base authorization must revise their Subtitle C program and seek authorization for the CKD listing. However, although the States can use their existing solid waste laws to comply with the requirements for the regulation of CKD, States are not required to seek plan approval for a CKD program under Subtitle D.

environment, public health or safety, or State, local, or tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.''

Pursuant to the terms of Executive Order 12866, the Agency has determined that this rule is a significant regulatory action because it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Changes made in response to OMB suggestions or recommendations are documented in the public record and are available in the docket for this rule. Although today's rule is expected to affect the economy by substantially less than $100 million per year, the Agency conducted a relatively detailed cost and impact study to evaluate the effects of the rule on the U.S. Portland cement industry and the economy.

1. Scope and Approach for Estimating Economic Costs and Impacts

As described in Section III.G. (Today's Approach—Exclude Properly Managed CKD From Hazardous Waste Listing) of this preamble, today's proposed rule calls for a flexible approach to managing land-disposed CKD, a policy tailored to site-specific cement plant, climate, and geophysical conditions. In this context, the Agency has attempted to estimate, individually for each plant, the changes in management practices that might be required to meet the performance-based objectives of the proposed policy, and then to estimate the costs for carrying out these changes. This requires: first, a reasonably detailed understanding of current ''baseline'' CKD waste generation and management practices; second, a means of simulating likely plant-specific practice changes; and third, an approach to estimate the costs of the projected changes.

a. The Regulatory Baseline

There are currently 110 Portland cement plants in the United States and Puerto Rico. Based on previous work for the Report to Congress and Regulatory Determination, the Agency had acquired an extensive data base on general cement plant characteristics, CKD generation and management practices, and locational circumstances. General plant-specific data on the types, location, and capacity of cement plants is cataloged and updated annually by the American Portland Cement Association (APCA). In addition, the APCA conducted a detailed industry survey of plant CKD generation and management practices for the year 1995, and information from this survey, together with follow-up information from member companies of the Non-Hazardous Burner CKD Coalition, was used to update and expand the Agency's facility-specific data base on waste generation. Thus, the combined 1990 and 1995 survey data on CKD generation and disposition was available for 108 of the 110 cement plants in the cost study.

The 1995 baseline survey results indicated that 24 of the 110 plants (22%) recycle all collected dust back to the kiln, and an additional 12 plants (11%) reported shipping all generated dust off-site for beneficial use. For the present impact analysis, the Agency thus defined the potentially affected cement plant universe to include the remaining two-thirds of the plants, i.e., the 74 facilities currently disposing of CKD on-site, with a combined annual CKD land-disposal requirement of 3.3 million metric tons in 1995.[44] These facilities employ on-site disposal for CKD quantities ranging from less than 1,000 metric tons per year up to more than 200,000 tons per year. It is also possible that some off-site CKD market changes could result from the proposed policy, thus altering CKD disposal requirements for individual plants. This possibility is discussed further below.

With respect to baseline management practices at individual plants, the Agency had to rely primarily on the earlier 1990 survey information where available, or to assume typical baseline practices for many plants based on APCA-provided summaries of industry-wide 1995 survey information which characterized the general distribution of typical current practices but not plant-specific information. Based on available information, EPA then categorized each of the 74 potentially affected plants into one of nine prototype baseline groups for purposes of estimating baseline CKD management costs. The nine baseline groups differed according to three generic types of disposal configuration (placement in a quarry, land pile, or combination in-ground and land pile) and three degrees of engineering and operational complexity (''low,'' ''medium,'' or ''high''), depending on the types and degrees of release-prevention practices employed.

b. Projecting Plant-Level Compliance Responses

Under a tailored management policy, the new compliance requirements for individual cement plants could vary substantially from State to State, depending on current baseline regulations, or from plant to plant even within a given State, depending on plant-specific waste quantities and management practices and local geological conditions. Thus, some plants will require little or no change in present practices while others may require an extreme change from essentially simple open dumping of their CKD up to and including an engineered land disposal design equivalent to the Federal municipal solid waste landfill technical standards. In rare situations, plants with no available on-site landfill space or plants located in areas of highly adverse geological conditions may be required to dispose of CKD in off-site municipal or approved industrial landfills.

For purposes of simulating plant-specific compliance responses under these highly variable and in many cases uncertain conditions, the Agency made the simplifying assumption that the final compliance outcome for each plant would fall into one of four compliance groups or scenarios. Three compliance designs varied primarily by degree of control measure required to meet the regulatory performance criteria. A ''CKD Low'' design requiring relatively simple but comprehensive measures for controlling releases to the air, ground water and surface water, could be satisfactory, for example, under local conditions with high depth to ground water and low rainfall. A ''CKD High'' design, employing a more extensive liner and closure-cover configuration, was assumed as an intermediate design to limit or prevent infiltration of leachate. The most extensive design is the ''Subtitle D Default,'' equivalent to the municipal landfill default requirement defined by today's rule. All three of these designs were costed in a mono-pile configuration as the least-costly available option. As a fourth generic option for cost-estimating purposes, the Agency estimated off-site disposal in a commercial landfill certified for contaminated media to accommodate facilities with inadequate landfill space or extremely adverse environmental locations that might preclude continued on-site disposal.

In assigning each of the 74 plants to one of these four compliance options, the Agency applied judgements based

[44] A small number of additional facilities could be affected if they were to loose off-site markets for CKD due to the Agency's proposed standards for use as an agricultural lime substitute.

on general knowledge and primarily public information regarding local geological conditions that would affect the need for groundwater protection. In addition, two specifically conservative assumptions affecting compliance costs were employed. The first assumed that disposal in quarries would not be allowed; the second assumed that in situations where karst terrain underlies a potential on-site land disposal location, the most extensive Subtitle D default design would be required for compliance. Since most baseline disposal is in quarries and a majority of cement plants are located over karst conditions, these assumptions will tend to overstate the degree of change required and the Agency's estimated cost of compliance for some fraction of the plants.

c. The Cost and Impacts Models

To estimate individual plant CKD disposal costs for both baseline and compliance scenarios, EPA adapted and updated the engineering costing model originally developed for the municipal landfill regulatory impact assessment. Essentially, the revised model sizes, designs, and calculates the capital and operating costs for specified land disposal options, including quarries, monopiles, and combination landfill/pile alternatives, and a wide variety of possible leachate and air emission release/control technologies, during the active-life, closure, and post-closure project phases. To estimate the costs of complying with today's rule, CKD management costs were estimated twice for each plant, first for the chosen baseline practice and then for the projected compliance design. The difference in cost between the two estimates is the Agency's incremental compliance cost estimate for each plant, the results of which are summarized below.

Additional details regarding the study design, baseline data, and engineering and costing assumptions for the study, as well as the estimated baseline costs and compliance costs for each of the 110 Portland cement plants, are presented in the technical background document titled Compliance Cost Estimates for the Proposed Land Management Regulation of Cement Kiln Dust (April 10, 1998) located in the RIC docket for today's rule.

In a second phase of the economic impact assessment, the Agency employed a Portland cement industry market impacts model designed to project regional cement price changes, plant capacity use changes, kiln closures, and shifts in international shipments. This industry or market-level impacts model was originally developed by the Agency's Office of Air Quality Planning and Standards for use in assessing cement industry impacts of proposed national emission standards for hazardous air pollutants. The methodology for estimating cement industry impacts, together with the results for 20 cement marketing regions and the United States as a whole, is contained in the document titled Regulatory Impact Analysis of the Cement Kiln Dust Rulemaking (June 1998) located in the RIC docket for this rule.

2. Summary of Cost and Impact Results

a. Nationwide Compliance Costs

Using the methods and data described above, the Agency estimates that today's rule would require incremental compliance costs for the Portland cement industry of about $44 million per year. These cost increases would initially fall on 68 of the 110 U.S. and Puerto Rican plants that currently manage CKD on site. Thirty-six of the remaining 42 plants would not have to undergo changes in management practices, either because they can recycle all collected dust back to the kiln or because they have off-site markets for all generated dust. In the case of the six remaining plants—all with small CKD quantities—the Agency estimates that off-site Subtitle D landfill disposal could be obtained at costs approximately at or below their current baseline costs. For the 68 negatively-affected plants, the average added cost per plant would be approximately $646,000 per year, or just over $13 per metric ton of CKD. For these 68 plants, estimated annual compliance costs ranged from under $100 thousand to over $3.5 million per year. Relative to its annual value of cement sales, the average affected plant would face additional costs of just under two percent of sales revenues.

Due to the wide variability in plant capacities, net CKD-to-clinker ratios, and required management practice changes, these costs would fall very unevenly among plants in the industry. The following table summarizes the distribution of costs across all plants in the industry, expressed as the percentage ratio of incremental compliance cost to annual Portland cement sales revenues at 1995 prices and capacity utilization levels.

TABLE 3.—INDUSTRY DISTRIBUTION OF COST AS A PERCENT OF SALES

| $Cost/$sales | Number of plants | Percent of plants | Cumulative percent |
|---|---|---|---|
| Zero Cost or Cost reduction | 42 | 38 | 38 |
| >0 to 1% | 29 | 26 | 64 |
| >1 to 2% | 19 | 17 | 82 |
| >2 to 3% | 9 | 8 | 89 |
| >3 to 4% | 4 | 4 | 94 |
| >4 to 7% | 7 | 6 | 100 |
| Total | 110 | 100% | |

Although costs for individual plants may be either over-or understated, for various reasons the Agency believes that the pattern of compliance costs estimated here represents a ''high end'' projection for the industry as a whole. First, due to a lack of detailed site-specific geophysical data, the default assumption was made that any plant currently disposing of dust in a quarry would no longer be able to continue managing in the quarry. In reality, the proposed rule would only apply, on a site-specific basis, to management in a quarry where the natural (unpumped) ground-water level would lie above the base of the disposal area. Similarly, for plants located in areas of karst terrain (based on generally available regional geological mapping), the default assumption was made that all such plants would need to utilize a full municipal solid waste landfill default design, the most costly compliance option. In practice, many such plants may face less expensive compliance designs based on more detailed local

knowledge of the existence and hydrology of the underlying karst topography. Since a substantial majority of potentially affected cement plants fall into one or both of these categories, the assumed compliance option for purposes of the costing study was biased towards the high-end engineering design. In a few instances, it appeared from available information that no on-site option might be viable. In another respect, the Agency's costs are also biased upwards due the fact that plant-specific data on current management practices was lacking for most plants and, as noted above, reliance was placed primarily on information from a 1990 survey. Some States have been actively regulating CKD placement in the interim, or are in the process of actively upgrading disposal regulations. Thus, EPA's outdated information on baseline practices for those plants means that, for an unknown but not insignificant number of plants, the incremental compliance costs will have been overstated in this analysis because several of these plants would already have become partially or substantially in compliance with the performance standards being proposed today.

b. Economic Impacts

The second phase of industry cost and impact assessment employed a Portland cement industry impacts model to project regional cement market shifts and impacts that could be expected to result from the estimated pattern of individual plant-level compliance cost increases. In general, a major part of the compliance cost burden will be shifted to cement consumers (in both the private and public sectors) in the form of higher prices for construction goods and to government in the form of somewhat reduced corporate taxes. The remaining burden will be born by that segment of the industry most directly affected by the highest compliance costs. On average, cement industry profits will be reduced, at least for some period of time, but several plants and firms—those with little or no compliance cost burden—will see higher capacity utilization and profits due to the upward shift in regional prices brought about by the shifting of costs by affected plants.

Based on this model, which projects intermediate term effects but does not account for longer term technology innovation or new capacity expansions at lower cost units, the Agency estimated the following cement market effects from the proposed rule.

*Cement Prices.* Nationally, cement prices are projected to increase over their 1995 baseline by less than one dollar per metric ton, or about 1.3 percent. Regionally, price increases would range from about 1.1 to 3.8 percent across the twenty cement market regions of the country.

*Cement Capacity and Production Changes.* Five to seven kiln closures, including one possible plant closure, could result from today's rule. All told, these capacity reductions together with net capacity utilization changes in each region, associated with or in response to the market price increases noted above, could result in domestic output reductions of about 2.6 percent of the 1995 baseline production on a national basis.

*Cement Imports.* Price increases by affected domestic cement producers will be tempered by increased foreign imports, which are projected to increase by over 800 thousand metric tons (6.2 percent).

*Employment Effects.* Nationally, employment reductions in the primary cement industry equivalent to about 500 full-time jobs would be associated with the production changes noted above.

Again, it bears emphasis that the Agency believes these impact estimates to be high end estimates, both because of the default assumptions employed in the plant-level engineering cost estimates themselves and because the market impacts model does not account for longer-term industry responses to the initial compliance cost effects.

3. Benefits of the Rulemaking

The Agency has undertaken several efforts to estimate the impacts from the baseline management of CKD and, thus, identify the benefits from today's rule. In support of the Report to Congress on Cement Kiln Dust and the Regulatory Determination, the Agency performed an individual risk analysis to determine whether current CKD management practices may impact nearby individuals, including highly exposed individuals (e.g., subsistence farming). For today's proposed rulemaking, the Agency built upon the previous individual risk analysis to estimate population-level impacts associated with current management practices (see Section II.C.4.a.—Population Risks). The Agency also conducted a screening level analysis to determine whether current management practices may result in effects to ecological receptors. The Agency, however, has not quantitatively assessed how the proposed standards will reduce the human health, ecological, and other damages associated with current CKD management. For the purposes of this analysis, an upper-bound estimate of the benefits provided by this rule is to assume that all of the impacts described below are avoided.

For the 1993 Report to Congress and 1995 Regulatory Determination, the Agency modeled individual risks from direct and indirect pathways for 83 plants. The Agency concluded that the risks from direct pathways (i.e., drinking water ingestion, incidental ingestion, and chemical inhalation) were low or negligible. The Agency caveated these conclusions by noting that (1) about half of the plants are underlain by limestone formations in areas of karst landscape and may be susceptible to fissures and hydraulic characteristics that allow leachate to directly enter groundwater without dilution or attenuation and cannot be modeled with current techniques; (2) empirical evidence indicated groundwater contamination in areas of both karst and non-karst terrain; and (3) modeling results for fine particulate emissions for 28 cement plants out of 52 modeled may have exceedances of NAAQS at plant boundaries and may result in risks from fine particulate inhalation at nearby residences. Today's proposed rule addresses each of these areas and should result in the avoidance of these individual-level impacts. For the indirect pathways, the Agency concluded that releases from about 12 percent of the 83 plants studied may result in cancer risks greater than $1\times10^{-5}$ for highly exposed individuals (i.e., subsistence fishers and subsistence farmers). Similarly, the Agency concluded that releases from about 12 percent of the 83 plants may result in noncancer hazard ratios greater than 1.0 for highly exposed individuals. Today's proposed action should help prevent these risks to highly exposed individuals.

As described in Section II.C.4.a.—Population Risks, the Agency expanded the individual risk assessment conducted for the 1993 Report to Congress and 1995 Regulatory Determination to evaluate population-level risks. Based on this expanded analysis, the proposed rule may result in a reduced risk of 0.0004 to 0.003 cancer cases per year (best estimate—0.0006) and 29 to 315 fewer persons (best estimate—43) exposed to potential non-cancer health effects due to food chain exposures (i.e., vegetables, beef, and/or milk) to ''backyard'' gardeners and subsistence farmers. In addition, the population analysis indicated that between 669 and 5,895 recreational fishers (best estimate—999) would avoid exposure to contaminant levels that may result in noncancer health effects. The population analysis indicated that 18 to 4,118 individuals (best estimate—2,378)

would avoid exposure to particulate matter in excess of the NAAQS.

As described in Section II.C.4.b.—Additional Ground-water Modeling, the Agency conducted additional groundwater analyses to determine whether the high alkalinity leachate associated with CKD may result in elevated groundwater concentrations of constituents of concern. The analysis indicated that the highly alkaline nature of CKD leachate resulted in elevated levels of lead, chromium, and cadmium in the groundwater and suggested that beryllium and barium also may be more mobile in CKD leachate. The analysis also indicated that all of these metals were more likely to be transported to the groundwater. Thus, today's action should help prevent contaminated CKD leachate from impacting groundwater resources.

The proposed rule will provide other benefits that have not been estimated quantitatively, but can be qualitatively described. These include protecting groundwater resources near cement plants, including resources located in areas of karst terrain; preventing the corrosion of water distribution pipes by source waters with pHs elevated by CKD leachate; and protecting ecological receptors from adverse effects resulting from the atmospheric deposition and groundwater discharge of CKD.

*B. Regulatory Flexibility Analysis*

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant adverse economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains EPA's determination.

1. Identification of Small Cement Companies

The Small Business Administration (SBA) has defined small companies in the Portland cement industry to include independent companies with less than 750 employees. At the time of the CKD Regulatory Determination, the Agency had identified and published a list of possible small cement companies based on initial research in Dun and Bradstreet and similar corporate business publications. Subsequently, both the APCA and the Non-Hazwaste Burner CKD Coalition reviewed this initial list and provided changes based on their own research and consultations with member companies. This resulted in a mutually agreed-upon list of eight small U.S. cement companies, each operating a single plant, in an industry comprised of 42 companies operating 110 plants in the U.S. and Puerto Rico.

2. Outreach

In addition to working with industry groups to identify small cement companies, in July 1997 the Agency sent a letter to the president of each of the eight small companies explaining the SBREFA process, outlining several possible CKD regulatory approaches, and requesting comments and suggestions regarding these options. In addition, those small companies that had not previously responded to the 1995 APCA CKD generation and management practices survey were urged to return a completed APCA questionnaire to EPA to facilitate a more realistic cost and impact assessment. In response, all eight companies either returned their comments and questionnaires directly or provided their input indirectly through the Non-Hazwaste Burner CKD Coalition. In addition, six of the companies presented their own estimates of compliance costs for the most stringent of the EPA regulatory options. The Coalition subsequently presented SBREFA policy arguments and recommendations to the OSWER Deputy Assistant Administrator.

3. The Agency's RFA Screening Analysis

Based on the APCA Survey responses and the cost analysis described previously, the Agency completed plant-specific compliance cost estimates for each of the eight small companies. Where relevant for individual plants, major compliance costs included engineered land disposal units with ground water monitoring, pelletizing and compaction of the CKD, closure and post-closure management for disposal units, and covers on trucks and the watering of plant roads to control airborne dust. The Agency did not include costs for storage sheds and silos that might be required at some plants for controlling dust that could be blown from CKD stored prior to shipment for off-site use. If needed, the cost of such temporary storage units should be relatively modest, under $10,000 per year on an annualized basis. In summary, for the eight small companies:

- Four would not be negatively affected (unless they were to lose off-site CKD markets).
- Three would have incremental compliance costs as a percent of baseline sales between 0.3% and 1.0%.
- One small-company would have costs greater than 1.0%, but still less than 2% of baseline sales.

As noted, six of the eight small companies also compiled and presented independent cost estimates in response to EPA's letter requesting comments on alternative regulatory approaches. The companies' worst case incremental compliance cost projections were somewhat higher than EPA's estimates, with one company under one percent of sales, four in the one-to-two percent range, and one between three and four percent. The greatest part of the difference between these and the EPA's estimates stems from the companies' assumption that all of the five small companies that presently market CKD for off-site uses would lose their entire off-site CKD markets as a result of the rule. This assumption is particularly critical for three of the six plants that currently ship all of their CKD to off-site uses. In addition, the companies' projections also assumed the worst-case: that full municipal solid waste landfill design standards would be required, rather than the site specific control measures, tailored to local conditions, which are proposed in today's rule. On this basis, the companies' estimates projected an implicit compliance cost distribution in which at least four of the six companies would have costs between one and two percent of sales revenue, and one would see costs in excess of three percent.

While this double worst-case combination can not unequivocally be ruled out for each and every small plant individually, the Agency believes that it represents an extremely unlikely scenario for projecting impacts of the rule on the small companies as a group. In particular, there is little reason to assume a total loss of off-site markets due to the Subtitle C ''stigma.'' The Agency is not proposing to list or otherwise regulate off-site beneficial uses generally. The only off-site use proposed for regulation is that of an agricultural lime substitute, and the Agency does not have information indicating that any of the small companies currently ship off-site for this use. Furthermore, current levels of

off-site CKD uses are continuing under the specter of EPA's Regulatory Determination decision to regulate CKD, and thus one might argue that any stigma associated with Federal regulation of CKD could already be in effect. For these and other reasons previously discussed, the Agency believes that its approach, based on continuance of off-site use markets and assuming location-specific flexibility in State program implementation, provides for a more realistic high end projection of initial compliance cost effects. Although the Agency believes that the stigma of Subtitle C will not result in the loss of off-site markets, EPA requests comment specifically on whether this rule will affect the availability of markets for beneficial use of CKD, and if so, to what extent and for which particular uses.

4. Agency Findings and Conclusions Regarding SBREFA Impacts

The Agency's RFA screening study does not indicate a significant negative impact on a substantial number of small companies as a likely outcome of the proposed rule. With respect to the per-cent-of-sales cost criterion, EPA's high end engineering cost estimates project that not more than one or two small companies will experience initial compliance costs greater than one percent of baseline sales. In addition, the economic impact analysis projects that regional cement price increases due to shifting of initial compliance costs to cement consumers will partially, if not totally, offset higher costs for small companies that might be required to alter their CKD management practices. In fact, several of the small companies—articularly those that do not land-dispose any wasted dust—ould thus realize higher net annual profits as a result of these market impacts.

For the reasons discussed above, I hereby certify that this rule will not have a significant adverse economic impact on a substantial number of small entities. This rule, therefore, does not require a regulatory flexibility analysis.

*C. Environmental Justice—Applicability of Executive Order 12898*

As part of its analysis of risks to human health posed by CKD, the Agency investigated whether there are environmental justice issues associated with the management of CKD. Executive Order 12898, dated February 11, 1994, and titled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' provides for Federal agencies to consider environmental justice issues. As explained in its Regulatory Determination (60 FR 7371, February 7, 1995), EPA announced the availability of a report titled Race, Ethnicity, and Poverty Status of Populations Living Near Cement Kilns in the United States.[45] In the report, the Agency examined the demographics around cement plants in order to determine if there exist any trends at the national level which indicate there might be environmental justice considerations with respect to cement kiln dust. EPA's study includes numerous analyses and summaries of demographic data, and is available in the RCRA docket. The results of the demographic studies of populations surrounding cement kilns indicate that cement plants are for the most part located in rural areas populated by varied types of communities. While the data do indicate that there are individual communities with high percentages of minority or low income populations surrounding specific cement kilns, they do not suggest that specific minorities or poverty-level populations are overly represented at the national level.

Today's rule is intended to reduce risks from the management of CKD and to benefit all populations. It is not expected to cause any disproportionately high and adverse human health and environmental effects on minority or low income communities versus affluent or non-minority communities. The Agency solicits comment and input on the implications of this rule for environmental justice, from all interested persons, including members of the environmental justice community and members of the regulated community. The Agency encourages all interested parties to provide comments or further information that might assist the Agency in further assessing impacts on minority or low-income populations.

*D. Protection of Children—Applicability of Executive Order 13045*

The Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that EPA determines (1) is ''economically significant'' as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to E.O. 13045 because this is not an economically significant regulatory action as defined by E.O. 12866.

However, the Agency has reason to believe that the environmental health risk addressed by this action may have an effect on children. The Agency has evaluated the environmental health effects of CKD on children. These documents are are summarized and discussed below and copies have been placed in the RCRA docket for this action.

Children's Health Protection. In accordance with § 5(501), the Agency has evaluated the environmental health effects for CKD on children, and found that generally the risks to children are similar to risks estimated to adults. However, the Agency noted that exposure to CKD may result in elevated blood-lead levels in children that live near cement plants that manage CKD. The Agency evaluated children's health through three mechanisms: the risk assessment to support the Report to Congress, the examination of health effects associated with lead, and the assessment to set risk-based concentration limits for hazardous constituents in CKD used as an agricultural liming agent.

In the risk assessment to support the Report to Congress, the Agency evaluated the risks from exposure to CKD through incidental ingestion of soil and dermal absorption of contaminants in CKD. For these exposure pathways, the Agency adjusted exposure parameters (e.g., ingestion rate, body weight) to reflect a five-year childhood exposure. Based on this analysis, the Agency concluded that health effects to children through these exposure routes were negligible. The analysis is described in detail in the Technical Background Document for the Human Health and Environmental Risk Assessment in Support of the Report to Congress on Cement Kiln Dust Waste—December 1993.

The Agency also evaluated effects of exposure to CKD on blood-lead levels. For this analysis, the Agency estimated concentrations in air, soil, ground water, surface water, and diet using a fate and transport model and then input these concentrations in the Integrated Exposure Uptake Biokinetic Model (IEUBK) to estimate potential blood-lead levels for children near a cement plant. The analysis indicated that two of the five modeled plants may result in blood-levels above 10 ug of lead/dL of blood,

[45] This report is available in the RIC docket (No. F–4–C2A–0016).

a level at which adverse effects to children may occur. Based on this analysis, the Agency noted that CKD may contribute to elevated blood-lead levels in children living near uncontrolled CKD piles. This analysis is described in detail in Technical Background Document for the Notice of Data Availability to Support the Regulatory Determination on Cement Kiln Dust—August 31, 1994.[46]

For the agricultural use risk assessment, EPA conducted a separate assessment of risk from hazardous constituents (metals and dioxins) in CKD for the child of farmer receptor scenario. A detailed description of this analysis is provided in the Risk Assessment for Cement Kiln Dust Used as an Agricultural Soil Amendment. Pathways evaluated for the child of farmer scenario include incidental ingestion of contaminated soil, ingestion of plants grown on amended soil, and products from animals raised on feed from CKD amended fields. For these exposure pathways, the Agency adjusted exposure parameters (e.g., ingestion rate, body weight) to reflect an 18-year childhood exposure. Exposures to lead were evaluated separately for this analysis. The IEUBK model was used to evaluate lead exposure in young children (birth to 7 years of age). The constituent concentration limit proposed for lead in todays rulemaking is based on EPA's analysis of predicted blood lead levels in children due to ingestion of CKD amended soil. Risks from other hazard constituents in agriculturally applied CKD did not differ significantly between children and adult exposure scenarios.

Although the Agency has noted the potential for adverse effects to children based on the current management of CKD, today's proposed rule will provide measures to ensure the protection of children's health. In particular, the proposed management standards will limit exposures via the ground water route and air pathway. In addition, the Agency believes that the storm-water run-off regulations will be adequate to protect from exposures via the overland runoff routes. These measures will limit uncontrolled releases from CKD piles, preventing children's exposures, and thus, protecting children's health. Finally, the development of risk-based concentration limits for hazardous constituents in CKD used agriculturally will ensure that children are adequately protected against potential environmental health risks from CKD used in this manner.

*E. National Technology Transfer and Advancement Act*

Under section 12(d) of the National Technology Transfer and Advancement Act, the Agency is directed to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards. The Agency is not aware of any available or potentially applicable voluntary consensus standards that would be applicable to the CKD issues addressed in this proposed rule.

*F. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written analysis, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA's analysis of compliance with UMRA found that the proposed action imposes no enforceable duty on any State, local, or tribal governments and therefore does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate. EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

*G. Paperwork Reduction Act*

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1870.01) and a copy may be obtained from Sandy Farmer by mail at: OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M Street S.W., Washington D.C. 20460, or by calling the Agency directly at (202) 260–2740. A copy may also be obtained by email at *farmer.sandy@epamail.epa.gov*, or downloaded off of the internet at *http://www.epa.gov/icr.*

The bottom line annual burden[47] to respondents over three years is about 4,000 hours with a cost of approximately $21 million.

[46] Errata for this document are identified in the Supplemental Errata for this document are identified in the Supplemental Errata Document for the Technical Background Document for the Notice of Data Avialability on Cement Kiln Dust—September 30, 1994.

[47] Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to of for a Federal Agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Approximately 88%, or $18.5 million of the total cost is attributable to O&M costs (consultant fees, sampling fees, and mailing costs). The capital costs incurred by facilities for the installation of ground-water monitoring systems, and the acquisition of new filing cabinets are approximately $206 thousand and $69 thousand per year, respectively. The bottom line annual burden to the Agency is about 1000 hours, with a cost of approximately $43 thousand, of which capital costs are insignificant.

EPA estimates that for each cement kiln dust landfill unit, there will be an average reporting burden of about 30 hours annually, which includes time for preparing and submitting demonstrations, notifications, and certifications to the EPA Regional Administrator. EPA estimates that each CKD landfill unit will incur an average annual recordkeeping burden of about 150 hours. This estimate includes time for reading regulations, and preparing demonstrations, notifications, and certifications to be placed in the operating record.

EPA estimates that cement manufacturing facilities that do not operate CKD landfills will incur an average reporting burden of less than one hour annually, and a recordkeeping burden of about three hours annually. The recordkeeping burden estimate includes time for reading the regulations, sampling and analyzing dust, and placing notations, certifications, and demonstrations in the operating record.

EPA may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the Agency's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

Comments are requested on EPA's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques. Send comments on the ICR to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137), 401 M Street S.W., Washington, D.C. 20460, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street N.W., Washington D.C. 20503 marked ''Attention: Desk Officer for EPA.'' Please include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after August 20, 1999, a comment to OMB is best assured of having its full effect if OMB receives it by September 20, 1999. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

*H. Executive Order 12875: Enhancing the Intergovernmental Partnership*

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's proposed rule implements requirements specifically set forth by the Congress in RCRA without the exercise of any discretion by EPA. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

*I. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's proposed rule implements requirements specifically set forth by the Congress in RCRA without the exercise of any discretion by EPA. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

**List of Subjects**

*40 CFR Part 259*

Environmental protection, Administrative practice and procedures, Air pollution control, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

*40 CFR Parts 261 and 266*

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

*40 CFR Part 270*

Environmental protection, Administrative practice and procedure, Hazardous waste.

Dated: July 30, 1999.

**Carol M. Browner,**

*Administrator.*

**Appendix I to the Preamble—Justification for CKD Listing**

Subtitle C of RCRA, as amended, establishes a Federal program for the comprehensive regulation of hazardous wastes. Hazardous waste is defined at section 1004(5) of RCRA, 42 U.S.C. 6903(5) as: (1) those solid wastes which may cause or significantly contribute to an increase in mortality, serious irreversible illness, or incapacitating reversible illness; and (2) those solid wastes which may pose a substantial present or potential hazard to human health or the environment when improperly managed.

Section 3001 of RCRA requires that EPA define which solid wastes are hazardous by either identifying the hazardous characteristics of hazardous wastes or listing particular hazardous wastes. Section 3001(a) of RCRA provides the Agency with flexibility in deciding whether to list or identify a waste as hazardous and to consider the need for regulation. Specifically, RCRA section 3001 requires that EPA, in determining whether to list a waste as hazardous waste, or to otherwise identify a waste as hazardous waste, decide whether a waste ''should be subject to the requirements of Subtitle C.'' Hence, RCRA section 3001 authorizes EPA to determine when Subtitle C regulation is appropriate. The Agency may evaluate

wastes from either specific or nonspecific sources and decide to list a waste as hazardous if it meets one of the three criteria codified at 40 CFR 261.11. The criteria for identifying characteristics and for listing wastes as hazardous are: (1) wastes may be classified as ''characteristic'' wastes if they have the properties described at 40 CFR 261.21–261.24 which would cause them to be classified as having the characteristics of ignitability, corrosivity, reactivity or toxicity; (2) wastes may be classified as acutely hazardous if they are fatal to humans at low doses, lethal in animal studies at particular doses designated in the regulation, or otherwise capable of causing or significantly contributing to an increase in serious illness; and (3) wastes may be listed as hazardous if they contain hazardous constituents identified in Appendix VIII of 40 CFR Part 261 and the Agency concludes, after considering eleven factors enumerated in 40 CFR 261.11(a)(3), that the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly managed. A substance is listed in Appendix VIII if it has been shown in scientific studies to have toxic, carcinogenic, mutagenic, or teratogenic effects on humans or other life forms. One of the factors the Administrator is to consider is the potential of the constituent (from Appendix VIII to 40 CFR Part 261) or any toxic degradation product of the constituent to migrate from the waste into the environment under the plausible types of improper management to which the waste could be subjected (see 40 CFR 261.11(a)(3)(iii)).

EPA has evaluated CKD against the listing criteria and determined that CKD meets the criteria at § 261.11(a)(3), as summarized in Table 1 follows:

TABLE 1.—CKD LISTING DETERMINATION RATIONALE

| Criteria at § 261.11(a)(3) | Rationale |
|---|---|
| Nature of the Toxicity Presented by the Constituents (§ 261.11(a)(3)(i)) | CKD contains toxic metals and organics listed in Appendix VIII to Part 261 for which non-cancer and cancer RfDs have been established. |
| Concentration of the Constituent in the Waste (§ 261.11(a)(3)(ii)) ..... | Amount of Appendix VIII constituents in CKD are high due to mass loadings into the cement manufacturing process. |
| Potential of the Constituent or Any Toxic Degradation Product of the Constituent to Migrate From the Waste Into the Environment Under Specified Types of Improper Management (§ 261.11(a)(3)(iii)). | The 13 cases of documented damage to ground water which are discussed in today's proposal, the Technical Background Document on Ground Water Controls at CKD Landfills, the 1993 Report to Congress, and subsequent NODA, demonstrate a high potential for Appendix VIII constituents to migrate from CKD into ground water. As discussed in the EPA's 1995 Regulatory Determination (60 FR 7370), Agency modeling of risks to human health due to fine particulate dust (10 microns or less) and 36 cases of documented damage to air demonstrate a high potential for contaminants to migrate into the environment via fugitive dust emissions. Modeling results discussed in the NODA on human health and environmental risk assessment (59 FR 47133) indicate human health risks of concern from CKD-derived chemical contaminants via indirect food chain pathways. |
| The Persistence of the Constituent or Any Toxic Degradation Product of the Constituent (§ 261.11(a)(3)(iv)). | Metals found in CKD are highly persistent in the environment. |
| The Potential for the Constituent or Any Toxic Degradation Product of the Constituent to Degrade Into Non-Harmful Constituents and the Rate of Degradation (§ 261.11(a)(3)(v)). | Constituents of concern in CKD are primarily metals which, unlike organics, do not have the potential to degrade into non-harmful constituents. |
| Degree to Which the Constituent or Any Degradation Product of the Constituent Bioaccumulates in Ecosystems (§ 261.11(a)(3)(vi)). | Where CKD is used in agricultural applications, there is a potential for 2,3,7,8-substituted dioxin and 2,3,7,8-substituted dibenzofuran, which are found in CKD, to bioaccumulate in living tissue. |
| Plausible Types of Improper Management to Which the Waste Could Be Subjected (§ 261.11(a)(3)(vii)). | As discussed in the Report to Congress and subsequent Regulatory Determination (60 FR 7368), CKD is typically managed on-site in unlined and uncovered landfills and piles located in abandoned quarries, retired portions of operating quarries or nearby ravines. Some active piles are also managed underwater or adjacent to surface water and/or agricultural lands. A review of 1995 CKD management practices suggested that, overall, management practices had not substantially changed from those reported in the 1993 Report to Congress. Current management practices are similar to past management scenarios, which are inadequate to limit contaminant releases from CKD management units. Moreover, additional damage cases have been identified which suggest current management practices are inadequate. |
| Quantities of the Waste Generated at Individual Generation Sites or on a Regional or National Basis (§ 261.11(a)(3)(viii)). | Cement plants average 47,000 metric tons CKD generated per year (1995 average). In 1995, the cement industry generated an estimated 4.1 million metric tons of CKD. |
| Nature and Severity of the Human Health and Environmental Damage That Has Occurred as a Result of the Improper Management of Wastes Containing the Constituent (§ 261.11(a)(3)(ix)). | As of 1997, EPA has documented evidence of damage to ground water and surface water at 16 sites, three of which have been listed on the Superfund NPL under CERCLA, and one of which remains on the NPL. 36 cases of damage to air have been documented at different sites. |
| Action Taken By Other Governmental Agencies or Regulatory Programs Based on the Health or Environmental Hazard Posed by the Waste or Waste Constituents (§ 261.11(a)(3)(x)). | Some States have recognized that mismanagement of CKD can cause substantial environmental problems, including Michigan, Pennsylvania, Texas, and Washington; however, the Agency believes State regulatory controls need to be improved as existing requirements vary substantially from State to State. Problems with repeated releases of CKD to the environment suggest that the implementation of existing regulations is uneven. |

TABLE 1.—CKD LISTING DETERMINATION RATIONALE—Continued

| Criteria at § 261.11(a)(3) | Rationale |
|---|---|
| Such Other Factors As May Be Appropriate (§ 261.11(a)(3)(xi)) ..... | When mixed with water, CKD often exhibits the characteristic of corrosivity (40 CFR 261.22). |

Based on the § 261.11(a)(3) criteria, the Agency believes that additional control of improperly managed CKD is warranted to protect the public from human health risks and to prevent environmental damage resulting from current management practices for this waste. The primary concerns to be addressed through the additional controls are documented damages to ground water and potable water supplies, and potential human health risks from inhalation of airborne CKD and ingestion via food chain pathways. There is the potential for ground-water contamination in both karst and non-karst areas, however, and EPA is particularly concerned about areas underlain by limestone with karst features. The Agency believes these potential risks can be eliminated through the implementation of more comprehensive management standards.

Although improperly managed CKD can create significant risks, the Agency believes that these risks can effectively be addressed by adopting certain basic management techniques. CKD poses risks to human health and the environment only in specific circumstances under particular conditions (e.g., disposal of uncompacted CKD in unlined, uncovered landfills exposed to winds and the influx of ground water and rain water). Therefore, EPA is proposing to exclude from listing as hazardous waste CKD that is properly managed according to standards specified in today's proposal (e.g., disposal of wet, compacted CKD, otherwise known as ''conditioned'' CKD, in covered, lined landfills located above the natural water table), or in a landfill with an alternative design that meets the performance standard and has been approved by the EPA Regional Administrator (or the State Director, in authorized States).

**Appendix II to the Preamble—Reportable Quantities**

All hazardous wastes listed under RCRA and codified in 40 CFR 261.31 through 261.33, as well as any solid waste that is not excluded from regulation as a hazardous waste under 40 CFR 261.4(b) and that exhibits one or more of the characteristics of a RCRA hazardous waste (as defined in §§ 261.21 through 261.24), are hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended (see CERCLA section 101(14)(C)). CERCLA hazardous substances are listed in Table 302.4 at 40 CFR 302.4 along with their reportable quantities (RQs). If a hazardous substance is released in an amount that equals or exceeds its RQ, the release must be reported immediately to the National Response Center (NRC) pursuant to CERCLA section 103.

*A. Reporting Requirements*

Under CERCLA section 103(a), the person in charge of a vessel or facility from which a hazardous substance has been released in a quantity that is equal to or exceeds its RQ must immediately notify the NRC as soon as that person has knowledge of the release. The toll-free telephone number of the NRC is 1–800–424–8802; in the Washington, D.C., metropolitan area, the number is (202) 267–2675. In addition to this reporting requirement under CERCLA, section 304 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) requires owners or operators of certain facilities to report releases of extremely hazardous substances and CERCLA hazardous substances to State and local authorities. EPCRA section 304 notification must be given immediately after the release of an RQ or more to the community emergency coordinator of the local emergency planning committee for any area likely to be affected by the release and to the State emergency response commission of any State likely to be affected by the release.

Under section 102(b) of CERCLA, all hazardous substances (as defined by CERCLA section 101(14)) have a statutory RQ of one pound, unless and until the RQ is adjusted by regulation. In today's rule, EPA is proposing to list cement kiln dust waste that is not beneficially used and not managed in accordance with 40 CFR Part 259, or cement kiln dust waste that is beneficially used for agricultural purposes and does not meet the requirements in 40 CFR 259.17. Such CKD would be added to the CERCLA list of hazardous substances and would have an unadjusted statutory RQ of one-pound. The Agency is also proposing today to adjust the one-pound statutory RQ for CKD hazardous waste.

*B. Basis for Proposed RQ Adjustment*

EPA's methodology for adjusting the RQs of individual hazardous substances begins with an evaluation of the intrinsic physical, chemical, and toxicological properties of each hazardous substance. The intrinsic properties examined, called ''primary criteria'', are aquatic toxicity, mammalian toxicity (oral, dermal, and inhalation), ignitability, reactivity, chronic toxicity, and potential carcinogenicity.

Generally, for each intrinsic property, EPA ranks the hazardous substance on a five-tier scale, associating a specific range of values on each scale with an RQ value of 1, 10, 100, 1,000, or 5,000 pounds. Based on the various primary criteria, the hazardous substance may receive several tentative RQ values. The lowest of the tentative RQs becomes the ''primary criteria RQ'' for that substance.

After the primary criteria RQ is assigned, the substance is evaluated further for its susceptibility to certain degradative processes, which are used as secondary RQ adjustment criteria. These natural degradative processes are biodegradation, hydrolysis, and photolysis (BHP). If a hazardous substance, when released into the environment, degrades relatively rapidly to a less hazardous form by one or more of the BHP processes, its primary criteria RQ is generally raised one level. Conversely, if a hazardous substance degrades to a more hazardous product after its release, the original substance is assigned an RQ equal to the RQ for the more hazardous substance, which may be one or more levels lower than the RQ for the original substance.

The standard methodology used to adjust the RQs for RCRA hazardous waste streams differs from the methodology applied to individual hazardous substances. The procedure for assigning RQs to RCRA waste streams is based on an analysis of the hazardous constituents of the waste streams. The constituents of each RCRA hazardous waste stream are identified in 40 CFR part 261, Appendix VII. EPA determines an RQ for each constituent within the waste stream and establishes the lowest RQ value of these constituents as the adjusted RQ for the waste stream. Therefore, in today's rule, the Agency is proposing a one-pound RQ for listed hazardous CKD waste based on the one-pound RQs for arsenic and mercury (i.e., the two constituents within this waste with the lowest RQ).

*C. Application of the CERCLA Mixture Rule to Listed Hazardous CKD Waste.*

Although in today's rule EPA is proposing a one-pound RQ for listed hazardous CKD waste, EPA is also proposing to modify its interpretation of the mixture rule, as described below, to allow facilities to use the maximum observed concentrations of the constituents within listed hazardous CKD waste in determining when to report releases of this waste.

For listed hazardous CKD waste, where the actual concentrations of the hazardous constituents are not known, EPA is today proposing that persons managing CKD waste have the option of reporting on the basis of the maximum observed concentrations that have been identified by EPA (see Table 2 below). Thus, although actual knowledge of constituent concentrations may not be known, constructive knowledge of the EPA-identified maximum concentrations has been assumed. This assumption is based on actual sampling data, specifically the maximum observed concentrations of hazardous constituents in Listed hazardous CKD waste.[48] Table 2 below identifies the

[48] To review these sampling data, see Appendix E of the Technical Background Document—Analysis of CKD Characteristics and Generation Data, Office of Solid Waste, U.S. EPA, August 1994;

Continued

hazardous constituents for Listed hazardous CKD waste, their maximum observed concentrations in parts per million (ppm), the constituents' RQs, and the number of pounds of the waste needed to contain an RQ of each constituent.

TABLE 2.—POUNDS REQUIRED TO CONTAIN RQ FOR EACH CONSTITUENT OF LISTED HAZARDOUS CKD WASTE

| Waste stream constituent | Maximum ppm | RQ (lb) | Pounds required to contain RQ |
|---|---|---|---|
| CKD | ..... | 1 | ..... |
| antimony | 360 | 5,000 | 13,888,889 |
| arsenic | 518 | 1 | 1,931 |
| barium | 1,402 | 1,000 | 713,267 |
| beryllium | 12 | 10 | 817,661 |
| cadmium | 1,540 | 10 | 6,494 |
| chromium | 450 | 5,000 | 11,111,111 |
| lead | 7,390 | 10 | 1,353 |
| mercury | 60 | 1 | 16,667 |
| nickel | 110 | 100 | 909,091 |
| selenium | 307 | 100 | 325,733 |
| silver | 58 | 1,000 | 17,271,157 |
| thallium | 776 | 1,000 | 1,288,660 |

For example, if Listed hazardous CKD waste is released from a facility, and the actual concentrations of the waste's constituents are not known, it may be assumed that the concentrations will not exceed those listed above in Table 2. Thus, applying the mixture rule, the RQ threshold for lead in this waste is 1,353 pounds, assuming the maximum concentration listed in Table 2. Reporting would be required only when an RQ or more of any hazardous constituent is released.

Where the concentration levels of all hazardous constituents are known, the traditional mixture rule would apply. Under this scenario, if the actual concentration of lead is 100 ppm, 100,000 pounds of the Listed hazardous CKD waste would need to be released to reach the RQ for lead. As applied to Listed hazardous CKD waste, EPA's proposed approach reduces the burden of notification requirements for the regulated community and adequately protects human health and the environment.

The modified interpretation of the mixture rule as it applies to Listed hazardous CKD waste in today's proposal is consistent with EPA's approach in a recent final rule listing four petroleum refining wastes (K169, K170, K171, and K172) as RCRA hazardous wastes and CERCLA hazardous substances (See 63 FR 42110, August 6, 1998). In that rule, the Agency promulgated a change in its interpretation of the mixture rule to allow facilities to consider the maximum observed concentrations for the constituents of the petroleum refining wastes in determining when to report releases of the four wastes. EPA codified this change to its mixture rule interpretation in 40 CFR 302.6(b)(1) as a new subparagraph (iii). If the Agency should take the rule final, EPA will revise this same subparagraph to extend the modified interpretation of the mixture rule to include Listed hazardous CKD waste.

*D. Unlisted RCRA Characteristic Waste*

Kiln dust waste that is beneficially used (other than for agricultural purposes) or managed in accordance with 40 CFR Part 259, would not be listed as a RCRA hazardous waste or CERCLA hazardous substance by this rulemaking. Nevertheless, such wastes may be a listed hazardous waste if there is a significant violation of the 40 CFR Part 259 standards, or considered unlisted CERCLA hazardous substances (as described in 40 CFR 302.4(b)) when all of the following conditions are met:

(1) the waste is a solid waste, as defined by 40 CFR 261.2;

(2) the waste is not excluded from regulation as a hazardous waste under 40 CFR 261.4(b); and,

(3) the waste exhibits any of the characteristics (i.e., ignitability, corrosivity, reactivity, or toxicity) of a RCRA hazardous waste (defined in 40 CFR 261.20 through 261.24).

Under proposed revisions to 40 CFR 261.4(b) included in today's rule, most CKD wastes have been excluded from regulation as a hazardous waste. Of the CKD wastes that are not excluded, few are expected to exhibit RCRA characteristics. As stated elsewhere in this preamble, cement kiln dust itself does not exhibit the RCRA hazardous waste characteristic of corrosivity, and the waste exhibits the toxicity characteristic infrequently, and only for certain metals. Therefore, CKD waste only rarely is expected to qualify as a RCRA characteristic waste and, thus, an unlisted CERCLA hazardous substance.

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

1. Part 259 is added to read as follows:

## PART 259—MANAGEMENT STANDARDS FOR CEMENT KILN DUST WASTE

### Subpart A—General Provisions

Sec.
259.1 Purpose, scope, and applicability.
259.2 Definitions.
259.3–259.9 [Reserved]

### Subpart B—Location Restrictions

259.10 Placement above the natural water table.
259.11 Floodplains.
259.12 Wetlands.
259.13 Fault areas.
259.14 Seismic impact zones.
259.15 Unstable areas.
259.16 Karst terrains.
259.17 Regulation of agricultural use.
259.18–259.19 [Reserved]

### Subpart C—Air Criteria

259.20 Air criteria for tanks, containers, or buildings.
259.21 Air criteria for trucks transporting cement kiln dust.
259.22 Air criteria for landfills.
259.23 Recordkeeping requirements.
259.24–259.29 [Reserved]

### Subpart D—Design Criteria

259.30 Design criteria.
259.31–259.39 [Reserved]

### Subpart E—Ground-Water Monitoring and Corrective Action

259.40 Applicability.
259.41 Ground-water monitoring systems.
259.42 [Reserved]
259.43 Ground-water sampling and analysis requirements.
259.44 Detection monitoring program.
259.45 Assessment monitoring program.
259.46 Assessment of corrective measures.
259.47 Selection of remedy.
259.48 Implementation of the corrective action program.
259.49 [Reserved]

### Subpart F—Closure and Post-Closure Care

259.50 Closure criteria.
259.51 Post-closure care requirements.
259.52–259.59 [Reserved]

### Subpart G—Financial Assurance Criteria

259.60 Applicability.
259.61 Financial assurance for closure.
259.62 Financial assurance for post-closure care.

The document is located in the EPA RIC docket No F–94–RCKA–FFFFF.

259.63 Financial assurance for corrective action.
259.64 Allowable mechanisms.
259.65 Discounting.

**Appendix I to Part 259—Constituents for Detection Monitoring**

**Authority:** 42 U.S.C. 6912(a), 6912(b)(3)(C) and 6924(x).

## Subpart A—General Provisions

### § 259.1 Purpose, scope, and applicability.

(a) The purpose of this part is to establish minimum national criteria for all cement kiln dust waste landfill (CKDLF) units. These minimum national criteria ensure the protection of human health and the environment.

(b) Regulations in this part apply to any cement kiln dust (CKD) waste actively managed [90 days after the effective date of the final rule], except as otherwise specifically provided in paragraph (d) of this section, including CKD managed in new CKDLF units, existing CKDLF units, and expansions.

(c) These criteria do not apply to CKD managed prior to 90 days after the date of publication of the final rule, except as otherwise specifically provided in paragraph (d) of this section.

(d) CKDLF units that receive waste after the date of publication of this proposal, but stop receiving waste before [the effective date of the final rule], are exempt from all the requirements of this part 259, except the final cover requirement specified in § 259.50. The final cover must be installed within six months of last receipt of CKD waste. Units described in this paragraph that do not have a complete cover installation within this six month period will be subject to all of the requirements of this part 259, unless otherwise specified.

(e) The compliance date for all requirements of this part 259, unless otherwise specified, is [two years after the effective date of the final rule], for all CKDLF units that receive waste after [the effective date of the final rule].

(f) Nothing in this part prevents, restricts, or regulates the beneficial use of CKD as a stabilizer or solidifier during RCRA cleanups under sections 3004(u), 3004(v) and 3008(h), CERCLA response actions that are carried out in accordance with the requirements of 40 CFR Part 300—the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), or when the EPA Regional Administrator (or the State, in authorized States) finds that the beneficial use of CKD in other cases for remedial purposes is protective of human health and the environment.

### § 259.2 Definitions.

This section contains definitions for terms that appear throughout this part; additional definitions appear in the specific sections to which they apply.

*Active life* means the period of operation beginning with the initial receipt of CKD waste and ending at completion of closure activities in accordance with § 259.50.

*Active management* means a facility or unit that receives CKD waste and that has not been closed in accordance with § 259.50.

*Aquifer* means a geological formation, group of formations, or portion of a formation capable of yielding significant quantities of ground water to wells or springs.

*Beneficial Use of CKD* means the substitution of CKD for another product based on similar properties. For purposes of today's proposed rule, beneficial use of CKD includes, but is not restricted to, waste stabilization and general construction (e.g., off-site management of CKD as surface material in unpaved roads and parking lots).

*Carbonate terrain* means terrain composed of carbonate bedrock (e.g., limestone or dolomite) that consists chiefly of carbonate minerals such as calcite and dolomite. In addition to limestone and dolomite, carbonate terrains may also contain variable amounts of aluminous shale, calcareous muds, and sands.

*Cement kiln dust waste* (CKD) means the fine particulate solids, associated with the production of Portland cement, which are collected by air pollution control devices used to clean the kiln exhaust.

*Cement kiln dust waste landfill (CKDLF) unit* means a discrete area of land or an excavation that receives CKD waste, and that is not a land application unit, surface impoundment, waste pile, as those terms are defined under § 257.2 of this chapter, or injection well as defined by 40 CFR Parts 144 and 146. A CKDLF unit may receive other types of non-hazardous industrial wastes, such as kiln brick, construction debris, mining overburden and other commercial solid waste (as defined in § 258.2 of this chapter). A CKDLF unit may be a new CKDLF unit, an existing CKDLF unit, or an expansion of an existing CKDLF unit.

*EPA Regional Administrator* means the chief administrative officer of the EPA Region responsible for implementing the Subtitle C solid waste permit program. This reference only applies to a State that has not chosen to create a CKD regulatory program under State law. In States with an authorized RCRA program, all references to the EPA Regional Administrator should be read as referring to the State Director, or other State official responsible for implementing the CKD regulatory program.

*Existing CKDLF unit* means any cement kiln dust waste landfill unit that is receiving CKD as of 90 days after the effective date of the final rule. Waste placement must be consistent with past operating practices or operating practices modified to ensure good management.

*Facility* means all contiguous land and structures, other appurtenances, and improvements on the land used for the disposal of CKD.

*Ground water* means water below the land surface in a zone of saturation.

*Expansion* means a lateral or vertical expansion of the waste boundaries of an existing CKDLF unit.

*Leachate* means a liquid that has passed through or emerged from CKD and contains soluble, suspended, or miscible materials removed from such waste.

*New CKDLF unit* means any cement kiln dust landfill unit or lateral expansion of an existing CKDLF unit, that has not received waste prior to 90 days after the effective date of the final rule.

*Person(s) managing CKD waste* means any person responsible for transport, disposal or sale of any CKD waste, including owners and operators of CKD waste landfills.

*Run-off* means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

*Run-on* means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

*Saturated* zone means that part of the earth's crust in which all voids are filled with water.

*Uppermost aquifer* means the geologic formation nearest the natural ground surface that is an aquifer, as well as, lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary. This definition specifically includes discontinuous aquifers which are perched.

*Waste management unit boundary* means a vertical surface located at the hydraulically downgradient limit of the unit. This vertical surface extends down into the uppermost aquifer.

### §§ 259.3–259.9 [Reserved]

## Subpart B—Location Restrictions

### § 259.10 Placement above the natural water table.

(a) CKD must be managed in a CKDLF unit with a base that is located above

the upper limit of the natural water table.

(b) For purposes of this section *natural water table* means the natural level at which water stands in a shallow well open along its length and penetrating the surficial deposits just deeply enough to encounter standing water at the bottom. This level is uninfluenced by ground-water pumping or other engineered activities.

**§ 259.11 Floodplains.**

(a) CKD shall not be managed in a CKDLF unit located in a 100-year floodplain unless a demonstration is made to the EPA Regional Administrator that the unit will not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human health and the environment. The person managing CKD waste must place a demonstration in the operating record and notify the EPA Regional Administrator that the demonstration has been placed in the operating record.

(b) For purposes of this Section:

(1) *Floodplain* means the lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, that are inundated by the 100-year flood.

(2) *100-year flood* means a flood that has a 1-percent or greater chance of recurring in any given year or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

(3) *Washout* means the carrying away of solid waste by waters of the base flood.

**§ 259.12 Wetlands.**

(a) CKD shall not be managed in CKDLF units located in wetlands, unless the following demonstrations are made to the EPA Regional Administrator:

(1) Where applicable under section 404 of the Clean Water Act or applicable State wetlands laws, the presumption that a practicable alternative to the proposed landfill is available which does not involve wetlands is clearly rebutted;

(2) The construction and operation of the CKDLF unit will not:

(i) Cause or contribute to violations of any applicable State water quality standard,

(ii) Violate any applicable toxic effluent standard or prohibition under section 307 of the Clean Water Act,

(iii) Jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Endangered Species Act of 1973, and

(iv) Violate any requirement under the Marine Protection, Research, and Sanctuaries Act of 1972 for the protection of a marine sanctuary;

(3) The CKDLF unit will not cause or contribute to significant degradation of wetlands. The integrity of the CKDLF unit and its ability to protect ecological resources must be demonstrated by addressing the following factors:

(i) Erosion, stability, and migration potential of native wetland soils, muds and deposits used to support the CKDLF unit;

(ii) Erosion, stability, and migration potential of dredged and fill materials used to support the CKDLF unit;

(iii) The volume and chemical nature of the waste managed in the CKDLF unit;

(iv) Impacts on fish, wildlife, and other aquatic resources and their habitat from release of the solid waste;

(v) The potential effects of catastrophic release of waste to the wetland and the resulting impacts on the environment; and

(vi) Any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected.

(4) To the extent required under section 404 of the Clean Water Act or applicable State wetlands laws, steps have been taken to attempt to achieve no net loss of wetlands (as defined by acreage and function) by first avoiding impacts to wetlands to the maximum extent practicable as required by paragraph (a)(1) of this Section, then minimizing unavoidable impacts to the maximum extent practicable, and finally offsetting remaining unavoidable wetland impacts through all appropriate and practicable compensatory mitigation actions (e.g., restoration of existing degraded wetlands or creation of man-made wetlands); and (5) Sufficient information is available to make a reasonable determination with respect to these demonstrations.

(b) For purposes of this section, wetlands means those areas that are defined in 40 CFR 232.2(r).

(c) Nothing in this section affects the applicability of any other statute or regulation affecting management of CKD in wetlands, including the permitting requirements under section 404 of the Clean Water Act.

**§ 259.13 Fault areas.**

(a) CKD shall not be managed in a CKDLF unit located within 200 feet (60 meters) of a fault that has had displacement in Holocene time unless a demonstration is made to the EPA Regional Administrator that an alternative setback distance of less than 200 feet (60 meters) will prevent damage to the structural integrity of the CKDLF unit and will be protective of human health and the environment.

(b) For the purposes of this section:

(1) *Fault* means a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side.

(2) *Displacement* means the relative movement of any two sides of a fault measured in any direction.

(3) *Holocene* means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch to the present.

**§ 259.14 Seismic impact zones.**

(a) CKD shall not be managed in CKDLF units located in seismic impact zones, unless a demonstration is made to the EPA Regional Administrator that all containment structures, including liners, leachate collection systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site. The person managing CKD waste must place the demonstration in the operating record and notify the EPA Regional Administrator that it has been placed in the operating record.

(b) For the purposes of this Section:

(1) *Seismic impact zone* means an area with a ten percent or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10g (i.e., 98.0 centimeters per second per second) in 250 years.

(2) *Maximum horizontal acceleration in lithified earth material* means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a 90 percent or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

(3) *Lithified earth material* means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface.

**§ 259.15 Unstable areas.**

(a) CKD shall not be managed in CKDLF units located in an unstable area unless a demonstration is made to the EPA Regional Administrator that engineering measures have been incorporated into the CKDLF unit's design to ensure that the integrity of the structural components of the CKDLF unit will not be disrupted. The person managing CKD waste must place the demonstration in the operating record and notify the EPA Regional Administrator that it has been placed in the operating record. The following factors, at a minimum, must be considered when determining whether an area is unstable:

(1) On-site or local soil conditions that may result in significant differential settling;

(2) On-site or local geologic or geomorphologic features; and

(3) On-site or local human-made features or events (both surface and subsurface).

(b) For purposes of this Section:

(1) *Unstable area* means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and karst terrains.

(2) *Structural components* means liners, leachate collection systems, final covers, run-on/run-off systems, and any other component used in the construction and operation of the CKDLF that is necessary for protection of human health and the environment.

(3) *Poor foundation conditions* means those areas where features exist which indicate that a natural or human-induced event may result in inadequate foundation support for the structural components of a CKDLF unit.

(4) *Areas susceptible to mass movement* means those areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the CKDLF unit, because of natural or human-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, soil fluction, block sliding, and rock fall.

**§ 259.16 Karst terrains.**

(a) CKD shall not be managed in CKDLF units located in karst terrain unless a demonstration is made to the EPA Regional Administrator that engineering measures have been incorporated into the CKDLF unit's design to ensure that the integrity of the structural components of the CKDLF unit will not be disrupted. The person managing CKD waste must place the demonstration in the operating record and notify the EPA Regional Administrator that it has been placed in the operating record. The following factors, at a minimum, must be considered when determining whether a terrain is karstic:

(1) On-site or local geologic or geomorphologic features;

(2) On-site or local soil conditions that may result in significant differential settling, collapse, or puncture of a landfill liner;

(3) On-site hydrology, including the character and direction of ground-water flow and points of discharge for the karst ground-water basin the facility may affect; and

(4) On-site or local human-made features or events (both surface and subsurface).

(b) For purposes of this Section:

(1) *Karst terrains* means areas where karst landscape, with its characteristic hydrogeology and/or landforms are developed. In karst terrain, ground-water flow generally occurs through an open system with both diffuse and conduit flow end member components, and typically has rapid ground-water flow velocities which exceed Darcian flow velocities. Composed of limestone, dolomite, gypsum and other soluble rock, karst terrain typically has well developed secondary porosity enhanced by dissolution. Landforms found in karst terrain include, but are not limited to, sinkholes, sinking streams, caves, springs and blind valleys. Karst terrains always include one or more springs for each ground-water basin, and underground streams except where ground-water flow is diffuse or the host rock has megaporosity.

(2) *Structural components* means liners, leachate collection systems, final covers, run-on/run-off systems, and any other component used in the construction and operation of the CKDLF that is necessary for protection of human health and the environment.

(3) *Conduit flow* means nonlinear to turbulent ground-water flow through an integrated system of conduits which behave hydraulically as a system of pipes. Conduit flow is typical of ground-water flow through thick, massive soluble rock such as limestone, where ground water is concentrated, flow is rapid and specific discharges are high. Turbulent conduit flow can be initiated in fractures as thin as 5 to 10 millimeters.

(4) *Darcian flow* means ground-water flow which follows Darcy's law, where the specific discharge is proportional to the hydraulic gradient. Darcian ground-water flow is typically linear and laminar, travels from $1 \times 10^{-11}$ to $1 \times 10^{2}$ centimeters per second, and is characteristic of ground-water flow through granular porous media.

(5) *Diffuse flow* means ground-water flow which is laminar and slow (within the range of Darcian flow velocities) through a system of joints and bedding planes that have had minimal solution enlargement.

**§ 259.17 Regulation of agricultural use.**

CKD shall not be used for agricultural purposes unless the CKD is mixed with sewage sludge and subject to 40 CFR Part 503 standards, or the waste meets the following requirements:

(a) CKD must not contain the toxic constituents arsenic, cadmium, lead, and thallium in excess of the following limits: arsenic—13 mg/kg, cadmium—22 mg/kg, lead—1500 mg/kg, and thallium—15 mg/kg.

(b) CKD must not contain chlorinated dioxins and furans in excess of 40 parts per trillion toxicity equivalent (TEQ).

(c) CKD destined for agricultural use must be sampled and analyzed by the generator prior to shipment for agricultural use to determine whether the waste has concentrations of toxic constituents in excess of those established in paragraphs (a) and (b) of this section.

(d) For all CKD shipped for beneficial agricultural use, the person generating CKD waste shall place in the operating record a notation listing the amount of CKD shipped and a letter of certification signed by a company representative verifying compliance with the provisions specified under paragraphs (a) and (b) of this section.

(e) For purposes of this section, *agricultural use* is defined as use of CKD as an agricultural lime substitute for the purpose of amending the soil to optimize pH or to promote the growth of crops or other foodstuffs. The Agency restricts this definition of use to CKD produced for use by the general public and not for the exclusive use of the owner or operator of the facility which generates the CKD waste.

**§§ 259.18–259.19 [Reserved]**

## Subpart C—Air Criteria

**§ 259.20 Air criteria for tanks, containers, or buildings.**

(a) This section applies to cement kiln dust waste placed in temporary storage.

Such CKD must be covered or otherwise managed to control wind dispersal of dusts, or stored in tanks, containers or buildings that meet the following minimum standards:

(1) The tank, container, or building should be an engineered structure with a human-made floor, walls, and a roof all of which prevent water from reaching the stored CKD and are made of non-earthen materials providing structural support.

(2) The tank, container, or building must be free standing and not a surface impoundment (as defined in 40 CFR 257.2), be manufactured of a material suitable for storage of its contents, and meet appropriate specifications such as those established by either ASTM, API, or UL standards.

(b) For purposes of this section, *temporary storage* means interim storage of CKD designated for recycling, sale or final disposal.

(c) Alternative measures for fugitive dust control may be approved by the EPA Regional Administrator if a demonstration is made to the EPA Regional Administrator that the alternative measures are at least as effective in controlling wind dispersal of CKD as the minimum standards defined in paragraph (a) of this section. The person managing CKD waste must place the demonstration in the operating record and notify the EPA Regional Administrator that it has been placed in the operating record.

**§ 259.21 Air criteria for trucks transporting cement kiln dust.**

(a) CKD waste transported in trucks or other vehicles must be covered or otherwise managed to control wind dispersal of dust.

(b) Alternative measures for fugitive dust control may be approved by the EPA Regional Administrator if a demonstration is made to the EPA Regional Administrator that the alternative measures are at least as effective in controlling wind dispersal of CKD as the standards defined in paragraph (a) of this section. The person managing CKD waste must place the demonstration in the operating record and notify the EPA Regional Administrator that it has been placed in the operating record.

**§ 259.22 Air criteria for landfills.**

(a) CKD disposed in all CKDLF units must be managed in a manner that does not violate any applicable requirements developed under a State Implementation Plan (SIP) approved or promulgated by the Administrator pursuant to section 110 of the Clean Air Act, as amended.

(b) CKD must be disposed in CKDLF units and expansions constructed so that such CKD is:

(1) Covered or otherwise managed to control wind dispersal of dust, or

(2) Emplaced as conditioned CKD to control wind dispersal, and

(3) Covered with a sufficient thickness of earthen material at the end of each operating day, or at more frequent intervals if necessary, except as provided in paragraph (d) of this section, to control blowing dust.

(c) For purposes of this section *conditioned CKD* means cement kiln dust that has been compacted in the field at appropriate moisture content using moderate to heavy equipment to attain 95% of the standard Proctor maximum dry density value according to ASTM D 698 or D 1557 test methods.

(d) Alternative measures for fugitive dust control may be approved by the EPA Regional Administrator if a demonstration is made to the EPA Regional Administrator that the alternative measures are at least as effective in controlling wind dispersal of CKD as the minimum standards defined in paragraphs (a), (b), and (c) of this section. The person managing CKD waste must place the demonstration in the operating record and notify the EPA Regional Administrator that it has been placed in the operating record.

**§ 259.23 Recordkeeping requirements.**

(a) An operating record of a CKDLF unit must be retained at the facility and/or in an alternative location approved by the EPA Regional Administrator. The following information must be recorded in the operating record as it becomes available:

(1) Any notification of violation required under paragraph (c) of this section;

(2) Any certification of compliance required under paragraph (d) of this section;

(3) Any location restriction demonstration required under Subpart B;

(4) Any CKDLF unit design documentation;

(5) Any demonstration, certification, finding, monitoring, testing, or analytical data required by Subpart E;

(6) Any demonstration, certification, testing, or analytical data required by § 259.17(d);

(7) Any plans for selected remedies as required by § 259.47;

(8) Closure and post-closure care plans and any monitoring, testing, or analytical data as required by §§ 259.50 and 259.51; and

(9) Any cost estimates and financial assurance documentation required by Subpart G of this part G.

(b) The person managing CKD waste must notify the EPA Regional Administrator when the documents from paragraph (a) of this section have been placed or added to the operating record, and all information contained in the operating record must be made available for inspection by the public at all reasonable times, and furnished upon request to the EPA Regional Administrator.

(c) The person managing CKD waste must notify the EPA Regional Administrator, in a letter signed by company management, whenever any standard of this rule is violated.

(d) The person managing CKD waste must submit a certification to the EPA Regional Administrator, signed by company management, once each year: throughout the active life and post-closure care period that a new or existing CKDLF unit is in compliance with the air criteria, ground-water monitoring, and corrective action provisions of subparts C and E of this part; and throughout the active life of the facility that all CKD managed on-site or sent off-site for beneficial use is disposed in compliance with all applicable provisions of this part. The certification must also certify that all records from paragraph (a) of this section are properly maintained and available to the public in accordance with the provisions of paragraph (b) of this section.

(e) The EPA Regional Administrator can set alternative schedules for recordkeeping and notification requirements as specified in paragraphs (a), (b), (c), (d) and (e) of this section.

**§§ 259.24–259.29 [Reserved]**

## Subpart D—Design Criteria

**§ 259.30 Design criteria.**

(a) Prior to construction of a CKDLF unit in carbonate terrain, a karst ground-water investigation must be conducted to define the direction of ground-water flow and points of discharge for the karst ground-water basin(s) the facility may affect. The karst ground-water investigation shall include, but not be limited to, a karst inventory and a dye tracer study to identify springs which are hydrologically related to the CKDLF unit. The investigation must be certified by a qualified ground-water scientist and approved by the EPA Regional Administrator.

(b) The requirement for a karst ground-water investigation under this part may be suspended by the EPA Regional Administrator for a CKDLF unit if a demonstration is made that there is no potential for migration of

hazardous constituents from that CKDLF unit to the uppermost aquifer (as defined in § 259.2) during the active life of the unit and the post-closure care period. This demonstration must be certified by a qualified ground-water scientist and approved by the EPA Regional Administrator, and must be based upon:

(1) Site-specific field collected measurements, sampling and analysis of physical, chemical, and biological processes affecting contaminant fate and transport, and

(2) Contaminant fate and transport predictions that maximize contaminant migration and consider impacts on human health and environment.

(c) CKD must be managed in CKDLF units and lateral expansions constructed:

(1) In accordance with a design which ensures that the concentration values listed in Table 1 of this section shall not be exceeded in the uppermost aquifer at the relevant point of compliance (POC), as specified under paragraph (d) of this section, or

(2) With a composite liner, as defined in paragraph (d) of this section and a leachate collection system that is designed and constructed to maintain less than a 30 cm depth of leachate over the liner.

(d) For purposes of this Section, *composite liner* means a system consisting of two components; the upper component must consist of a minimum 30 mil flexible membrane liner (FML), and the lower component must consist of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than $1x10E^{-7}$ cm/sec. FML components consisting of high density polyethylene (HDPE) shall be at least 60 mil thick. The FML component must be installed in direct and uniform contact with the compacted soil component.

(e) When designing a CKDLF unit that complies with paragraph (c)(1) of this section, the following factors, at a minimum, must be considered:

(1) The hydrologic characteristics of the facility and surrounding land, especially the presence of karst terrain;

(2) The climatic factors of the area; and

(3) The volume and physical and chemical characteristics of the leachate.

(f) The relevant POC shall be no more than 150 meters from the waste management unit boundary and shall be located on land owned by the owner of the CKDLF unit. In determining the relevant POC, the following factors shall be considered:

(1) The hydrogeologic characteristics of the facility and surrounding land;

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

(3) The quantity, quality, and direction of flow of ground water;

(4) The proximity and withdrawal rate of the ground-water users;

(5) The availability of alternative drinking water supplies;

(6) The existing quality of the ground water, including other sources of contamination and their cumulative impacts on the ground water, and whether the ground water is currently used or reasonably expected to be used for drinking water; and

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

Table 1.—Concentration Limits for Metals in the Uppermost Aquifer

| Chemical | MCL (mg/l) |
|---|---|
| Antimony | 0.006 |
| Arsenic | 0.05 |
| Barium | 2.0 |
| Beryllium | 0.004 |
| Cadmium | 0.005 |
| Chromium (total) | 0.1 |
| Lead | 0.015[a] |
| Mercury | 0.002 |
| Selenium | 0.05 |
| Silver | 0.01[b] |
| Thallium | 0.002 |

[a] EPA Action level.
[b] Federal Secondary Drinking Water MCL.

(g) The person managing CKD waste must notify the EPA Regional Administrator when the documents from paragraph (a) of this section have been placed or added to the operating record, and all information contained in the operating record must be made available for inspection by the public at all reasonable times, and furnished upon request to the EPA Regional Administrator.

(h) Alternative CKDLF unit designs may be approved by the EPA Regional Administrator if a demonstration is made that the alternative unit designs protect ground water without presenting a threat to human health and the environment.

**§§ 259.31-259.39 [Reserved]**

## Subpart E—Ground-Water Monitoring and Corrective Action

**§ 259.40 Applicability.**

(a) The requirements in this part apply to all new and existing CKDLF units, except as provided in paragraph (b) of this section.

(b) Ground-water monitoring requirements under §§ 259.41 through 259.45 may be suspended by the EPA Regional Administrator for a CKDLF unit if a demonstration is made that there is no potential for migration of hazardous constituents from that CKDLF unit to the uppermost aquifer (as defined in § 259.2) during the active life of the unit and the post-closure care period. This demonstration must be certified by a qualified ground-water scientist and approved by the EPA Regional Administrator, and must be based upon:

(1) Site-specific field collected measurements, sampling, and analysis of physical, chemical, and biological processes affecting contaminant fate and transport, and

(2) Contaminant fate and transport predictions that maximize contaminant migration and consider impacts on human health and the environment.

(c) Persons managing CKD waste in CKDLF units must comply with the ground-water monitoring requirements of this part according to the following schedule:

(1) Existing CKDLF units must be in compliance with the ground-water monitoring requirements specified in §§ 259.41 through 259.45 by two years after the effective date of the rule;

(2) New CKDLF units and expansions of existing CKDLF units must be in compliance with the ground-water monitoring requirements specified in §§ 259.41 through 259.45 before cement kiln dust waste can be placed in the unit.

(d) The person managing CKD waste must notify the EPA Regional Administrator once each year throughout the active life and post-closure care period that a new or existing CKDLF unit is in compliance with the ground-water monitoring and corrective action provisions of this Subpart.

(e) Once established at a CKDLF unit, ground-water monitoring shall be conducted throughout the active life and post-closure care period of that CKDLF unit as specified in § 259.51.

(f) For the purposes of this subpart, a *qualified ground-water scientist* is a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering and has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by State registration, professional certifications, or completion of accredited university programs that enable that individual to make sound professional judgements regarding ground-water monitoring, contaminant fate and transport, and corrective action, particularly as they relate to karst terrain.

**§ 259.41 Ground-water monitoring systems.**

(a) A ground-water monitoring system must be installed that consists of a sufficient number of wells and/or springs, installed at appropriate locations and depths, to yield ground-water samples from the uppermost aquifer (as defined in § 259.2). The ground-water monitoring system must include at a minimum one up-gradient and three down-gradient wells. Ground-water samples must:

(1) Represent the quality of background ground water that has not been affected by leakage from the unit being monitored. A determination of background quality may include sampling of wells and/or springs that are not hydraulically upgradient of the waste management area where:

(i) Hydrogeologic conditions do not allow the person managing CKD waste to determine what wells and springs are hydraulically upgradient; or

(ii) Sampling at other wells and springs will provide an indication of background ground-water quality that is as representative or more representative than that provided by the upgradient wells and springs; and

(2) Represent the quality of ground water passing the relevant POC. The downgradient monitoring system must be installed at the relevant POC (or at the waste management unit boundary) that ensures detection of ground-water contamination in the uppermost aquifer. When physical obstacles preclude installation of ground-water monitoring wells at the relevant POC at existing units, the down-gradient monitoring system may be installed at the closest practicable distance hydraulically down-gradient from the relevant POC that ensures detection of ground-water contamination in the uppermost aquifer.

(b) A multi-unit ground-water monitoring system may be installed instead of separate ground-water monitoring systems for each CKDLF unit when the facility has several units, provided the multi-unit ground-water monitoring system meets the requirement of paragraph (a) of this section and will be as protective of human health and the environment as individual monitoring systems for each CKDLF unit, based on the following factors:

(1) Number, spacing, and orientation of the CKDLF units;

(2) Hydrogeologic setting;

(3) Site history; and

(4) Engineering design of the CKDLF units.

(c) Monitoring wells must be cased in a manner that maintains the integrity of the monitoring well bore hole. This casing must be screened or perforated and packed with gravel or sand, where necessary, to enable collection of ground-water samples. The annular space (i.e., the space between the bore hole and well casing) above the sampling depth must be sealed to prevent contamination of samples and the ground water.

(1) The person managing CKD waste must notify the EPA Regional Administrator that the design, installation, development, and decommission of any monitoring wells, piezometers and other measurement, sampling, and analytical devices documentation has been placed in the operating record; and

(2) The monitoring wells, springs, piezometers, and other measurement, sampling, and analytical devices must be operated and maintained so that they perform to design specifications throughout the life of the monitoring program.

(d) The number, spacing, and depths of monitoring systems shall be:

(1) Determined based upon site-specific technical information that must include thorough characterization of:

(i) Aquifer thickness, ground-water flow rate, ground-water flow direction including seasonal and temporal fluctuations in ground-water flow; and

(ii) Saturated and unsaturated geologic units and fill materials overlying the uppermost aquifer, materials comprising the uppermost aquifer, and materials comprising the confining unit defining the lower boundary of the uppermost aquifer; including, but not limited to: thicknesses, stratigraphy, lithology, hydraulic conductivities, porosities and effective porosities.

(2) Certified by a qualified ground-water scientist or approved by the EPA Regional Administrator. Within 14 days of this certification, the person managing CKD waste must notify the EPA Regional Administrator that the certification has been placed in the operating record.

**§ 259.42 [Reserved]**

**§ 259.43 Ground-water sampling and analysis requirements.**

(a) The ground-water monitoring program must include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of ground-water quality at the background and downgradient wells (and at springs respective to site hydrogeology) installed in compliance with § 259.41(a). The person managing CKD waste must notify the EPA Regional Administrator that the sampling and analysis program documentation has been placed in the operating record and the program must include procedures and techniques for:

(1) Sample collection;

(2) Sample preservation and shipment;

(3) Analytical procedures;

(4) Chain of custody control; and

(5) Quality assurance and quality control.

(b) The ground-water monitoring program must include sampling and analytical methods that are appropriate for ground-water sampling and that accurately measure hazardous constituents and other monitoring parameters in ground-water samples. Ground-water samples shall not be field-filtered prior to laboratory analysis.

(c) The sampling procedures and frequency must ensure protection of human health and the environment.

(d) Ground-water elevations must be measured in each well immediately prior to purging, each time ground water is sampled. The rate and direction of ground-water flow must be determined each time ground water is sampled. Ground-water elevations in wells which monitor the same waste management area must be measured within a period of time short enough to avoid temporal variations in ground-water flow which could preclude accurate determination of ground-water flow rate and direction.

(e) The background ground-water quality must be established in a hydraulically upgradient or background well(s) (and spring(s) if appropriate) for each of the monitoring parameters or constituents required in the particular ground-water monitoring program that applies to the CKDLF unit, as determined under § 259.44(a) or § 259.45(a). Background ground-water quality may be established at wells (and springs if appropriate) that are not located hydraulically upgradient from the CKDLF unit if it meets the requirements of § 259.41(a)(1).

(f) The number of samples collected to establish ground-water quality data must be consistent with the appropriate statistical procedures determined pursuant to paragraph (g) of this section. The sampling procedures shall be those specified under § 259.44(b) for detection monitoring, § 259.45(b) and (d) for assessment monitoring, and § 259.46(b) for corrective action.

(g) One of the following statistical methods to be used in evaluating ground-water monitoring data must be specified in the operating record for each hazardous constituent. The statistical test chosen shall be

conducted separately for each hazardous constituent in each well (and spring if appropriate).

(1) A parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent.

(2) An analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent.

(3) A tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit.

(4) A control chart approach that gives control limits for each constituent.

(5) Another statistical test method that meets the performance standards of paragraph (h) of this section. The person managing CKD waste must place a justification for this alternative in the operating record and notify the EPA Regional Administrator of the use of this alternative test. The justification must demonstrate that the alternative method meets the performance standards of paragraph (h) of this section.

(h) Any statistical method chosen under paragraph (g) of this section shall comply with the following performance standards, as appropriate:

(1) The statistical method used to evaluate ground-water monitoring data shall be appropriate for the distribution of chemical parameters or hazardous constituents. If the distribution of the chemical parameters or hazardous constituents is shown by the person managing CKD waste to be inappropriate for a normal theory test, then the data should be transformed or a distribution-free theory test should be used. If the distributions for the constituents differ, more than one statistical method may be needed.

(2) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a ground-water protection standard, the test shall be done at a Type I error level no less than 0.01 for each testing period. If a multiple comparisons procedure is used, the Type I experimental error rate for each testing period shall be no less than 0.05; however, the Type I error of no less than 0.01 for individual well comparisons must be maintained. This performance standard does not apply to tolerance intervals, prediction intervals, or control charts.

(3) If a control chart approach is used to evaluate ground-water monitoring data, the specific type of control chart and its associated parameter values shall be protective of human health and the environment. The parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(4) If a tolerance interval or a predictional interval is used to evaluate ground-water monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval must contain shall be protective of human health and the environment. These parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(5) The statistical method shall account for data below the limit of detection with one or more statistical procedures that are protective of human health and the environment. Any practical quantitation limit (pql) that is used in the statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.

(6) If necessary, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

(i) The person managing CKD waste must determine whether or not there is a statistically significant increase over background values for each parameter or constituent required in the particular ground-water monitoring program that applies to the CKDLF unit, as determined under § 259.44(a) or § 259.45(a).

(1) In determining whether a statistically significant increase has occurred, the person managing CKD waste must compare the ground-water quality of each parameter or constituent at each monitoring well (and spring if appropriate) designated pursuant to § 259.41(a)(2) to the background value of that constituent, according to the statistical procedures and performance standards specified under paragraphs (g) and (h) of this section.

(2) Within 14 days after completing sampling and analysis, the person managing CKD waste must determine whether there has been a statistically significant increase over background at each monitoring well and spring.

**§ 259.44 Detection monitoring program.**

(a) Detection monitoring is required at CKDLF units at all ground-water monitoring wells (and springs if appropriate) defined under §§ 259.41 (a)(1) and (a)(2). At a minimum, a detection monitoring program must include the monitoring for the constituents listed in Appendix I to this part.

(1) The EPA Regional Administrator may delete any of the Appendix I of this part monitoring parameters for a CKDLF unit if it can be shown that the removed constituents are not reasonably expected to be in, mobilized by, or derived from the CKD contained in the unit.

(2) The EPA Regional Administrator may establish an alternative list of inorganic indicator parameters for a CKDLF unit, in lieu of some or all of the heavy metals, if the alternative parameters provide a reliable indication of inorganic releases from the CKDLF unit to the ground water. In determining alternative parameters, the EPA Regional Administrator shall consider the following factors:

(i) The types, quantities, and concentrations of constituents in wastes managed at the CKDLF unit;

(ii) The mobility, stability, and persistence of waste constituents or their reaction products in the unsaturated zone beneath the CKDLF unit;

(iii) The detectability of indicator parameters, waste constituents, and reaction products in the ground water; and

(iv) The concentration or values and coefficients of variation of monitoring parameters or constituents in the ground-water background.

(b) The monitoring frequency for all constituents listed in Appendix I to this part, or in the alternative list approved in accordance with paragraph (a)(2) of this section, shall be at least semiannual during the active life of the facility (including closure) and the post-closure period. A minimum of four independent samples from each background and downgradient well (and spring if appropriate) must be collected and analyzed for the constituents listed in Appendix I of this part, or the alternative list approved in accordance with paragraph (a)(2) of this section,

during the first semiannual sampling event.

(c) At least one sample from each background and downgradient well (and spring if appropriate) must be collected and analyzed during subsequent semiannual sampling events. The EPA Regional Administrator may specify an appropriate alternative frequency for repeated sampling and analysis for constituents listed in Appendix I of this part, or the alternative list approved in accordance with paragraph (a)(2) of this Section, during the active life (including closure) and the post-closure care period. The alternative frequency during the active life (including closure) shall be no less than annual. The alternative frequency shall be based on consideration of the following factors:

(1) Lithology of the aquifer and unsaturated zone;
(2) Hydraulic conductivity of the aquifer and unsaturated zone;
(3) Ground-water flow rates;
(4) Minimum distance between upgradient edge of the CKDLF unit and downgradient monitoring well screen (minimum distance of travel);
(5) Storm hydrograph of springs, if appropriate; and
(6) Resource value of the aquifer.

(d) If the person managing CKD waste determines, pursuant to § 259.43(g), that there is a statistically significant increase over background for one or more of the constituents listed in Appendix I to this part at any monitoring well (or spring if appropriate) at the boundary specified under § 259.41(a)(2), the person managing CKD waste:

(1) Must, within 14 days of this finding, place a notice in the operating record indicating which constituents have shown statistically significant changes from background levels, and notify the EPA Regional Administrator of this finding that this notice was placed in the operating record; and

(2) Must establish an assessment monitoring program meeting the requirements of § 259.45 within 90 days, except as provided for in paragraph (c)(3) of this section.

(3) The owner/operator may demonstrate that a source other than a CKDLF unit caused the contamination or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground-water quality. A report documenting this demonstration must be certified by a qualified ground-water scientist and be placed in the operating record. If a successful demonstration is made and documented, the person managing CKD waste may continue detection monitoring as specified in this Section. If, after 90 days, a successful demonstration is not made, the person managing CKD waste must initiate an assessment monitoring program as required in § 259.45.

**§ 259.45 Assessment monitoring program.**

(a) Assessment monitoring is required whenever a statistically significant increase over background has been detected for one or more of the constituents listed in the Appendix I of this part.

(b) Within 90 days of triggering an assessment monitoring program, and annually thereafter, the person managing CKD waste must sample and analyze the ground water for the following hazardous metal constituents identified in Appendix VIII of Part 261 of this chapter: antimony, arsenic, barium, beryllium, cadmium, chromium (total), lead, mercury, nickel, selenium, silver, and thallium. A minimum of one sample from each downgradient well (and spring if appropriate) must be collected and analyzed during each sampling event. For any constituent detected in the downgradient wells (and springs if appropriate) as a result of the metal constituent analysis of Appendix VIII of Part 261 of this chapter, a minimum of four independent samples from each background and downgradient well (and spring if appropriate) must be collected and analyzed to establish background for the constituents. The EPA Regional Administrator may specify an appropriate subset of wells (and springs if appropriate) to be sampled and analyzed for metal constituents (as listed in Appendix VIII of Part 261 of this chapter) during assessment monitoring. The EPA Regional Administrator may delete any of the metal constituent monitoring parameters required by paragraph (b) of this section for a CKDLF unit if it can be shown that the removed constituents are not reasonably expected to be in, mobilized by, or derived from the waste contained in the unit.

(c) The EPA Regional Administrator may specify an appropriate alternate frequency for repeated sampling and analysis for the set of metal constituents (as listed in Appendix VIII of Part 261 of this chapter) required by paragraph (b) of this Section, during the active life (including closure) and post-closure care of the unit considering the following factors:

(1) Lithology of the aquifer and unsaturated zone;
(2) Hydraulic conductivity of the aquifer and unsaturated zone;
(3) Ground-water flow rates;
(4) Minimum distance between upgradient edge of the CKDLF unit and downgradient monitoring well screen (minimum distance of travel);
(5) Storm hydrograph of springs if appropriate: and
(6) Resource value of the aquifer; and
(7) Nature (fate and transport) of any constituents detected in response to this Section.

(d) After obtaining the results from the initial or subsequent sampling events required in paragraph (b) of this Section, the person managing CKD waste must:

(1) Within 14 days, place a notice in the operating record identifying the metal constituents (as listed in Appendix VIII of Part 261 of this chapter) that have been detected and notify the EPA Regional Administrator of the identified constituents and that this notice has been placed in the operating record;

(2) Within 90 days, and on at least a semiannual basis thereafter, resample all wells (and springs if appropriate) specified by § 259.41(a), conduct analyses for all constituents in Appendix I of this part, and for those metal constituents in Appendix VIII of Part 261 of this chapter that are detected in response to paragraph (b) of this Section, and record their concentrations in the facility operating record. At least one sample from each background and downgradient well (and spring if appropriate) must be collected and analyzed during these sampling events.

(3) Establish background concentrations for any constituents detected pursuant to paragraph (b) or (d)(2) of this Section; and

(4) Establish ground-water protection standards for all constituents detected pursuant to paragraph (b) or (d) of this Section. The ground-water protection standards shall be established in accordance with paragraph (h) of this Section.

(e) If the concentrations of all metal constituents (as listed in Appendix VIII of Part 261 of this chapter) are shown to be at or below background values, using the statistical procedures in § 259.43(g), for two consecutive sampling events, the person managing CKD waste must notify the EPA Regional Administrator of this finding prior to returning to detection monitoring.

(f) If the concentrations of any metal constituents (as listed in Appendix VIII of Part 261 of this chapter) are above background values, but all concentrations are below the ground-water protection standard established under paragraph (h) of this Section,

using the statistical procedures in § 259.43(g), the person managing CKD waste must continue assessment monitoring in accordance with this Section.

(g) If one or more metal constituents (as listed in Appendix VIII of Part 261 of this chapter) are detected at statistically significant levels above the ground-water protection standard established under paragraph (h) of this section in any sampling event, the person managing CKD waste must, within 14 days of this finding, place a notice in the operating record identifying the metal constituents that have exceeded the ground-water protection standard and notify the EPA Regional Administrator and all appropriate local government officials that the notice has been placed in the operating record. The person managing CKD waste must also:

(1)(i) Characterize the nature and extent of the release by installing additional monitoring wells as necessary;

(ii) Install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well in accordance with paragraph (d)(2) of this Section;

(iii) Notify all persons who own the land or reside on the land that directly overlies any part of the plume of contamination if contaminants have migrated off-site if indicated by sampling of wells (and springs if appropriate) in accordance with paragraph (g)(1) of this section; and

(iv) Initiate an assessment of corrective measures as required by § 259.46 within 90 days; or

(2) May demonstrate that a source other than a CKDLF unit caused the contamination, or that the SSI increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground-water quality. A report documenting this demonstration must be certified by a qualified ground-water scientist and placed in the operating record. If a successful demonstration is made, the person managing CKD waste must continue monitoring in accordance with the assessment monitoring program pursuant to this section, and may return to detection monitoring if the metal constituents (as listed in Appendix VIII of part 261 of this chapter) are at or below background as specified in paragraph (e) of this section. Until a successful demonstration is made, the person managing CKD waste must comply with paragraph (g) of this section including initiating an assessment of corrective measures.

(h) The person managing CKD waste must establish a ground-water protection standard for each metal constituent (as listed in Appendix VIII of Part 261 of this chapter) detected in the ground water. The ground-water protection standard shall be:

(1) For constituents for which a maximum contaminant level (MCL) has been promulgated under section 1412 of the Safe Drinking Water Act (codified) under 40 CFR Part 141, the MCL for that constituent;

(2) For constituents for which MCLs have not been promulgated, the background concentration for the constituent established from wells in accordance with § 259.41(a)(1); or

(3) For constituents for which the background level is higher than the MCL identified under paragraph (h)(1) of this section or health based levels identified under paragraph (i)(1) of this section, the background concentration.

(i) The Director of an approved State may establish an alternative ground-water protection standard for constituents for which MCLs have not been established. These ground-water protection standards shall be appropriate health based levels that satisfy the following criteria:

(1) The level is derived in a manner consistent with Agency guidelines for assessing the health risks of environmental pollutants;

(2) The level is based on scientifically valid studies conducted in accordance with the Toxic Substances Control Act Good Laboratory Practice Standards (40 CFR Part 792) or equivalent;

(3) For carcinogens, the level represents a concentration associated with an excess lifetime cancer risk level (due to continuous lifetime exposure) with the $1x10^{-4}$ to $1x10^{-6}$ range; and

(4) For systemic toxicants, the level represents a concentration to which the human population (including sensitive subgroups) could be exposed to on a daily basis that is likely to be without appreciable risk of deleterious effects during a lifetime. For purposes of this subpart, systemic toxicants include toxic chemicals that cause effects other than cancer or mutations.

(j) In establishing ground-water protection standards under paragraph (i) of this section, the Director of an approved State may consider the following:

(1) Multiple contaminants in the ground water;

(2) Exposure threats to sensitive environmental receptors; and

(3) Other site-specific exposure or potential exposure to ground water.

**§ 259.46 Assessment of corrective measures.**

(a) Within 90 days of finding that any of the metal constituents listed in Appendix VIII of Part 261 of this chapter have been detected at a statistically significant level exceeding the ground-water protection standards defined under § 259.45(h), the person managing CKD waste must initiate an assessment of corrective measures. Such an assessment must be completed within 90 days, or within an alternative period of time decided by the EPA Regional Administrator.

(b) The person managing CKD waste must continue to monitor in accordance with the assessment monitoring program as specified in § 259.45.

(c) The assessment shall include an analysis of the effectiveness of potential corrective measures in meeting all of the requirements and objectives of the remedy as described under § 259.47, addressing at least the following:

(1) The performance, reliability, ease of implementation, and potential impacts of appropriate potential remedies, including safety impacts, cross-media impacts, and control of exposure to any residual contamination;

(2) The time required to begin and complete the remedy;

(3) The costs of remedy implementation; and

(4) The institutional requirements such as State or local permit requirements or other environmental or public health requirements that may substantially affect implementation of the remedies.

(d) The person managing CKD waste must discuss the results of the corrective measures assessment, prior to the selection of remedy, in a public meeting with interested and affected parties.

**§ 259.47 Selection of remedy.**

(a) Within 90 days of completing an assessment of corrective measures conducted under § 259.46, the person managing CKD waste must select a remedy that, at a minimum, meets the standards listed in paragraph (b) of this section. Within 14 days of selecting a remedy, the person managing CKD waste must submit to the EPA Regional Administrator a report describing the selected remedy which demonstrates how the remedy meets the standards in paragraph (b) of this section. The report must include a notification that the owner and operator has placed a copy of the report in the operating record.

(b) Remedies must:

(1) Be protective of human health and the environment;

(2) Attain the ground-water protection standard as specified pursuant to § 259.45(h);

(3) Control the source(s) of releases so as to reduce or eliminate, to the maximum extent practicable, further releases of metal constituents (as listed in Appendix VIII of Part 261 of this chapter) into the environment that may pose a threat to human health or the environment; and

(4) Comply with standards for management of wastes as specified in § 259.48(d).

(c) In selecting a remedy that meets the standards of paragraph (b) of this section, the person managing CKD waste shall consider the following evaluation factors:

(1) The long- and short-term effectiveness and protectiveness of the potential remedies, along with the degree of certainty that the remedy will prove successful based on consideration of the following:

(i) Magnitude of reduction of existing risks;

(ii) Magnitude of residual risks in terms of likelihood of further releases due to waste remaining following implementation of a remedy;

(iii) The type and degree of long-term management required, including monitoring, operation, and maintenance;

(iv) Short-term risks that might be posed to the community, workers, or the environment during implementation of such a remedy, including potential threats to human health and the environment associated with excavation, transportation, and redisposal of containment;

(v) Time until full protection is achieved;

(vi) Potential for exposure of humans and environmental receptors to remaining wastes, considering the potential threat to human health and the environment associated with excavation, transportation, redisposal, or containment;

(vii) Long-term reliability of the engineering and institutional controls; and

(viii) Potential need for replacement of the remedy.

(2) The effectiveness of the remedy in controlling the source to reduce further releases based on consideration of the following factors:

(i) The extent to which containment practices will reduce further releases; and

(ii) The extent to which treatment technologies may be used.

(3) The ease or difficulty of implementing a potential remedy(s) based on consideration of the following types of factors:

(i) Degree of difficulty associated with constructing the technology;

(ii) Expected operational reliability of the technologies;

(iii) Need to coordinate with and obtain necessary approvals and permits from other agencies;

(iv) Availability of necessary equipment and specialists; and

(v) Available capacity and location of needed treatment, storage, and disposal services.

(4) Practicable capability of the person managing CKD waste, including a consideration of the technical and economic capability.

(5) The degree to which community concerns are addressed by a potential remedy(s).

(d) The person managing CKD waste shall specify as part of the selected remedy a schedule(s) for initiating and completing remedial activities. Such a schedule must require the initiation of remedial activities within 90 days taking into consideration the factors set forth in paragraphs (d) (1) through (8) of this section. The person managing CKD waste must consider the following factors in determining the schedule of remedial activities:

(1) Extent and nature of contamination;

(2) Practical capabilities of remedial technologies in achieving compliance with ground-water protection standards established under § 259.45 (g) or (h) and other objectives of the remedy;

(3) Availability of treatment or disposal capacity for wastes managed during implementation of the remedy;

(4) Desirability of utilizing technologies that are not currently available, but which may offer significant advantages over already available technologies in terms of effectiveness, reliability, safety, or ability to achieve remedial objectives;

(5) Potential risks to human health and the environment from exposure to contamination prior to completion of the remedy;

(6) Resource value of the aquifer including:

(i) Current and future uses;

(ii) Proximity and withdrawal rate of users;

(iii) Ground-water quantity and quality;

(iv) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

(v) The hydrogeologic characteristics of the facility and surrounding land;

(vi) Ground-water removal and treatment costs; and

(vii) The cost and availability of alternative water supplies.

(7) Other relevant factors.

(e) The EPA Regional Administrator may determine an alternative period of time for the person managing CKD waste to initiate or complete remedial activities pursuant to paragraph (d) of this section.

(f) The EPA Regional Administrator may determine that remediation of a release of a constituent (as listed in Appendix VIII of Part 261 of this chapter) from a CKDLF unit is not necessary if the person managing CKD waste demonstrates to the satisfaction of the EPA Regional Administrator that:

(1) The ground water is additionally contaminated by substances that have originated from a source other than a CKDLF unit and those substances are present in concentrations such that cleanup of the release from the CKDLF unit would provide no significant reduction in risk to actual or potential receptors; or

(2) The constituent(s) is present in ground water that:

(i) Is not currently or reasonably expected to be a source of drinking water; and

(ii) Is not hydraulically connected with waters to which the hazardous constituents are migrating or are likely to migrate in a concentration(s) that would exceed the ground-water protection standards established under § 259.45(h); or

(3) Remediation of the release(s) is technically impracticable; or

(4) Remediation results in unacceptable cross-media impacts.

(g) This section shall not affect the authority of the EPA Regional Administrator to require the person managing CKD waste to undertake source control measures or other measures that may be necessary to eliminate or minimize further releases to the ground water, to prevent exposure to the ground water, or to remediate the ground water to concentrations that are technically practicable and significantly reduce threats to human health or the environment.

**§ 259.48 Implementation of the corrective action program.**

(a) Based on the schedule established under § 259.47(d) for initiation and completion of remedial activities, the owner/operator must:

(1) Establish and implement a corrective action ground-water monitoring program that:

(i) At a minimum, meets the requirements of an assessment monitoring program under § 259.45;

(ii) Indicates the effectiveness of the corrective action remedy; and

(iii) Demonstrates compliance with ground-water protection standards pursuant to paragraph (e) of this section.

(2) Implement the corrective action remedy selected under § 259.47; and

(3) Take any interim measures necessary to ensure the protection of human health and the environment. Interim measures should, to the greatest extent practicable, be consistent with the objectives of and contribute to the performance of any remedy that may be required pursuant to § 259.47. The following factors must be considered by a person managing CKD waste in determining whether interim measures are necessary:

(i) Time required to develop and implement a final remedy;

(ii) Actual or potential exposure of nearby populations or environmental receptors to hazardous constituents;

(iii) Actual or potential contamination of drinking water supplies or sensitive ecosystems;

(iv) Further degradation of the ground water that may occur if remedial action is not initiated expeditiously;

(v) Weather conditions that may cause hazardous constituents to migrate or be released;

(vi) Potential for exposure to hazardous constituents as a result of an accident or failure of a container or handling system; and

(vii) Other situations that may pose threats to human health and the environment.

(b) A person managing CKD waste may determine, based on information developed after implementation of the remedy has begun or other information, that compliance with requirements of § 259.47(b) are not being achieved through the remedy selected. In such cases, the person managing CKD waste must implement other methods or techniques that could practicably achieve compliance with the requirements, unless the person managing CKD waste makes the determination under paragraph (c) of this section.

(c) If the person managing CKD waste determines that compliance with requirements under § 259.47(b) cannot be practically achieved with any currently available methods, the person managing CKD waste must:

(1) Obtain certification of a qualified ground-water scientist or approval by the EPA Regional Administrator that compliance with requirements under § 259.47(b) cannot be practically achieved with any currently available methods;

(2) Implement alternate measures to control exposure of humans or the environment to residual contamination, as necessary to protect human health and the environment; and

(3) Implement alternate measures for control of the sources of contamination, or for removal or decontamination of equipment, units, devices, or structures that are:

(i) Technically practicable; and

(ii) Consistent with the overall objective of the remedy.

(4) Notify the EPA Regional Administrator within 14 days that a report justifying the alternative measures prior to implementing the alternative measures has been placed in the operating record.

(d) All solid wastes that are managed pursuant to a remedy required under § 259.47, or an interim measure required under paragraph (a)(3) of this section, shall be managed in a manner:

(1) That is protective of human health and the environment; and

(2) That complies with applicable RCRA requirements.

(e) Remedies selected pursuant to § 259.47 shall be considered complete when:

(1) The person managing CKD waste complies with the ground-water protection standards established under §§ 259.45(h) at all points within the plume of contamination that lie beyond the ground-water monitoring well (and spring system if appropriate) established under § 259.41(a).

(2) Compliance with the ground-water protection standards established under § 259.45(h) has been achieved by demonstrating that concentrations of metal constituents (as listed in Appendix VIII of Part 261 of this chapter) have not exceeded the ground-water protection standards for a period of three consecutive years using the statistical procedures and performance standards in § 259.43 (g) and (h). The EPA Regional Administrator may specify an alternative length of time during which the person managing CKD waste must demonstrate that concentrations of metal constituents (as listed in Appendix VIII of Part 261 of this chapter) have not exceeded the ground-water protection standards taking into consideration:

(i) Extent and concentration of the release;

(ii) Behavior characteristics of the hazardous constituents in the ground water;

(iii) Accuracy of monitoring or modeling techniques, including any seasonal, meteorological, or other environmental variabilities that may affect the accuracy; and

(iv) Characteristics of the ground water.

(3) All actions required to complete the remedy have been satisfied.

(f) Upon completion of the remedy, the person managing CKD waste must notify the EPA Regional Administrator within 14 days that a certification that the remedy has been completed in compliance with the requirements of paragraph (e) of this section has been placed in the operating record. The certification must be signed by the person managing CKD waste and by a qualified ground-water scientist or approved by the EPA Regional Administrator.

(g) When, upon completion of the certification, the person managing CKD waste determines that the corrective action remedy has been completed in accordance with the requirements under paragraph (e) of this section, the person managing CKD waste shall be released from the requirements for financial assurance for corrective action under § 259.63.

### § 259.49 [Reserved]

## Subpart F—Closure And Post-Closure Care

### § 259.50 Closure criteria.

(a) A final cover system must be installed at all CKDLF units that is designed to minimize infiltration and erosion. The final cover system must be designed and constructed to:

(1) Have a saturated hydraulic conductivity less than or equal to the saturated hydraulic conductivity of any bottom liner system or natural subsoils present, or a saturated hydraulic conductivity no greater than $1x10^{-5}$ cm/sec, whichever is less, and

(2) Minimize infiltration through the closed CKDLF by the use of an infiltration layer that contains a minimum 18-inches of earthen material, and

(3) Minimize erosion of the final cover by the use of an erosion layer that contains a sufficient thickness of earthen material that is capable of sustaining native plant growth, and

(4) Minimize the disruption of the final cover through a design that accommodates settling and subsidence.

(b) The EPA Regional Administrator may approve an alternative final cover design that includes:

(1) An infiltration layer that achieves an equivalent reduction in infiltration as the infiltration layer specified in paragraphs (a)(1) and (a)(2) of this section, and

(2) An erosion layer that provides equivalent protection from wind and water erosion as the erosion layer specified in paragraph (a)(3) of this section.

(c) The person managing CKD waste must prepare a written closure plan that describes the steps necessary to close all CKDLF units at any point during their active life in accordance with the cover design requirements in paragraphs (a) or (b) of this section, as applicable. The closure plan, at a minimum, must include the following information:

(1) A description of the final cover, designed in accordance with paragraph (a) of this section and the methods and procedures to be used to install the cover;

(2) An estimate of the largest area of the CKDLF unit ever requiring a final cover as required under paragraph (a) of this section at any time during the active life;

(3) An estimate of the maximum inventory of wastes ever on-site over the active life of the landfill facility; and

(4) A schedule for completing all activities necessary to satisfy the closure criteria in this section.

(d) The person managing CKD waste must notify the EPA Regional Administrator that a closure plan has been prepared and placed in the operating record no later than the effective date of this rule, or by the date of initial receipt of waste, whichever is later.

(e) Prior to beginning closure of each CKDLF unit as specified in paragraph (f) of this section, the person managing CKD waste must notify the EPA Regional Administrator that a notice of the intent to close the unit has been placed in the operating record.

(f) The closure activities of each CKDLF unit must begin no later than 30 days after the date on which the CKDLF unit receives the known final receipt of wastes or, if the CKDLF unit has remaining capacity and there is a reasonable likelihood that the CKDLF unit will receive additional wastes, no later than one year after the most recent receipt of wastes. Extensions beyond the one-year deadline for beginning closure may be granted by the EPA Regional Administrator if the person managing CKD waste demonstrates that the CKDLF unit has the capacity to receive additional wastes and the person managing CKD waste has taken and will continue to take all steps necessary to prevent threats to human health and the environmental from the unclosed CKDLF unit.

(g) The closure activities of all CKDLF units must be completed in accordance with the closure plan within 180 days following the beginning of closure as specified in paragraph (f) of this Section. Extensions of the closure period may be granted by the EPA Regional Administrator if the person managing CKD waste demonstrates that closure will, of necessity, take longer than 180 days and he or she has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed CKDLF unit.

(h) Within 14 days following closure of each CKDLF unit, the person managing CKD waste must notify the EPA Regional Administrator that a certification, signed by an independent registered professional engineer, facility management, or approved by the EPA Regional Administrator, verifying that closure has been completed in accordance with the closure plan, has been placed in the operating record.

(i)(1) Within 14 days following closure of all CKDLF units, the person managing CKD waste must record a notation on the deed to the landfill facility property, or some other instrument that is normally examined during title search, and notify the EPA Regional Administrator that the notation has been recorded and a copy has been placed in the operating record.

(2) The notation on the deed must in perpetuity notify any potential purchaser of the property that the land has been used for disposal of CKD waste.

(j) The person managing CKD waste may request permission from the EPA Regional Administrator to remove the notation from the deed if all CKD waste has been removed from the facility.

**§ 259.51 Post-closure care requirements.**

(a) Following closure of each CKDLF unit, the person managing CKD waste must conduct post-closure care. Post-closure care must be conducted for 30 years, except as provided under paragraph (b) of this Section, and consist of at least the following:

(1) Maintaining the integrity and effectiveness of any final cover, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the final cover;

(2) Maintaining and operating the leachate collection system in accordance with the requirements in § 259.30, if applicable. The EPA Regional Administrator may allow the person managing CKD waste to stop managing leachate if the person managing CKD waste demonstrates that leachate no longer poses a threat to human health and the environment; and

(3) Monitoring the ground water in accordance with the requirements of Subpart E of this part and maintaining the ground-water monitoring system, if applicable.

(b) The length of the post-closure care period may be:

(1) Decreased by the EPA Regional Administrator if the person managing CKD waste demonstrates that the reduced period is sufficient to protect human health and the environment and this demonstration is approved by the EPA Regional Administrator; or

(2) Increased by the EPA Regional Administrator if the EPA Regional Administrator determines that the lengthened period is necessary to protect human health and the environment.

(c) For all CKDLF units the person managing CKD waste must prepare a written post-closure care plan that includes, at a minimum, the following information:

(1) A description of the monitoring and maintenance activities required in paragraph (a) of this Section for each CKDLF unit, and the frequency at which these activities will be performed;

(2) Name, address, and telephone number of the person or office to contact about the facility during the post-closure period; and

(3) A description of the planned uses of the property during the post-closure period. Post-closure use of the property shall not disturb the integrity of the final cover, liner(s), or any other components of the containment system, or the function of the monitoring systems unless necessary to comply with the requirements in this part. The EPA Regional Administrator may approve any other disturbance if the person managing CKD waste demonstrates that disturbance of the final cover, liner or other component of the containment system, including any removal of waste, will not increase the potential threat to human health or the environment.

(d) The person managing CKD waste must notify the EPA Regional Administrator that a post-closure care plan has been prepared and placed in the operating record no later than the effective date of this rule, or by the date of initial receipt of waste, whichever is later.

(e) Within 14 days following completion of the post-closure care period for each CKDLF unit, the person managing CKD waste must notify the EPA Regional Administrator that a certification, signed by an independent, registered professional engineer or approved by the EPA Regional Administrator, verifying that post-closure care has been completed in accordance with the post-closure plan, has been placed in the operating record.

**§§ 259.52–259.59 [Reserved]**

## Subpart G—Financial Assurance Criteria

**§ 259.60 Applicability.**

(a) The requirements of this section apply to owners and operators of all CKDLF units, except owners or operators who are State or Federal Government entities whose debts and liabilities are the debts and liabilities of a State or the United States.

(b) In this part, Owner means the person(s) who owns a CKDLF unit or part of a CKDLF unit.

Operator means the person(s) responsible for the overall operation of a CKDLF unit or part of a CKDLF unit.

**§ 259.61 Financial assurance for closure.**

(a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of hiring a third party to close the largest area of all CKDLF units ever requiring a final cover as required under § 259.50 at any time during the active life in accordance with the closure plan. The owner or operator must notify the EPA Regional Administrator that the estimate has been placed in the operating record.

(1) The cost estimate must equal the cost of closing the largest area of all CKDLF unit ever requiring a final cover at any time during the active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan (see § 259.50(c)(2)).

(2) During the active life of the CKDLF unit, the owner or operator must annually adjust the closure cost estimate for inflation.

(3) The owner or operator must increase the closure cost estimate and the amount of financial assurance provided under paragraph (b) of this Section if changes to the closure plan or CKDLF unit conditions increase the maximum cost of closure at any time during the remaining active life.

(4) The owner or operator may reduce the closure cost estimate and the amount of financial assurance provided under paragraph (b) of this Section if the cost estimate exceeds the maximum cost of closure at any time during the remaining life of the CKDLF unit. Within 14 days of this finding, the person managing CKD waste must notify the EPA Regional Administrator that the justification for the reduction of the closure cost estimate and the amount of financial assurance has been placed in the operating record.

(b) For each CKDLF unit receiving CKD waste after the effective date of the rule, the owner or operator must establish financial assurance for closure in compliance with § 259.64. The owner or operator must provide continuous coverage for closure until released from financial assurance requirements by demonstrating compliance with § 259.50 (h) and (i).

**§ 259.62 Financial assurance for post-closure care.**

(a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of hiring a third party to conduct post-closure care for the CKDLF unit in compliance with the post-closure care plan developed under § 259.51. The post-closure care cost estimate used to demonstrate financial assurance in paragraph (b) of this Section must account for the total costs of conducting post-closure care, including annual and periodic costs as described in the post-closure care plan over the entire post-closure care period. The owner or operator must notify the EPA Regional Administrator that the estimate has been placed in the operating record.

(1) The cost estimate for post-closure care must be based on the most expensive costs of post-closure care during the entire post-closure care period.

(2) During the active life of the CKDLF unit and during the post-closure care period, the owner or operator must annually adjust the post-closure cost estimate for inflation.

(3) The owner or operator must increase the post-closure care cost estimate and the amount of financial assurance provided under paragraph (b) of this section if changes in the post-closure plan or CKDLF unit conditions increase the maximum costs of post-closure care.

(4) The owner or operator may reduce the post-closure care cost estimate and the amount of financial assurance provided under paragraph (b) of this section if the cost estimate exceeds the maximum costs of post-closure care remaining over the post-closure care period. Within 14 days of this finding, the owner or operator must notify the EPA Regional Administrator that the justification for the reduction of the post-closure cost estimate and the amount of financial assurance has been placed in the operating record.

(b) The owner or operator of each CKDLF unit must establish, in a manner in accordance with § 259.64, financial assurance for the costs of post-closure care as required under § 259.51. The owner or operator must provide continuous coverage for post-closure care until released from financial assurance requirements for post-closure care by demonstrating compliance with § 259.51(e).

**§ 259.63 Financial assurance for corrective action.**

(a) An owner or operator in a CKDLF unit required to undertake a corrective action program under § 259.48 must have a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action in accordance with the program required under § 259.48. The corrective action cost estimate must account for the total costs of corrective action activities as described in the corrective action plan for the entire corrective action period. Prior to undertaking corrective action under § 259.48, the owner or operator must notify the EPA Regional Administrator that the estimate has been placed in the operating record.

(1) The owner or operator must annually adjust the estimate for inflation until the corrective action program is completed in accordance with § 259.48(f).

(2) The owner or operator must increase the corrective action cost estimate and the amount of financial assurance provided under paragraph (b) of this section if changes in the corrective action program or CKDLF unit conditions increase the maximum costs of corrective action.

(3) The owner or operator may reduce the amount of the corrective action cost estimate and the amount of financial assurance provided under paragraph (b) of this section if the cost estimate exceeds the maximum remaining costs of corrective action. Within 14 days of making an annual adjustment under paragraph (a)(1) of this section, the owner or operator must notify the EPA Regional Administrator that the justification for the reduction or increase of the corrective action cost estimate and the amount of financial assurance has been placed in the operating record.

(b) An owner or operator in a CKDLF unit, if required to undertake a corrective action program under § 259.48 must establish financial assurance using the allowable mechanisms defined under § 259.64. An owner or operator in a CKDLF unit must establish financial assurance for all corrective action programs initiated during the active life of the unit, closure, and post-closure care periods. The owner or operator must provide continuous coverage for corrective action until released from financial assurance requirements for corrective action by demonstrating compliance with §§ 259.48 (f) and (g).

**§ 259.64 Allowable mechanisms.**

The mechanisms used to demonstrate financial assurance under this Section must ensure that the funds necessary to meet the costs of closure, post-closure care, and corrective action for known releases will be available whenever they are needed. Persons managing CKD waste must choose from the options specified in paragraphs (a) through (j) of this section.

(a) *Trust Fund.* (1) The owner or operator may satisfy the requirements of this section by establishing a trust fund which conforms to the requirements of this paragraph. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency. A copy of the trust agreement must be placed in the facility's operating record.

(2) Payments into the trust fund must be made annually by the owner or operator over the term of the initial control mechanism or over the remaining life of the CKDLF unit, whichever is shorter, in the case of a trust fund for closure or post-closure care, or over one-half of the estimated length of the corrective action program in the case of corrective action for known releases. This period is referred to as the pay-in period.

(3) For a trust fund used to demonstrate financial assurance for closure and post-closure care, the first payment into the fund must be at least equal to the current cost estimate for closure or post-closure care, except as provided in paragraph (k) of this section, divided by the number of years in the pay-in period as defined in paragraph (a)(2) of this section. The amount of subsequent payments must be determined by the following formula:

Next Payment = [CE − CV]/Y

Where:

CE is the current cost estimate for closure or post-closure care (updated for inflation or other changes), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(4) For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund must be at least equal to one-half of the current cost estimate for corrective action, except as provided in paragraph (k) of this section, divided by the number of years in the corrective action pay-in period as defined in paragraph (a)(2) of this Section. The amount of subsequent payments must be determined by the followingformula:

Next Payment = [RB − CV]/Y

Where:

RB is the most recent estimate of the required trust fund balance for corrective action (i.e., the total costs that will be incurred during the second half of the corrective action period), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(5) The initial payment into the trust fund must be made before the initial receipt of waste or before two years elapse after the effective date of this rule, whichever is later; in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 259.48.

(6) If the owner or operator establishes a trust fund after having used one or more alternate mechanisms specified in this Section, the initial payment into the trust fund must be at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to the specifications of this paragraph and paragraph (a) of this section, as applicable.

(7) The owner or operator, or other person authorized to conduct closure, post-closure care, or corrective action activities may request reimbursement from the trustee for these expenditures. Requests for reimbursement will be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure, post-closure care, or corrective action, and if justification and documentation of the cost is placed in the operating record. Prior to reimbursement, the owner or operator must notify the EPA Regional Administrator that the documentation of the justification for reimbursement has been placed in the operating record and that reimbursement has been received.

(8) The trust fund may be terminated by the owner or operator only if the owner or operator substitutes alternate financial assurance as specified in this Section or if he is no longer required to demonstrate financial responsibility in accordance with the requirements of § 259.61(b), § 259.62(b), or § 259.63(b).

(b) *Surety Bond Guaranteeing Payment or Performance.* (1) The owner or operator may demonstrate financial assurance for closure or post-closure care by obtaining a payment or performance surety bond which conforms to the requirements of this paragraph. The owner or operator may demonstrate financial assurance for corrective action by obtaining a performance bond which conforms to the requirements of this paragraph. The bond must be effective before the initial receipt of waste or before two years elapse after [the effective date of this rule], whichever is later; in the case of closure and post-closure care, the bond must be effective no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 259.48. Within 14 days after demonstrating financial assurance according to this section, the owner or operator must notify the EPA Regional Administrator that a copy of the bond has been placed in the operating record. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

(2) The penal sum of the bond must be in an amount at least equal to the current closure, post-closure care or corrective action cost estimate, whichever is applicable, except as provided in paragraph (k) of this section.

(3) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(4) The owner or operator must establish a standby trust fund. The standby trust fund must meet the requirements of paragraph (a) of this Section except the requirements for initial payment and subsequent annual payments specified in paragraphs (a)(2), (3), (4) and (5) of this section.

(5) Payments made under the terms of the bond will be deposited by the surety directly into the standby trust fund. Payments from the trust fund must be approved by the trustee.

(6) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner and operator and to the EPA Regional Administrator 120 days in advance of cancellation. If the surety cancels the bond, the owner or operator must obtain alternate financial assurance as specified in this section.

(7) The owner or operator may cancel the bond only if alternate financial assurance is substituted as specified in this Section or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with § 259.61(b), § 259.62(b) or § 259.63(b).

(c) *Letter of Credit.* (1) The owner or operator may satisfy the requirements of this Section by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph. The letter of credit must be effective before the initial receipt of waste or before two years elapse after the effective date of this rule, whichever is later; in the case of closure and post-

closure care, the letter of credit must be effective no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 259.48. Within 14 days after obtaining a letter of credit, the owner or operator must notify the EPA Regional Administrator that a copy of the letter of credit has been placed in the operating record. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a Federal or State agency.

(2) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: Name, and address of the facility, and the amount of funds assured, must be included with the letter of credit in the operating record.

(3) The letter of credit must be irrevocable and issued for a period of at least one year in an amount at least equal to the current cost estimate for closure, post-closure care or corrective action, whichever is applicable, except as provided in paragraph (k) of this Section. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner and operator and to the EPA Regional Administrator 120 days in advance of cancellation. If the letter of credit is canceled by the issuing institution, the owner or operator must obtain alternate financial assurance.

(4) The owner or operator may cancel the letter of credit only if alternate financial assurance is substituted as specified in this Section or if the owner or operator is released from the requirements of this Section in accordance with § 259.61(b), § 259.62(b) or § 259.63(b).

(d) *Insurance.* (1) The owner or operator may demonstrate financial assurance for closure and post-closure care by obtaining insurance which conforms to the requirements of this paragraph. The insurance must be effective before the initial receipt of waste or before two years elapse after the effective date of the requirements of this rule, whichever is later; in the case of closure and post-closure care, the insurance must be effective no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 259.48. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States. Within 14 days after obtaining insurance, the owner or operator must notify the EPA Regional Administrator that a copy of the insurance policy has been placed in the operating record.

(2) The closure or post-closure care insurance policy must guarantee that funds will be available to close the CKDLF unit whenever final closure occurs and/or to provide post-closure care for the CKDLF unit whenever the post-closure care period begins, whichever is applicable. The policy must also guarantee that once closure or post-closure care begins, the insurer will be responsible for the paying out of funds to the owner or operator or other person authorized to conduct closure or post-closure care, up to an amount equal to the face amount of the policy.

(3) The insurance policy must be issued for a face amount at least equal to the current cost estimate for closure or post-closure care, whichever is applicable. The term face amount means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(4) A owner or operator, or any other person authorized to conduct closure or post-closure care, may receive reimbursements for closure or post-closure expenditures, whichever is applicable. Requests for reimbursement will be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of closure or post-closure care, and if justification and documentation of the cost is placed in the operating record. Within 14 days after reimbursement, the owner or operator must notify the EPA Regional Administrator that the documentation of the justification for reimbursement has been placed in the operating record and that reimbursement has been received.

(5) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided that such consent is not unreasonably refused.

(6) The insurance policy must provide that the insurer may not cancel, terminate or fail to renew the policy except for failure of payment of premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner and operator and to the EPA Regional Administrator 120 days in advance of cancellation. If the insurer cancels the policy, the owner or operator must obtain alternate financial assurance as specified in this section.

(7) For insurance policies providing coverage for post-closure care, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for 26-week Treasury securities.

(8) The owner or operator may cancel the insurance policy only if alternate financial assurance is substituted as specified in this Section or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with the requirements of § 259.61(b), § 259.62(b) or § 259.63(b).

(e) *Corporate Financial Test.* The owner or operator that satisfies the requirements of this paragraph may demonstrate financial assurance up to the amount specified herein:

(1) Financial Component.

(i) The owner or operator must satisfy one of the following three conditions:

(A) A current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; or

(B) A ratio of less than 1.5 comparing total liabilities to net worth; or

(C) A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus $10 million, to total liabilities.

(ii) The tangible net worth of the owner or operator must be greater than:

(A) The sum of the current closure, post-closure care, corrective action cost estimates and any other environmental obligations, including guarantees, covered by a financial test plus $10 million except as provided in paragraph (e)(1)(ii)(B) of this section.

(B) $10 million in net worth plus the amount of any guarantees that have not been recognized as liabilities on the financial statements, provided all of the current closure, post-closure care, and corrective action costs and any other environmental obligations covered by a financial test are recognized as liabilities on the owner's or operator's audited financial statements, and

subject to the approval of the EPA Regional Administrator.

(iii) The owner or operator must have assets located in the United States amounting to at least the sum of current closure, post-closure care, corrective action cost estimates and any other environmental obligations covered by a financial test as described in paragraph (e)(3) of this Section.

(2) Recordkeeping and reporting requirements.

(i) As they become available, the owner or operator must place the following items into the facility's operating record:

(A) A letter signed by the owner's or operator's chief financial officer that:

(*1*) Lists all the current cost estimates covered by a financial test, including, but not limited to, cost estimates required for municipal solid waste management facilities under 40 CFR Part 258, cost estimates required for UIC facilities under 40 CFR Part 144, if applicable, cost estimates required for petroleum underground storage tank facilities under 40 CFR Part 280, if applicable, cost estimates required for PCB storage facilities under 40 CFR Part 261, if applicable, and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, if applicable; and

(*2*) Provides evidence demonstrating that the firm meets the conditions of either paragraph (e)(1)(i)(A) or (e)(1)(i)(B) or (e)(1)(i)(C) and paragraphs (e)(1)(ii) and (e)(1)(iii) of this Section.

(B) A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion, disclaimer of opinion, or other qualified opinion will be cause for disallowance, with the potential exception for qualified opinions provided in the next sentence. The EPA Regional Administrator may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the EPA Regional Administrator deems that the matters which form the basis for the qualification are insufficient to warrant disallowance of the test. If the EPA Regional Administrator does not allow use of the test, the owner or operator must provide alternate financial assurance that meets the requirements of this Section.

(C) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that owner or operator satisfies paragraphs (e)(1)(i)(B) or (e)(1)(i)(C) of this section that are different from data in the audited financial statements referred to in paragraph (e)(2)(i)(B) of this Section or any other audited financial statement or data filed with the Securities and Exchange Commission (SEC) then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.

(D) If the chief financial officer's letter provides a demonstration that the firm has assured for environmental obligations as provided in paragraph (e)(1)(ii)(B) of this section, then the letter shall include a report from the independent certified public accountant that verifies that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements, how these obligations have been measured and reported, and that the tangible net worth of the firm is at least $10 million plus the amount of any guarantees provided.

(ii) The owner or operator must place the items specified in paragraph (e)(2)(i) of this section in the operating record and notify the EPA Regional Administrator that these items have been placed in the operating record before the initial receipt of waste or before two years elapse after the effective date of this rule, whichever is later; in the case of closure, and post-closure care, items specified in paragraph (e)(2)(i) of this section must have been placed in the operating record no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 259.48.

(iii) After the initial placement of items specified in paragraph (e)(2)(i) of this section in the operating record, the owner or operator must annually update the information and place updated information in the operating record within 90 days following the close of the owner or operator's fiscal year. The EPA Regional Administrator may provide up to an additional 45 days for a owner or operator who can demonstrate that 90 days is insufficient time to acquire audited financial statements. The updated information must consist of all items specified in paragraph (e)(2)(i) of this section.

(iv) The owner or operator is no longer required to submit the items specified in paragraph (e)(2) of this section or comply with the requirements of this paragraph when:

(A) The person substitutes alternate financial assurance as specified in this section that is not subject to these recordkeeping and reporting requirements; or

(B) The person is released from the requirements of this section in accordance with § 259.61(b), § 259.62(b), or § 259.63(b).

(v) If the owner or operator no longer meets the requirements of paragraph (e)(1) of this section, the owner or operator must, within 120 days following the close of the owner or operator's fiscal year, obtain alternative financial assurance that meets the requirements of this section, place the required submissions for that assurance in the operating record, and notify the EPA Regional Administrator that the owner or operator no longer meets the criteria of the financial test and that alternate assurance has been obtained.

(vi) The EPA Regional Administrator may, based on a reasonable belief that the owner or operator may no longer meet the requirements of paragraph (e)(1) of this section, require at any time the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation as specified in paragraph (e)(2) of this section. If the EPA Regional Administrator finds that the owner or operator no longer meets the requirements of paragraph (e)(1) of this section, within 120 days of this finding the owner or operator must provide alternate financial assurance that meets the requirements of this section.

(3) *Calculation of costs to be assured.* When calculating the current cost estimates for closure, post-closure care, corrective action, or the sum of the combination of such costs to be covered, and any other environmental obligations assured by a financial test referred to in paragraph (e) of this section, the owner or operator must include cost estimates required for cement kiln dust solid waste management facilities under this part, as well as cost estimates required for the following environmental obligations, if the person assures them through a financial test: obligations associated with UIC facilities under 40 CFR Part 144, petroleum underground storage tank facilities under 40 CFR Part

280, PCB storage facilities under 40 CFR Part 261, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265.

(f) *Corporate Guarantee.* (1) The owner or operator may meet the requirements of this section by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a ''substantial business relationship'' with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraph (e) of this section and must comply with the terms of the guarantee. A certified copy of the guarantee must be placed in the facility's operating record along with copies of the letter from the guarantor's chief financial officer and accountants' opinions. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter from the guarantor's chief financial officer must describe the value received in consideration of the guarantee. If the guarantor is a firm with a ''substantial business relationship'' with the owner or operator, this letter must describe this ''substantial business relationship'' and the value received in consideration of the guarantee.

(2) The guarantee must be effective and all required submissions placed in the operating record before the initial receipt of waste or before the effective date of the requirements of this section, whichever is later, in the case of closure and post-closure care, or in the case of corrective action no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 259.48.

(3) The terms of the guarantee must provide that:

(i) If the owner or operator fails to perform closure, post-closure care, and/or corrective action of a facility covered by the guarantee, the guarantor will:

(A) Perform, or pay a third party to perform, closure, post-closure care, and/or corrective action as required (performance guarantee); or

(B) Establish a fully funded trust fund as specified in paragraph (a) of this section in the name of the owner or operator (payment guarantee).

(ii) The guarantee will remain in force for as long as the owner or operator must comply with the applicable financial assurance requirements of this Subpart unless the guarantor sends prior notice of cancellation by certified mail to the owner or operator and to the EPA Regional Administrator. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the EPA Regional Administrator, as evidenced by the return receipts.

(iii) If notice of cancellation is given, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the EPA Regional Administrator, obtain alternate financial assurance, place evidence of that alternate financial assurance in the facility operating record, and notify the EPA Regional Administrator. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance within 120 days of the cancellation notice, obtain alternative assurance, place evidence of the alternate assurance in the facility operating record, and notify the EPA Regional Administrator.

(4) If a corporate guarantor no longer meets the requirements of paragraph (e)(1) of this section, the owner or operator must, within 90 days, obtain alternative assurance, place evidence of the alternate assurance in the facility operating record, and notify the EPA Regional Administrator. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance within the next 30 days.

(5) The owner or operator is no longer required to meet the requirements of paragraph (g) of this section when:

(i) The owner or operator substitutes alternate financial assurance as specified in this section; or

(ii) The owner or operator is released from the requirements of this section in accordance with § 259.61(b), § 259.62(b), or § 259.63(b).

(g) *State-Approved Mechanism.* In an authorized State, the owner or operator may satisfy the requirements of this section by obtaining any other mechanism that meets the criteria specified in paragraph (j)(1) Of this section, and that is approved by the State Director.

(h) *State Assumption of Responsibility.* If the State Director either assumes legal responsibility for the person's compliance with the closure, post-closure care and/or corrective action requirements of this part, or assures that the funds will be available from State sources to cover the requirements, the owner or operator will be in compliance with the requirements of this section. Any State assumption of responsibility must meet the criteria specified in paragraph (j)(1) of this section.

(i) *Use of multiple mechanisms.* The owner or operator may demonstrate financial assurance for closure, post-closure, and corrective action, as required by § 259.61, § 259.62, and § 259.63 by establishing more than one mechanism per facility, except that mechanisms guaranteeing performance rather than payment, may not be combined with other instruments. The mechanisms must be as specified in paragraphs (a), (b), (c), (d), (e), (f), (g), (h), and (i) of this section, except that financial assurance for an amount at least equal to the current cost estimate for closure, post-closure care, and/or corrective action may be provided by a combination of mechanisms rather than a single mechanism.

(j) The language of the mechanisms listed in paragraphs (a), (b), (c), (d), (e), (f), (g), (h), and (i) of this section must ensure that the instruments satisfy the following criteria:

(1) The financial assurance mechanisms must ensure that the amount of funds assured is sufficient to cover the costs of closure, post-closure care, and corrective action for known releases when needed;

(2) The financial assurance mechanisms must ensure that funds will be available in a timely fashion when needed;

(3) The financial assurance mechanisms must be obtained by the owner or operator by the effective date of these requirements or prior to the initial receipt of solid waste, whichever is later, in the case of closure and post-closure care, and no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 259.48, until the owner or operator is released from the financial assurance requirements under §§ 259.61, 259.62 and 259.63.

(4) The financial assurance mechanisms must be legally valid, binding, and enforceable under State and Federal law.

**§ 259.65 Discounting.**

The EPA Regional Administrator may allow discounting of closure cost estimates in § 259.61(a), post-closure cost estimates in § 259.62(a), and/or corrective action costs in § 259.63(a) up to the rate of return for essentially risk free investments, net of inflation, under the following conditions:

(a) The EPA Regional Administrator determines that cost estimates are complete and accurate and the owner or operator has submitted a statement from a Registered Professional Engineer so stating;

(b) The EPA Regional Administrator finds the facility in compliance with applicable and appropriate permit conditions;

(c) The EPA Regional Administrator determines that the closure date is certain and the owner or operator certifies that there are no foreseeable factors that will change the estimate of site life; and

(d) Discounted cost estimates must be adjusted annually to reflect inflation and years of remaining life.

APPENDIX I TO PART 259—CONSTITUENTS FOR DETECTION MONITORING

| Common name [1] |
|---|
| pH |
| Conductivity |
| Total Dissolved Solids |
| Potassium |
| Chloride |
| Sodium |
| Sulfate |

[1] Common names are those used widely in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

## PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

2. Section 261.4 is amended by revising paragraph (b)(8) to read as follows:

### § 261.4 Exclusions.

* * * * *

(b) * * *

(8)(i) Except as provided in § 266.112 of this chapter for facilities that burn or process hazardous waste, CKD waste, so long as it is managed in accordance with Part 259 of this chapter.

(ii) CKD waste is not managed in accordance with Part 259 of this chapter when a facility:

(A) Fails to comply with:

(*1*) air requirements for landfills, as specified § 259.22 of this chapter, by 90 days after the effective date of the final rule, unless granted approval by the EPA Regional Administrator (or the State, in authorized States) under § 259.22(d) of this chapter to implement alternative measures for fugitive dust control;

(*2*) the containment standards, as specified under § 259.20 of this chapter, for CKD destined for sale or beneficial use within two years after the effective date of the final rule, unless granted approval by the EPA Regional Administrator under § 259.20(c) of this chapter to implement alternative measures for fugitive dust control;

(*3*) design requirements for CKD landfills, as specified under § 259.30(c) of this chapter by two years after the effective date of the final rule, unless granted approval by the EPA Regional Administrator under the provisions of § 259.30(h) of this chapter for a unit design, or a finding is made of no potential for migration under § 259.40(b) of this chapter;

(*4*) ground-water monitoring systems requirements, as specified under § 259.41 of this chapter, by two years after the effective date of the final rule, unless granted approval by the EPA Regional Administrator under the provisions of § 259.30(h) of this chapter for a unit design, or a finding is made of no potential for migration under § 259.40(b) of this chapter;

(*5*) the time frames for appropriate corrective action proposed today under §§ 259.41, 259.44, 259.45, 259.46, and 259.47 of this chapter;

(*6*) any applicable demonstration requirements for new CKD landfills as specified under §§ 259.11(a), 259.12(a), 259.13(a), 259.14(a), 259.15(a) and 259.16(a) of this chapter;

(*7*) any requirement identified in a notice received from the Regional Administrator because of repeated violations the requirements of Part 259 of this chapter, other than those specified in paragraphs (b)(8)(ii)(A)(*1*) through (b)(8)(ii)(A)(*6*) of this section; or,

(B) Fails to comply with any section of Part 259 of this chapter, other than those specified in paragraphs (b)(8)(ii)(A) of this section, within 30 days of receiving a written notice of non-compliance with any of those sections from the Regional Administrator

(iii) Clinker manufactured with CKD waste that has been listed in Subpart D of this part and has been reintroduced to the cement manufacturing process.

* * * * *

## PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

1. The authority citation for Part 266 continues to read as follows:

**Authority:** 42 USC 1006, 2002(a), 3004, 3014, 6905, 6906, 6912, 6922, 6924, 6925, and 6937.

2. Subpart I is added to Part 266 to read as follows:

## Subpart I—Management Standards For Hazardous Cement Kiln Dust Waste

Sec.
266.120 Applicability and requirements.
266.121 Removal of the hazardous waste designation.

### § 266.120 Applicability and requirements.

(a) The purpose of this part is to establish national criteria under the Resource Conservation and Recovery Act (RCRA or the Act), as amended, for cement kiln dust waste that is not characteristically hazardous waste under the provisions of 40 CFR 266.112 and is not managed in accordance with the provisions of Part 259 of this chapter.

(b) Persons who generate, transport or store CKD that is regulated under this Subpart are subject to the requirements in paragraphs (b)(1) through (7) of this section. These requirements operate in lieu of requirements in 40 CFR Parts 262–265, and 40 CFR Part 268 except where portions of those Parts are specifically cross-referenced.

(1) All applicable provisions of Part 262 (Standards Applicable to Generators of Hazardous Waste) of this chapter;

(2) Sections 264.4 and 265.4 of Subpart A (Imminent hazard action) of this chapter;

(3) Sections 264.11 and 265.11 (Identification number), 264.12 and 265.12 (Required notices), 264.14 and 265.14 (Security), 264.15 and 265.15 (General inspection requirements), 264.16 and 265.16 (Personnel training), and 264.19 and 265.19 (Construction quality assurance program) of Subpart B (General Facility Standards) of this chapter.

(4) Subparts C, D, and E of both Parts 264 and 265 (Preparedness and Prevention, Contingency Plan and Emergency Procedures, and Manifest System, Recordkeeping, and Reporting) of this chapter;

(5) All provisions of 40 CFR Part 259 of this chapter.

### § 266.121 Removal of the hazardous waste designation.

(a) If any CKD waste loses the exemption under § 261.4(b)(8) of this chapter and becomes subject to § 266.120, the owner or operator of the facility managing such waste may apply to the Regional Administrator for removal of the hazardous designation for such CKD waste. The application must include:

(1) A statement that the CKD waste is now being managed in accordance with Part 259;

(2) A statement explaining the circumstances of the non-compliance; and,

(3) A demonstration that the non-compliance is not likely to recur.

(b) The Regional Administrator may remove the hazardous waste designation by reinstating the exclusion, as listed under § 261.4(b)(8) of this chapter, if the Regional Administrator finds that the owner or operator of the facility has satisfactorily explained the circumstances of the non-compliance, has demonstrated that the non-compliance is not likely to recur and that removal of the hazardous waste designation will not pose a threat to human health or the environment. The Regional Administrator may remove the hazardous waste designation by reinstating the exclusion (as listed under § 261.4(b)(8) of this chapter) with additional conditions if the Regional Administrator finds that such additional conditions are necessary to ensure protection of human health and the environment.

(c) The Regional Administrator should take action on an application for removal of a hazardous waste designation within 60 days after receipt of the application. If the Regional Administrator does not take action on the application within that time period, then the application for removal of the hazardous waste designation (i.e., reinstatement of the exclusion under § 261.4(b)(8) of this chapter) is deemed granted, retroactive to the date of the application. However, the Regional Administrator may terminate a removal (i.e., reinstatement of the exclusion under § 261.4(b)(8) of this chapter) by default under this subsection if the Regional Administrator finds that the removal of the hazardous waste designation is not appropriate based on the factors specified in paragraph (b) of this Section.

## PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

1. The authority citation for Part 270 continues to read as follows:

**Authority:** 42 USC 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

2. Section 270.10 is amended by adding a sentence to the end of paragraph (a) to read as follows:

### Subpart B—Permit Application

#### § 270.10 General application Requirements.

(a) *Permit application.* * * * Procedures for application, issuance and administration of permits for cement kiln facilities that do not comply with the provisions of Part 259 are found exclusively in 40 CFR 270.69.

* * * * *

### Subpart F—Special Forms of Permits

2. Subpart F is amended to add a new § 270.69 to read as follows:

#### § 270.69 Permits for the Management of Cement Kiln Dust

(a) The EPA Regional Administrator may issue a permit for continued operation of cement manufacturing facilities that do not comply with the provisions of 40 CFR Part 259. Any such permit shall contain such terms and conditions as will assure protection of human health and the environment. Such permits:

(1) Shall provide for the operation of the facility in accordance 40 CFR Part 259, and

(2) May include such additional requirements as the EPA Regional Administrator deems necessary to protect human health and the environment, including, but not limited to requirements regarding monitoring, operation, financial responsibility, closure and remedial action.

(b) In issuing such permits, the EPA Regional Administrator may modify or waive permit application and permit issuance requirements in 40 CFR Parts 124 and 270, except procedures regarding public participation, provided the modifications or waivers protect human health and the environment.

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Friday
August 20, 1999

# Part IV

# Office of Management and Budget

**48 CFR Part 9903**

**Cost Accounting Standards Board; Changes in Cost Accounting Practices Proposed Rule**

## OFFICE OF MANAGEMENT AND BUDGET

### Office of Federal Procurement Policy

### 48 CFR Part 9903

### Cost Accounting Standards Board; Changes in Cost Accounting Practices

**AGENCY:** Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** The Cost Accounting Standards Board (CASB) invites a third round of comments on proposed amendments to the regulatory provisions contained in chapter 99 of title 48. The CASB's objective in issuing this document is to utilize the proposed amendments as a basis for holding an open public meeting, conducting a benchmarking survey, and soliciting public comments.

The proposed amendments, when issued as a final rule, would revise the current definitions, exceptions and illustrations governing changes in cost accounting practices; exempt certain changes in compliant cost accounting practices from the CASB's contract price and cost adjustment requirements, and establish new coverage for ''desirable changes.'' A new subpart 9903.4, Contractor Cost Accounting Practice Changes and Noncompliances, is also proposed. The new subpart would establish contractor notification requirements for circumstances when contractors make changes to their compliant cost accounting practices. The new subpart would also delineate the process for determining and resolving the cost impact of a compliant change in cost accounting practice or a noncompliant practice on existing covered contract and subcontract prices and/or costs.

Educational Institutions: For covered contracts and subcontracts awarded to an educational institution, the proposed subpart also provides that certain subpart requirements may be waived, on a case-by-case basis, if the cognizant Federal agency official concurrently establishes with the educational institution an ''advance agreement'' that details the specific procedures to be followed for the notification and resolution of compliant changes to established cost accounting practices and/or the correction of noncompliant practices when the educational institution is performing covered contracts, covered subcontracts and other Federally sponsored agreements.

**DATES:** Comments must be submitted in writing, by letter, and should be received by October 19, 1999.

**ADDRESSES:** Comments should be addressed to Mr. Rudolph J. Schuhbauer, Project Director, Cost Accounting Standards Board, Office of Federal Procurement Policy, 725 17th Street, NW, Room 9013, Washington, DC 20503. Attn: CASB Docket No. 93–01N(3). To facilitate the CASB's review of your submitted comments, please include with your written comments a three point five inch (3.5″) computer diskette copy of your comments and denote the format used. A format that is compatible with Corel WordPerfect 8 is preferred. The submission of public comments via the internet by ''E-mail'' will not satisfy the specified requirement that public comments must be submitted in writing, by letter, as receipt of a readable data file is not assured.

**FOR FURTHER INFORMATION CONTACT:** Rudolph J. Schuhbauer, Project Director, Cost Accounting Standards Board (telephone: 202–395–3254).

**SUPPLEMENTARY INFORMATION:** In response to the second of comments requested on this topic in the Supplemental Notice of Proposed Rulemaking, promulgated on July 14, 1997 (hereinafter referred to as ''SNPRM–I''), a number of commenters expressed their concerns regarding the purpose and scope of the Board's proposed amendments. In consideration of those concerns, the Board has decided to request a third round of public comments via this Supplemental Notice of Proposed Rulemaking (hereinafter referred to as ''SNPRM–II'') To ensure the views and concerns of interesteed parties are fully surfaced, the Board will also conduct an open public meeting and initiate a ''benchmarking'' survey.

### Open Public Meeting

In addition to the submission of public comments, the Board will schedule an open public meeting to discuss this proposed rule. The date, time and location details of that meeting will be the subject of a separate **Federal Register** notice.

### Benchmarking Survey

In response to the Board's prior proposal, some commenters generally recommended that the Board field test and/or further study the impact its proposal will have on contractors and the Government and then to reconsider the need for the proposed amendments. For a more detailed discussion of the commenters' concerns, see ''Cost Benefit Issues'' contained in Section B below. To better understand such concerns, the Board will invite a small number of major defense contractors to participate in a coordinated ''benchmarking'' survey. The objective of the survey will be to specifically identify the additional number of contract price and cost adjustment cases that would result if the Board's current proposal were applied to actual contractor changes that occurred in a recently completed cost accounting period. Participation by contractors will be on a voluntary basis. Collection and identification of the survey data is expected to be coordinated with the contractor's cognizant Federal audit organization prior to its submission. These ''benchmarking'' surveys will be formally initiated by the Board through coordination with interested industry associations. For those contractors that wish to participate in the survey but are not included in the resultant contractor groupings established through coordination with the industry associations, the survey questionnaire may be obtained by faxing a request to the CASB staff at 202–395–5105. In such cases, the survey data should be submitted by the due date specified below. Timely submitted contractor surveys will be examined, on a sampling basis, by the cognizant Federal audit organization after they are received by the CASB.

### A. Regulatory Process

The CASB's rules, regulations and Cost Accounting Standards (CAS) are codified at 48 CFR Chapter 99. Section 26(g)(1) of the Office of Federal Procurement Policy Act, 41 U.S.C. 422(g), requires that the Board, prior to the establishment of any new or revised Standard, complete a prescribed rulemaking process. The process generally consists of the following four steps:

(1) Consult with interested persons concerning the advantages, disadvantages and improvements anticipated in the pricing and administration of Government contracts as a result of the adoption of a proposed Standard (e.g., promulgation of a Staff Discussion Paper (SDP)).

(2) Issue an Advance Notice of Proposed Rulemaking (ANPRM).

(3) Issue a Notice of Proposed Rulemaking (NPRM).

(4) Promulgate a Final Rule.

This Notice is a continuation of the third step of the four-step process.

**B. Background**

*Prior Promulgations*

Many commenters have identified the Board's regulatory coverage on ''changes in cost accounting practice'' as a matter requiring clarification and/or further coverage. The CASB requested public comments from interested parties on this topic in an SDP published in the **Federal Register** on April 9, 1993 (58 FR 18428) and in an ANPRM published on April 25, 1995 (60 FR 20252). On September 18, 1996, the CASB, in an NPRM published in the **Federal Register** (61 FR 49196), proposed to amend the Board's current coverage governing changes in cost accounting practices. That NPRM also included proposed amendments to conform the language contained in the contract clauses for ''Full'' and ''Modified'' coverage, specify certain Federal agency responsibilities, and expand the criteria for desirable change determinations. A new subpart was also proposed to delineate the actions to be taken by the contracting parties when a contractor makes a compliant change to a cost accounting practice or follows a noncompliant practice. On July 14, 1997, the CASB published the SNPRM–I in the **Federal Register** (62 FR 37654), to solicit additional comments concerning certain proposed revisions to the previously proposed NPRM coverage and to solicit comments to determine to what extent, if any, there may be support for the establishment of new provisions that would exempt certain voluntary changes in a contractor's cost accounting practices from the Board's contract price and cost adjustment requirements.

*Public Comments*

Of the sixty-nine sets of public comments received in response to the SNPRM–I, fifty-nine were provided in a timely manner. The public comments were received from contractors, educational institutions, professional associations, Federal agencies, accounting organizations, and other individuals. A number of commenters supported the establishment of new provisions that would exempt from the Board's contract price and cost adjustment requirements those voluntary changes in compliant cost accounting practices that directly result from changes made by a contractor to improve the economy and efficiency of its operations. Some commenters supported the proposed amendments contained in the SNPRM–I. Some did not. Others offered suggestions on how the proposed coverage might be clarified or otherwise improved. The responses received in a timely manner are addressed in Section E, Public Comments.

Certain other inquiries and concerns, of a more general nature, that were expressed by several commenters with respect to the Board's overall objectives and rationale for the proposed amendments are addressed immediately below.

*Board Objectives and Rationale*

A number of contractors and professional associations questioned the purpose of the Board's proposed amendments and asked if other more simplified approaches would not better serve the Government and contractors. Some commenters felt that the Board had never supplied a clear rationale for the proposed definition of the term ''cost accounting practice.'' One commenter stated that because ''cost accounting practice'' is not so much an accounting concept as it is a key to the administration of CAS, a statement of purpose or rationale would help to understand the CAS Board's goal.

The Board's objectives are discussed below.

*Continuing Board Objective:* To support the Government's procurement process for negotiated cost-based contracts.

The Board's continuing objective is to promote an acquisition environment wherein Government contracting officials can, with a high degree of confidence, rely upon the estimated and actual cost information provided by contractors relative to (1) the costs contained in and/or submitted in support of proposed contract prices, (2) the overall costs of operations and/or (3) the costs of prior contract performance. Because the Board's CAS and Interpretations often limit or narrow the range of alternative cost accounting practices that might otherwise be used by a contractor, or by competing contractors, in calculating submitted cost information, Government procurement officials can with a greater degree of reliance make meaningful analyses and comparisons when contractor submitted cost information is derived through a contractor's consistent application of CAS compliant cost accounting practices.

Pursuant to its enabling statue, the Board promulgates CAS and Interpretations that are designed to achieve uniformity and consistency in the cost accounting practices used by contractors to estimate, accumulate and report costs. The concepts of ''uniformity'' and ''consistency'' are set forth in the Board's ''Statement of Objectives, Policies and Concepts'' (57 FR 31036, 7/13/92). The Board's rules also require the larger CAS-covered contractors to formally disclose to the Government their established cost accounting practices, via submission of a disclosure statement. Disclosure reduces the potential for Government misunderstandings concerning contractor cost information submissions. Consequently, the submission of estimated or actual cost information developed by contractors based on the consistent application of CAS compliant cost accounting practices enables the Government to make more meaningful cost comparisons between competing contractors, facilitates the negotiation of fair and reasonable contract prices, and permits the Government to make more reliable comparisons of a particular contractor's estimated and actual contract costs.

*Immediate Board Objective:* To bridge the gap between contractor cost accounting matters and the Government's procurement process for negotiating and administering negotiated cost-based contracts, particularly when contractors fail to apply their established cost accounting practices in a consistent manner, fail to comply with applicable CAS or make compliant changes to their established cost accounting practices.

*Statutory Requirement.* Under its enabling statute, the Board is required to promulgate regulations that require contractors and subcontractors to ''* * * agree to a contract price adjustment * * * for any increased costs paid to such contractor or subcontractor by reason of a change in the contractor's or subcontractor's cost accounting practices or by reason of a failure by the contractor or subcontractor to comply with applicable cost accounting standards.'' Accordingly, the Board's implementing regulations include provisions that are designed to establish what constitutes a ''change to a cost accounting practice'' and ''increased cost'' to the Government. The Board's regulations also provide for contract price and cost adjustments if a contractor changes its established cost accounting practice or applied a noncompliant practice. The Board's current proposal is designed to facilitate the implementation of the Board's statutory requirements.

*Cost Accounting Practice Definition:* Consistent with the Board's statutory requirements, the purpose of the Board's proposed amendments to the definitions of the terms ''cost accounting practice'' and ''change to a cost accounting practice'' is to direct the contracting parties to focus on the cost accounting

practices actually used by contractors to accumulate cost in cost pools for subsequent allocation to intermediate and final cost objectives when determining if a voluntary change in cost accounting practice has occurred. Specifically, the proposed amendments make clear that changes in the selection and/or composition of cost pools are changes in the methods and techniques used to allocate cost to cost objectives, i.e., a change to a cost accounting practice.

Based on the commenters' stated perceptions, some contractors apparently believe that the term ''cost accounting practice'' as defined in the Board's existing rules is merely a contractual term of art that is used to identify a finite or limited number of circumstances which trigger contract price or cost adjustments under the terms and conditions of CAS-covered contracts. In their view, a change in cost accounting practice only occurs if the change is specifically cited or illustrated in the Board's rules. That line of reasoning would inappropriately preclude from consideration the complete spectrum of cost accounting practices actually used by each contractor to accumulate costs in cost pools for subsequent allocation to intermediate and final cost objectives. The commenters' inferences are that the Board has the ability to promulgate a rule that describes or illustrates every conceivable circumstance that the Board considers to be a change to a cost accounting practice for each contractor performing CAS-covered contracts. That, however, is not feasible or desirable. Instead, the Board's objective is to maintain cost accounting practice definitions that can be related to each contractor's established cost accounting practices.

The Board's proposed definitions are, therefore, from a broader perspective. The Board's objective is to permit the application of the Board's rules to all contractors and subcontractors, regardless of their specific individual cost accounting practices applied to accumulate costs. The Board's expectations are that the contracting parties will be able to determine, on a case-by-case basis, whether a change in a particular contractor's established cost accounting practice has occurred based on the revised language contained in the Board's proposed definitions. Under the definition being proposed today, if a contractor makes changes that alter the flow of pooled costs to intermediate and final cost objectives, for ongoing functions, such changes would generally be considered a change in cost accounting practice. Thus, it is the substance of the actual change made that is to be evaluated by the contracting parties. A cost accounting practice change may occur even if it is not specifically depicted in the Board's rules.

The accompanying illustrations are a secondary source of guidance regarding the application of the primary policy reflected in the definitional language. A determination that a change in practice has occurred should normally result whenever there is a change in how pooled costs are accumulated for allocation to intermediate and final cost objectives. The determination is, therefore, not limited to only those circumstances that replicate the conditions associated with the changes in cost accounting practices illustrated in the Board's amended rule or by any previously proposed coverage (proposed definitional language or illustrations) associated with this rulemaking that is not eventually incorporated in the final rule.

*Contract Price and Cost Adjustments.* In proposing a new subpart 9903.4, the Board's objective is to establish a definitive cost impact process that fully considers and reflects how contractor submitted cost information is used by the Government (i) to negotiate contract prices at the time of award, (ii) to convert cost ceilings or target costs into final contract prices for flexibly priced contracts after award, and (iii) to pay contract costs under the terms and conditions of the different types of negotiated cost based contracts (FFP, CPFF, etc.) that are utilized by the Government to obtain products, supplies and services, research, etc.

Contractor cost estimates submitted to support proposed contract prices for the performance of specific tasks generally reflect the amount of direct and indirect costs that contractors expect they will actually accumulate in accordance with their established cost accounting practices after receipt of a contract award, if they were selected to perform the specific tasks. The Government's negotiators rely upon such cost estimates when they establish the negotiated contract price at the time of contract negotiations, prior to contract award. If a contractor changes a compliant cost accounting practice after contract award, the amount of costs accumulated for existing CAS-covered contracts may increase or decrease in comparison to the amounts that would have been accumulated had no practice change been made. Such post award changes made by a contractor could result in the payment of increased costs by the Government. If a contractor applied a noncompliant cost accounting practice, the amount of estimated costs based on the noncompliant practice may result in overstated or understated negotiated contract prices and/or the amount of actual costs accumulated for resultant CAS-covered contracts may be higher or lower than the amounts that would have resulted if a compliant practice had been used to accumulate costs. In such circumstances, contract price or cost adjustments may be required to preclude the payment of increased cost, to correct overstated contract prices and to deobligate overstated funding obligations that resulted from an estimating noncompliance, or to address individual contract cost overrun or underrun conditions that may result. Adjustments may also be required so that Government cost comparisons between estimated and actual costs of contract performance contained in contract cost status reports result in valid comparisons.

By proposing a definitive cost impact process, the Board is taking action to establish how the contracting parties are henceforth to:

- Estimate the amounts by which the amount of costs accumulated under existing CAS-covered contracts will increase or decrease after a compliant cost accounting practice change is made.
- Convert the estimated changes in cost accumulation (increases or decreases) for individual contracts to equitable contract price adjustments for ''required'' and ''desirable'' practice changes.
- Determine if ''voluntary'' cost accounting practice changes made unilaterally by a contractor after contract award will result in the payment of increased costs, in the aggregate, by the Government and to prescribe the actions to be taken to preclude the payment of the aggregate increased costs. At the time of contract award, a contractor agrees to consistently apply its established cost accounting practices when accumulating and reporting the costs of contract performance. A voluntary change in cost accounting practice negates that agreement and triggers the CAS contract clause price and cost adjustment provisions which preclude the Government from paying aggregate increased costs (as defined by the Board) that may result from a voluntary change in cost accounting practice. When a contractor makes a voluntary change to its established cost accounting practices, the amount of contract costs accumulated by the contractor for individual contracts may increase or decrease as compared to the amounts

that would have been accumulated for the individual contracts had the practice change not occurred. The cost impact process being proposed prescribes how to determine if the Government would pay ''increased costs,'' in the aggregate, as the result of a voluntary change in practice for the different types of contracts that may be involved (FFP or flexibly priced contracts). The increased cost determination is predicated upon an analysis of the changes in individual contract cost accumulations that are expected to result after the practice change and a determination on whether or not contract price adjustments or other actions are required to preclude the payment of aggregate increased costs, e.g., require adjustment of the Government's contractual obligations to pay the negotiated cost-based contract prices (FFP or cost ceilings for flexibly priced contracts) which were determined at the time of award based on proposed contract costs that were estimated in conformity with the contractor's then established cost accounting practices and the contractor's agreement to consistently apply such established practices when accumulating and reporting the actual costs of contract performance.

- Convert the estimated changes in cost accumulations (increases or decreases) for individual contracts to contract price adjustments and/or other actions that may be required to preclude the payment of increased costs or to otherwise reflect the cost impact of ''voluntary'' cost accounting practice changes.
- Determine if increased cost to the Government, in the aggregate, occurred in the event a noncompliant cost accounting practice was used to estimate contract costs and/or to accumulate contract costs.
- Correct noncompliant conditions.

The purpose of the foregoing discussion is intended to guide interested parties in commenting on the Board's proposal.

*Alternative Procedures*

Some commenters advocated that the use of other approaches might better serve the Government and its contractors. The thrust of their arguments was that other measurement criteria for evaluating the reliability of contractor cost submissions and remedies for ''unreliable'' cost submissions might be developed with the result that the contracting parties would incur less administrative costs. General references were made to recent regulatory changes established by the procurement community in response to acquisition reform legislation that produced ''streamlined'' acquisition regulations for contract awards where contract prices are generally based on ''adequate price competition,'' e.g., the use of ''past performance'' evaluations for determining responsible sources and ''Process Oriented Contract Administration Services (PROCAS),'' a ''team approach'' review program developed by the Defense Logistics Agency that establishes increased reliance on contractor internal control procedures so that Government surveillance can be lessened. How such alternative processes might be related to the implementation of the Board's statutory requirements for negotiated cost-based contracts was not, however, detailed. Any alternative system, if designed to provide the basis for making meaningful evaluations regarding compliance with the Board's CAS and the resulting submission and use of contractor prepared cost information, would require a baseline or benchmark against which submitted cost information could be measured, verified and equitably adjusted if unreliable cost information had been submitted. Additional contractor reporting systems and new measurement criteria relative to the Board's statutory requirements would need to be developed and implemented. Team reviews also consume considerable resources, pose scheduling delays, and are generally invoked only at the largest contractor locations.

In a cost-based contracting environment, the use of such alternative processes may not be as effective or less costly than the Board's administrative requirements. The Board has carefully considered the commenters' views and believes that its regulatory requirements (once amended as proposed in this SNPRM–II) and Standards result in a reasonably efficient and effective process for administering contractor cost accounting matters that affect the pricing of negotiated cost-based Government contracts and subcontracts.

*Cost Benefit Issues*

Cost Accounting Practice Definition

A number of commenters opined that the costs of implementation of the Board's proposed amendments would exceed any cost savings the Board might expect from the potential recovery of increased costs paid by the Government. The commenters premised their concerns on the notion that the proposed amendments to the Board's definitions of a ''cost accounting practice'' and ''change to a cost accounting practice'' will increase the number of cases (cost accounting practice changes) that will need to be reported to the Government and subjected to the Board's cost impact process. They reasoned that the increased number of cases will, in turn, increase the Government's and contractors' administrative costs over the levels currently being experienced. Consequently, they generally recommended that the Board field test and/or further study the impact its proposal will have on contractors and the Government and then reconsider the need for the proposed amendments. It is their belief that the Board will find that the Government's and contractors' administrative cost levels would increase substantially while any increase in the levels of ''increased costs'' to be recovered by the Government would not justify the higher administrative cost levels.

The Board acknowledges that for some contractors the *reported* number of cost accounting practice changes that would become subject to the Board's contract price or cost adjustment process may increase when compared to the number currently being reported. The possible increase would not be due to the actual number of ''changes'' made each year, but rather due to those changes that have been made routinely in the past but were not treated by the contractor as a ''change to a cost accounting practice'' (e.g., pool combinations, pool split-outs, and transfers of ongoing functions from one pool to another pool). Some contractors do not believe such changes are currently subject to the Board's consistency requirements and CAS contract price and cost adjustment provisions due to their interpretations of the Board's existing definitions, illustrations and rulemaking history regarding the definition of a change to a cost accounting practice.

Such cost pool changes normally impose additional non-CAS driven administrative burdens on both the Government and contractors because they generally require the negotiation of revised sets of forecasted indirect cost rates for contract cost estimating purposes and the establishment of revised sets of provisional and actual indirect cost rates for the payment of accumulated actual contract costs. These revisions are required whenever changes in the accumulation of pooled costs significantly affect estimated and/or actual contract cost accumulations. However, this additional administrative cost burden does not appear to be a contractor concern since these corollary administrative actions were not mentioned. Also not considered was the impact of the alternative outcomes and

alternative administrative actions that would result if the CAS cost impact process were not applied to uniformly resolve individual contract cost overruns or under-runs that may result from such changes.

A study of Government cost recoveries is not needed since the Board does not expect that only contract price reductions will occur due to the promulgation of this proposed rule. The contract price and cost adjustments made under the CAS cost impact process generally increase and decrease individual contract prices and costs in synchronization with the increase or decrease in actual cost accumulations expected to result from the practice change. If the Government determines a practice change to be a ''desirable change'', then the Government may increase, not decrease, contract prices in the aggregate. The objective is to track the expected changes in cost accumulation for the individual covered contracts and to adjust individual contract prices, if necessary. It is not to gain an advantage for the Government. The ''savings'' will accrue through the Government's continued reliance on contractor cost submissions, the Government's ability to adjust contract prices and costs to preclude the payment of increased costs (as defined by the Board), and the implementation of a less burdensome cost impact system.

The commenters' ''cost savings'' rationale avoided the basic issues under consideration by the Board, i.e., what constitutes a change in a contractor's established cost accounting practices used to estimate, accumulate and report costs for covered contracts, and, has the Board's statutory requirement to preclude the payment of ''increased costs'' been implemented in an effective manner? Their arguments were limited to the premise that if the proposed amendments increase existing administrative cost levels to the contractor and/or there is no significant increase in the level of amounts recovered by the Government, promulgation of the proposed amendments is not justified.

Throughout this rulemaking process, contractors continued to advocate that, from a technical prospective, the definition of a change to a cost accounting practice should not be amended, i.e., the Board's contract price and cost adjustment provisions should not be triggered if a contractor's estimated cost proposal was predicated on the accumulation of estimated pooled costs in a particular manner and, after contract award, the contractor elected to accumulate actual pooled costs differently and thereby altered the amount of actual contract costs accumulated for individual contracts. This administrative cost burden argument is really an extension of those technical arguments which are addressed elsewhere in this Preamble. However, as presented, the burden argument ignores the potential direct ''cost'' risk to the Government in terms of increased contract prices or costs that may result and be billed to the Government due to such post-award changes. By objecting on the basis that the Board's proposed amendments will increase the administrative cost burden, some contractors are really arguing that the CASB's requirements for adjusting contract prices to reflect the changes in the accumulation of pooled costs allocated to individual contracts, should not be applied. If such ''burden'' arguments were accepted, the CASB's cost impact process would not be used to uniformly resolve individual contract cost shifts resulting from such changes. The Board does not agree with such views. The Board does not believe that the commenter's arguments have technical merit or that the Board's proposal will materially increase the overall administrative cost burden level currently imposed by the Government on cost-based contractors.

The Board's objective is to consistently treat unilateral changes made by contractors that alter the manner by which the costs of ongoing functions are accumulated in cost pools for subsequent allocation to intermediate and final cost objectives as a change in cost accounting practice. Such contractor changes are viewed as a constant. They occur irrespective of the Board's rules, regulations and Standards. Therefore, the issue is simply whether changes in the accumulation of pooled costs that alter the flow of costs to intermediate and final cost objectives are also to be recognized as changes in a contractor's cost accounting practices for contract pricing purposes.

To ensure that equity results from the Government's cost-based contract pricing process, the Board is of the opinion that a change made by a contractor which alters the flow of costs to cost objectives, for ongoing functions, constitutes a change in cost accounting practice for contract cost or pricing purposes. In the final analysis, an approach that protects the Government's interests in an equitable manner, consistent with the Board's enabling statute, is needed in a cost-based contracting environment. The benefits of commonly understood definitions that result in implementation of the Board's statutory requirements will tend to negate the administrative costs of implementation even if some administrative cost levels were to increase for a short time. This is because the Board's existing rules have not resulted in an effective, easily understood and agreed to regulation. The contracting parties have experienced contentious disagreements and legal disputes concerning amounts paid under covered contracts after contractors made ''changes'' that altered the flow of costs to intermediate and final cost objectives which in turn altered the aggregate amount of accumulated contract costs. Settlement of these disagreements and adjudication of the resulting legal cases, particularly when extended over long periods of time, have produced significant ''administrative costs'' to both the Government and contractors. It is the Board's expectation that finalization of this proposal to more precisely define what constitutes a ''change to a cost accounting practice'' will reduce the potential for such disagreements and therefore will obviate the cost of protracted legal proceedings for many such changes in the future.

Cost Impact Process

The Board found that the administrative process for making the contract price and cost adjustments has not always been implemented in a uniform manner, and that the ''undocumented'' procedures and processes for making such adjustments is not widely understood by the Government or its contractors. The proposed cost impact process delineates the entire process to be followed when a contractor changes a compliant cost accounting practice, or is required to correct a non-compliant practice. It addresses when notification of a practice change is required and specifies a flexible process for determining and resolving the cost impact of a cost accounting practice change or noncompliance. The Board believes that the proposed process, when promulgated as a final rule, will prove to be more flexible and less burdensome than current practices. It will also facilitate user comprehension of the process and thereby tend to reduce the overall amount of administrative effort currently being expended to resolve individual cases.

In Summary

The Board's continuing objectives are to maintain its existing rules and Standards in a manner that is consistent with its enabling statute. The purpose of the Board's current proposal is to focus

on the two basic issues that are an essential part of the Board's overall contract price and cost adjustment process, i.e., what constitutes a ''cost accounting practice'' and how to administer CAS-covered contracts in the event a contractor or subcontractor makes a change to its otherwise compliant cost accounting practices or a contractor or subcontractor does not comply with an applicable CAS when estimating, accumulating or reporting costs. Based on the public comments received throughout this proposed rulemaking, it is clearly evident that disagreements still exist over what should constitute a change in a contractor's established cost accounting practices for purposes of triggering the CAS contract price and cost adjustment process. Accordingly, the Board believes that the amendments being proposed today are needed to facilitate implementation of the Board's statutory mandate concerning the payment of increased costs attributable to contractor cost accounting practice changes, and that the contracting community will benefit from the promulgation of a flexible cost impact process that is designed to achieve a more flexible and less burdensome administrative process.

The Board does not believe that its proposed amendments, when promulgated as a final rule, will increase the level of administrative costs currently being experienced by contractors and Government agencies by any appreciable margin. In the long run, the benefits accruing from a more precise definition of a ''change to a cost accounting practice'' and a more flexible cost impact process should reduce, not increase, the overall administrative burden currently being experienced by contractors and agencies.

Proposed Amendments

A brief description of the proposed amendments follows:

*Part 9903, Contract Coverage—Proposed Amendments*

In subpart 9903.2, CAS Program Requirements, subsection 9903.201–4 is amended to conform certain language in the ''Full'' and ''Modified'' contract clauses and to clarify the provisions governing changes made to a contractor's established cost accounting practices and changes made to correct noncompliant practices. Subsection 9903.201–6 is amended to provide exemption criteria for determining if a voluntary change in cost accounting practice associated with certain restructuring activities can be exempted from the contract price or cost adjustment requirements prescribed in part 9903. Subsection 9903.201–7 is amended to establish criteria for determining when a voluntary change in cost accounting practice is desirable and not detrimental to the Government's interests and to establish alternate processes for resolving desirable changes. Subsection 9903.201–8 is added to specify certain cognizant Federal agency responsibilities for administering CAS-covered contracts and subcontracts.

In subpart 9903.3, CAS Rules and Regulations, section 9903.301 is amended to incorporate definitions for the terms ''Function'' and ''Intermediate cost objective.'' In subsection 9903.302–1, Cost Accounting Practice, the definition is amended to incorporate language changes and to add clarifying guidance. Subsection 9903.302–2, Change to a cost accounting practice, is revised to make explicit the types of changes that are to be regarded as a change in cost accounting practice.

The illustration of a change in cost accounting practice at 9903.302–3(c)(3) is replaced by a new illustration. In 9903.302–3(c) and in 9903.302–4, several illustrations have been included to provide additional guidance regarding the revised definitions of the terms ''cost accounting practice'' and ''change to a cost accounting practice.''

A new subpart 9903.4 is added to establish the notification and cost impact resolution process to be followed by a contractor and the cognizant Federal negotiator when a CAS-covered contractor or subcontractor changes a compliant cost accounting practice, fails to comply with an applicable Standard or fails to consistently follow its established cost accounting practices.

*Summary Description of Proposed CAS Coverage*

In subpart 9903.2, the proposed amendments:

Conform the contract clause language for ''Full'' and ''Modified'' coverage. The contract clause provisions are also revised to clarify the actions required when a contractor or a subcontractor is required to change a cost accounting practice or elects to replace an established practice with another compliant cost accounting practice. Also specified are the corrective actions required when a contractor's estimated cost proposal was based on a noncompliant practice and/or actual contract cost accumulations were based on a noncompliant practice.

Provide criteria for determining when a voluntary change in cost accounting practice associated with restructuring activities can be exempted from contract price or cost adjustment.

Provide criteria for determining when a non-exempted voluntary change in cost accounting practice can be determined to be a desirable change that is not detrimental to the Government's interests.

Provide a more flexible process for resolving the cost impact of certain desirable changes.

Require Federal agencies, in accordance with agency procedures, to:

—Establish internal policies and procedures for administering CAS-covered contracts when the agency is and is not the cognizant Federal agency for contractors performing agency contracts.
—Designate the agency office or official responsible for administering the agency's CAS-covered contracts and subcontracts.
—Delegate contracting authority to designated agency officials, as required, for the negotiation of cost impact settlements and associated contract price or cost accumulation adjustments.
—Concurrently settle, on a Government-wide basis, the cost impacts on all CAS-covered contracts and subcontracts affected by a contractor's or subcontractor's change in cost accounting practice or noncompliant practice.

In subpart 9903.3, 9903.301 is amended to incorporate two definitions to clarify the terms ''Function'' and ''Intermediate cost objective.'' The amendments made to 9903.302–1(c), *Allocation of cost to cost objectives*, make explicit the methods and techniques that are considered to be a cost accounting practice, including the methods and techniques used to accumulate the cost of specific activities in cost pools. Additional subparagraphs are added to clarify the concepts associated with the selection and composition of cost pools and their allocation bases.

The proposed amendments to 9903.302–2 expand the existing coverage by specifying that, as used in part 9903 and the applicable contract clauses, changes in cost accounting practices include pool combinations, pool split-outs and transfers of existing ongoing functions. The existing cost accounting practice exceptions cited in 9903.302–2(a) and (b) are restated and modified in new subparagraphs.

Within 9903.302–3, a new introductory paragraph is added regarding the use of the illustrations that follow. Introductory paragraphs (a), (b) and (c) are revised to clarify that the illustrations involve ''cost accounting practices'' that have changed. The

illustration at 9903.302–3(c)(3) is replaced by new illustrations depicting changes in cost accounting practices that are consistent with the revised definitions. The new illustration at 9903.302–3(c)(3) illustrates that the use of a different base for the allocation of indirect costs to final cost objectives is a change in cost accounting practice. Additional illustrations are added to 9903.302–3(c) and 9903.302–4 to depict various changes which do and do not result in changes in cost accounting practices when a contractor combines, eliminates or splits-out pools, transfers functions or when business combinations due to mergers and acquisitions occur.

A new subpart 9903.4, Contractor Cost Accounting Practice Changes and Noncompliances, is proposed. It details the methodology for determining required contract price or cost accumulation adjustments due to changes in a contractor's cost accounting practices and specifies the actions to be taken by a contractor and the cognizant Federal official (e.g., the contracting officer, administrative contracting officer (ACO) or other agency official authorized to act in that capacity), including the negotiation of cost impact settlements on behalf of the Government. The new subpart provides coverage on the applicability and purpose of the subpart, materiality considerations, definitions of terms related to the subpart, procedures for changes in compliant cost accounting practices, and procedures for noncompliance actions. An additional section is also included to illustrate the application of the proposed coverage. The proposed coverage is briefly described below.

Section 9903.405, Changes in Cost Accounting Practices, includes subsections on the following areas: contractor notification of changes in cost accounting practices; Government determinations, approvals and initiating the cost impact process; contractor cost impact submissions; and negotiation and resolution of the cost impact action.

Section 9903.405 provides a streamlined process which does not require submissions of cost impact estimates or contract price adjustments for every CAS-covered contract affected by a change in accounting practice. It provides for the submission of ''cost savings'' data that will enable the cognizant Federal agency official to promptly determine if a voluntary change can be exempted from contract price or cost adjustment. For changes in cost accounting practices that can not be exempted, it provides flexibility to the cognizant Federal agency official in determining the level of detail required for a cost impact submission and materiality thresholds for required contract price and cost adjustments. To this end, it creates a three-step sequential process which includes (1) an initial evaluation to determine if the cost impact of the accounting change is obviously immaterial, (2) the use of a general dollar magnitude (GDM) settlement proposal, and if ultimately determined necessary, (3) the submission of a detailed cost impact proposal for contracts exceeding Government determined materiality thresholds. The proposed procedure encourages settlement of material cost impacts based on the contractor's GDM settlement proposal to the maximum extent possible, without having to resort to a detailed cost impact proposal. It also provides for contract price adjustment on individual contracts only when the cost impact amount is material.

Section 9903.405 addresses the use of the offset process. It allows for the use of the offset process to reduce the number of contract price and cost adjustments required as a result of a change in cost accounting practice, while still providing for adjustments of individual contracts when the cost impact amount on individual contracts is material. The rules provide that offsets of increased costs against decreased costs shall only be made within the same contract type.

Section 9903.405 also explains when and what action needs to be taken to preclude increased costs paid by the Government as a result of a voluntary change in cost accounting practice. It clarifies how increased costs to the Government are measured on firm-fixed-price contracts as a result of a change in accounting practice. It also makes clear that action must be taken to preclude increased costs from being paid when the estimated aggregate higher allocation of costs on flexibly-priced contracts subject to adjustment exceeds the estimated aggregate lower allocation of costs on firm-fixed-price contracts subject to adjustment as a result of a voluntary change in accounting practice.

Section 9903.406, Noncompliances, details the processes for handling noncompliant actions. It outlines the procedures to be followed when the parties agree or disagree on whether a noncompliant condition exists. An example of an acceptable GDM Settlement Proposal format that the contracting parties may use to resolve a noncompliance is included. The proposed section contains separate coverage on estimating practice noncompliances and cost accumulation practice noncompliances to clarify the different actions, particularly to recover increased costs and/or applicable interest on increased costs paid, that need to be taken under these different noncompliant conditions. It also provides procedures to be followed when a noncompliant condition does not result in material increased costs paid by the Government.

### C. Paperwork Reduction Act

The Paperwork Reduction Act, Public Law 96–511, does not apply to this proposal, because this proposal imposes no paperwork burden on offerors, affected contractors and subcontractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

### D. Executive Order 12866 and the Regulatory Flexibility Act

The economic impact of this proposal on contractors and subcontractors is expected to be minor. As a result, the Board has determined that this proposal will not result in the promulgation of a ''major rule'' under the provisions of Executive Order 12866, and that a regulatory impact analysis will not be required. Furthermore, this proposal will not have a significant effect on a substantial number of small entities because small businesses are exempt from the application of the Cost Accounting Standards. Therefore, this proposed rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

### E. Public Comments

This proposed rule was developed after consideration of the public comments received in response to the Board's NPRM (61 FR 49196, 9/18/96) and the SNPRM–I (62 FR 37654, 7/14/97) that were published in the **Federal Register**, wherein public comments were invited. The NPRM comments received and the Board's actions taken in response thereto were reflected in the SNPRM–I. The supplemental comments received in response to the SNPRM–I and the Board's actions taken in response thereto are summarized in the paragraphs that follow:

*Contract Price and Cost Adjustment Exemption*

*Comment:* Although commenters remained concerned regarding the level of detail that would be needed to obtain an exemption, they expressed strong support for the creation of a provision that would exempt from the Board's contract price and cost adjustment requirements those voluntary changes in

cost accounting practices that are associated with management changes made to improve the efficiency and effectiveness of a contractor's operations.

*Response:* The Board's deliberations focused on how a voluntary change to a contractor's established cost accounting practices should be treated under the Board's rules when the practice change is directly associated with management actions undertaken to improve the economy and efficiency of the contractor's operations. It is the Board's continuing belief that the Government should be informed of any changes made to the contractor's established cost accounting practices that are being used to accumulate and report the costs of performing existing CAS-covered contracts. Such notification facilitates the contract administration process and beneficially reduces the potential for disputes, particularly if a disclosure statement is required. However, in cases where a change in cost accounting practice is made in conjunction with contractor restructuring activities that are undertaken to reduce personnel or facilities in order to significantly lower the contractor's overall costs of operations, the contract price and cost adjustment process contractually required for changes in cost accounting practices under existing CAS-covered contracts may not be necessary or appropriate.

For example, assume that after contractor restructuring activities and associated practice change(s) are implemented concurrently, a reduction in the contractor's future overall operating costs is expected and the aggregate costs accumulated for existing covered contracts are also expected to be less than the aggregate costs that would have been accumulated if the restructuring activities had not been made by management. In such cases, it would generally be inappropriate to separately adjust existing contract prices or costs *only* for the cost impact of the change in cost accounting practice. That is because the aggregate CAS cost impact calculation for a practice change is based on the application of the original and changed cost accounting practices to the contractor's lower level of costs expected to result after restructuring changes are implemented. It does not give consideration to the impact that the lower overall operating cost levels (cost savings) expected to result from the restructuring activities will have, in the aggregate, on accumulated contract costs for existing covered contracts. Nor would the CAS cost impact adjustments give consideration to the effects of any resulting contract ceiling or target price adjustments or decisions that may otherwise be made by the Government based on the expected aggregate reductions in accumulated costs for the existing contracts as reported in the contractor's restructuring cost savings submissions or contract cost performance status reports. For such actions, the Government's decision(s) would be based on reported cost information that already reflects the application of the new changed cost accounting practices to the lower level of costs expected to occur after the restructuring changes are made by management. Consequently, an independent CAS contract price or cost adjustment made for the shift in costs attributable only to the cost accounting practice change(s) might alter, in part, the contractor's reported cost savings estimates and/or any resultant actions otherwise taken by the Government.

After considering this matter at length, the Board proposes to establish contractor notification requirements for any changes made to the contractor's established cost accounting practices (at 9903.405–2). The Board also proposes to establish an exemption from its contract price and cost adjustment requirements for certain voluntary changes made to a contractor's cost accounting practices (at 9903.201–6). The proposed exemption would become applicable when the cognizant Federal agency official determines that the Board's promulgated criteria for granting the exemption has been met: i.e., when a contractor adequately demonstrates that a planned restructuring activity is expected to result in cost savings to the Government; the practice change would not occur but for the planned restructuring activity; reductions in contractor personnel or facilities will occur; and reduced contract cost accumulations are expected to occur, in the aggregate, for existing flexibly priced contracts, and all expected future CAS-covered contracts and subcontracts.

If a change in cost accounting practice directly associated with planned restructuring activities were exempted, existing flexibly priced contracts would, however, remain subject to applicable contract terms and conditions prescribed in agency procurement regulations. Accordingly, the Contracting Officer may still make individual contract cost ceiling and/or target cost adjustments or otherwise take action to address any potential contract cost overrun and/or underrun conditions that are expected to result due to the restructuring activities.

The administrative process for requesting the exemption and granting an exemption is also proposed at 9903.405–2 and 9903.405–3. When a contractor requests an exemption, the submission of some contractor information is necessary concerning the contract cost accumulation changes and cost savings that are expected to result from the planned restructuring activities. Otherwise, the cognizant Federal agency official would not have a reasonable basis for determining, in a meaningful manner, if a planned cost accounting practice change meets the Board's specified exception criteria, and should be exempted, or if the practice change should be subjected to the Board's standard contract price and cost adjustment process.

*Comment:* A Federal agency supported the establishment of an exemption for improved management efficiency and effectiveness. It recommended, however, that the exemption only be granted when the contractor meets the Board's stated requirements *and* the cognizant Federal agency official makes a determination, based on the facts and circumstances of the situation, to grant the exemption. A related concern was that flexible contract adjustment provisions were needed so that adjustments can be made for shifts in contract costs resulting from changes made in cost accounting practices to ensure that contractor completion of flexibly priced contracts would not be jeopardized.

*Response:* In considering the establishment of an exemption, the Board did not expect to establish a mandatory exemption provision that would obviate the need for determinations, on a case-by-case basis, by the cognizant Federal agency official on whether a cost accounting practice change should be exempted. A unilateral exemption decision by the contractor was not envisioned, e.g., the draft ''Option B'' language included in the SNPRM–I provided that the contractor would request an exemption and the cognizant Federal agency official would notify the contractor if the Board's exemption criteria had been met and that the voluntary change would be exempt.

The Board's objective is to not discourage restructuring activities. Consequently, the Board is proposing an exemption provision so that cognizant Federal agency officials will not be required to apply the Board's contract price and cost adjustment process for certain changes in cost accounting practice that are directly associated with certain restructuring activities. The exemption would only apply when a

cognizant Federal agency official finds that contract price and cost adjustments otherwise required under the Board's regulations for existing contracts are not considered necessary to protect the Government's interest. This would occur where the cognizant Federal agency official determines that a contractor has met the Board's proposed exemption criteria which includes a demonstration that aggregate reductions in contract cost accumulations for existing flexibly priced CAS-covered contracts and future CAS-covered contracts are expected to result from the planned restructuring activity. However, when such ''cost savings'' to the Government are expected to occur in the aggregate due to restructuring and a voluntary cost accounting practice change is made concurrently with the restructuring change, then the two changes made in unison may produce cost underrun and/or overrun conditions for some individual flexibly priced type contracts. In such cases, the Board would expect that, as a normal contract administration matter, the contracting parties would mutually agree to concurrently decrease or increase the affected contract ceiling or target prices, and revise funding obligations, as necessary, to reflect the lower cost accumulations (cost savings), expected in the aggregate, for all affected flexibly priced contracts. The overall objective of such actions would be to recognize the aggregate ''cost savings'' and to address (correct) any individual contract cost overrun conditions that might result under existing CAS-covered contracts and subcontracts.

When the aggregate cost accumulations for existing flexibly priced contracts are expected to increase due to planned restructuring activities, then the cognizant Federal agency official may grant the exemption if a determination is made that the ''cost savings'' expected to result under future covered contract awards exceed the aggregate increase for such existing contracts. However, the resulting cost overrun conditions for such exempted CAS-covered contracts would remain subject to the same Contracting Officer actions that are normally taken to address cost overruns in accordance with the existing contracts' other terms and conditions that are prescribed in applicable agency procurement regulations.

The Board's intent is to provide flexibility to cognizant Federal agency officials administering CAS-covered contracts and subcontracts while also providing assurance to contractors that requests for the proposed exemption will generally be granted when the Board's specified criteria are applied. The granting or use of the Board's proposed exemption should not otherwise disrupt the Government's ongoing administration of CAS-covered contracts.

In response to the commenter's concerns, the Board proposes to establish a ''finding'' requirement at 9903.201–6 to clarify that a cognizant Federal agency determination is needed before a voluntary change in cost accounting practice can be considered exempt from a CAS-covered contract's contract price and cost adjustment provisions. The establishment of an adjustment provision for flexibly priced contracts to address the potential cost overrun conditions attributable to a change in cost accounting practice associated with a planned restructuring activity was not considered necessary.

*Comment:* A number of commenters advocated that if an exemption provision is promulgated, the coverage should not be limited to ''transfers of functions'' or ''merger of cost pools.'' Several commenters recommended that the exemption language not be limited to cost accounting practice changes resulting from ''organizational changes.'' Conversely, some commenters objected to the promulgation of an exemption based on their belief that an exemption for economy and efficiency changes would be abused. They opined that virtually every change in cost accounting practice could be covered as a change made for ''improved management efficiency and effectiveness.''

*Response:* The exemption criteria being proposed today has been expanded to include any changes in the ''allocation of cost to cost objectives'' (9903.201–6(c)) that occur within a cost accounting period, i.e., ''intra-period'' cost shifts. Changes involving the ''measurement of cost'' or the ''assignment of cost to cost accounting periods'' are not subject to exemption.

The Board also shares the concerns expressed by those commenters advocating that no exemption be provided in order to avoid the potential for abuse. In that regard, the SNPRM–I ''Option B'' exemption criteria has been modified to require an adequate contractor demonstration that the planned restructuring activities, when implemented, are expected to result in cost savings to the Government, in the aggregate. With regard to the latter, this proposed rule also requires a demonstration of the expected impact on projected cost accumulations for existing CAS-covered FFP contracts. Contract price adjustments normally required to resolve the cost impact resulting solely from a voluntary change in cost accounting practice would not, however, be required for existing CAS-covered FFP contracts, if the practice change is exempted. But the data submission in a FFP environment would provide support for the determination that similar offsetting ''cost savings'' can be reasonably expected to occur in future CAS-covered contracts.

The Board will revisit this matter if subsequent events reveal that the proposed exemption is ''abused'' after promulgation as a final rule.

*Comment:* A commenter opined that the proposed language would limit the exemption only to organizational changes that involve ''physical'' actions. The commenter recommended that a clarifying revision be made to permit changes that make more efficient use of existing facilities and personnel or increase productivity of those facilities and personnel.

*Response:* The proposed requirement for physical actions to evidence that a significant nonrecurring management change was being made to improve the economy and efficiency of operations has been retained in the exception being proposed today. The Board's intent is to provide a clear distinction between management actions taken to lower overall operating cost levels through reductions in personnel or facilities (physical changes) where any associated voluntary change to a cost accounting practice should be exempted, and other management actions taken to otherwise improve the economy and efficiency of operations where any associated voluntary change in cost accounting practice would remain subject to the cost impact process required for existing CAS-covered contracts. The proposed provisions are intended to facilitate overall contract administration activities, protect the Government's interests and reduce the potential for disagreements over whether a particular management change resulting in a voluntary change to an established cost accounting practice is an ''exempt'' or a ''desirable'' change under the Board's rules.

*Comment:* The draft Option B exemption should be applicable to all organizational changes (both internal and external) that meet the benefit test.

*Response:* The exemption criteria being proposed today applies to all restructuring activities as defined by the Board at 9904.406–61(b). It is not limited to ''external restructuring activities'' as currently defined in the Defense Federal Acquisition Regulation

Supplement (DFARS) at DFARS 231.205–70(b)(2).

*Contract Price and Cost Adjustment Exemption for Changes in the Composition of Overhead and General an Administrative Expense Pools*

*Comment:* A number of commenters felt the CASB staff's draft ''Option C'' presented for the Board's consideration was not useful. A few commenters believed that the draft ''Option C'' exemption concept was feasible and that it provided adequate protection to the Government.

*Response:* The Board has not incorporated this concept in this proposed rule.

*Desirable Changes*

*Comment:* Several commenters who supported the draft ''Option B'' exemption provision also advocated that the Board retain the proposed SNPRM–I mandatory ''desirable change'' provisions requiring the cognizant Federal agency official to find as ''desirable'' all voluntary cost accounting practice changes made to improve the efficiency and effectiveness of a contractor's operations.

A Federal agency recommended that the proposed mandatory desirable change criteria for changes in cost accounting practice that result in ''cost savings'' be deleted because the proposed criteria precludes consideration of other relevant facts and circumstances. In addition, if ''cost savings'' form the basis for granting a requested exemption, as advocated by the commenter, then contractors should not have the ability to choose between an exemption or a desirable change provision.

A Federal agency, with oversight responsibilities, recommended deletion of the SNPRM–I proposed amendment mandating desirable change findings for contractor changes made to improve the economy and efficiency of operations, and strongly supported the draft exemption provisions included as ''Option B'' because it offered ''* * * controls to protect the Government * * *'' The commenter felt that the proposed SNPRM–I amendments for desirable changes, at 9903.201–6(c)(2), did not offer adequate protection to the Government.

*Response:* A desirable change determination permits the contracting parties to increase existing CAS-covered contract prices, in the aggregate, to reflect the aggregate increased costs to the Government (as defined by the Board) that are expected to result from a contractor's voluntary change in cost accounting practice. In such cases, equitable contract price adjustments are negotiated to resolve the cost impact of the changes in contract cost accumulations that are estimated to result for the existing CAS-covered contracts due to the practice change. Where the cost impact of a practice change on existing CAS-covered contracts does not result in increased costs to the Government, in the aggregate, a desirable change determination is not needed to effect the required contract price and/or cost adjustments, in the aggregate. Only if the cost impact of a practice change on existing contracts results in aggregate ''increased costs'' after the change is made, would a desirable change determination serve a useful purpose.

In the SNPRM–I, the proposed mandatory desirable change determination criteria included changes in cost accounting practices attributable to organizational changes where ''cost savings'' were expected to occur under existing and/or future CAS-covered contracts. That provision was proposed as a stand alone amendment in the SNPRM–I, on the premise that the proposed mandatory provision would not be accompanied by an exemption provision for changes in cost accounting practices associated with management changes that are expected to result in more economical and efficient operations or cost savings (see the introduction to item 2 of the draft ''Option B'' provisions, in the SNPRM–I, which indicated that the desirable change criteria proposed at 9903.201–6(c)(2) for economy and efficiency improvements would be deleted or modified if the ''Option B'' draft exemption were established (62 FR 37671, 7–14–97)).

The Board believes the underlying merits of cost accounting practice changes that result in aggregate ''increased costs'' to the Government, as defined by the Board, need to be evaluated on a case-by-case basis. It would be inappropriate to mandate that ''all'' voluntary practice changes made ostensibly for improved economy and effectiveness reasons be deemed desirable changes that are not detrimental to the Government if expected cost savings to the Government cannot be demonstrated for existing and/or future contracts.

As specified under *''Contract Price and Cost Adjustment Exemption,''* the Board concluded that contract prices and costs should not be separately adjusted to only reflect the cost impact of a change in cost accounting practice when that practice change is associated with planned restructuring activities that are expected to produce cost savings to the Government. Furthermore, it would be inappropriate to establish two provisions, an exemption provision and a desirable change provision to cover cost accounting practice changes made for the same reason, i.e., restructuring changes that produce cost savings. The contracting parties would undoubtedly experience endless debate over which one of the two provisions should be applied in a particular circumstance.

The Board has therefore concluded that one consistent approach is needed for cost accounting practice changes that are associated with management actions which are expected to produce costs savings. In consideration of the comments received, the Board's current proposal is to require the following:

Where the cognizant Federal agency official finds that cost savings to the Government are expected to result from planned restructuring activities in accordance with the Board's prescribed criteria, the changes in cost accounting practice directly associated with such restructuring activities will be exempted from the CAS contract price and cost adjustment requirements, unless a determination is made that the exemption would otherwise be detrimental to the Government's interests.

—Where the cognizant Federal agency official finds that cost savings to the Government are expected to result from planned management changes, including planned restructuring activities that do not result in an exemption determination in accordance with the Board's proposed exemption criteria at 9903.201–6, the changes in cost accounting practice directly associated with such management changes will generally be treated as a ''desirable change.'' In such cases, the CAS contract price and cost adjustments normally required to resolve the resulting cost impact of the practice change may be otherwise resolved, without requiring the submission of additional data in the form of a cost impact proposal, provided a determination is made that an alternative resolution (based on the contractor's previously submitted expected ''cost savings'' and contract cost accumulation changes data (see 9903.405–2(e)) is not detrimental to the Government's interests. The Board believes that the proposed ''cost savings'' demonstration and alternative resolution determination requirements should provide adequate controls to protect the Government's interests.

—All other voluntary changes in cost accounting practices made for any other reason will remain subject to the Board's voluntary change ''no increased cost'' prohibition and other related desirable change provisions (see proposed 9903.201–7(c)(3)).

In conjunction with the exemption being proposed today, the Board has modified the mandatory desirable change amendment that was proposed in the SNPRM–I at 9903.201–6(c)(2). Essentially, the Board's current proposal is to amend its existing desirable change criteria to provide that a voluntary change to a cost accounting practice, including those associated with restructuring activities but not exempted under 9903.201–6(a), shall be deemed to be desirable change if the contractor can demonstrate cost savings to the Government, in the aggregate, for existing flexibly priced and all future CAS-covered contracts or otherwise demonstrate desirability of the practice change (see 9903.201–7(c) (2) and (3)).

*Comment:* A Federal agency responded that contract disputes have arisen as to when a voluntary change in cost accounting practice can be considered to be a desirable change. The agency recommended that the rule state a voluntary change is not to be considered desirable until the cognizant Federal agency official notifies the contractor the change has been determined to be a desirable change.

*Response:* Proposed provisions have been added, at 9903.201–7(b), to clarify the purpose of a desirable change determination and that until the cognizant Federal agency official determines that a change is desirable and not detrimental to the Government, the change shall be considered to be a voluntary change for which the Government will pay no increased costs.

*Comment:* A Federal agency recommended that more flexibility would be provided for making desirable change determinations if the phrase ''provided there is a reasonable expectation that benefits will accrue to the Government in future awards'' were deleted from the last sentence proposed in the SNPRM–I at 9903.201–6(d).

However, many industry commenters argued that the cost impact on future CAS-covered contracts should be considered by the cognizant Federal agency official in determining how to resolve the cost impact of a voluntary change in cost accounting practice that results in ''increased'' cost to the Government. The commenters opined that inequitable results that penalize a contractor may occur if decreased cost accumulations expected to result for future CAS-covered contracts, after the voluntary change is made, are not considered.

*Response:* One of the Board's statutory mandates is to preclude the payment of increased costs, as defined by the Board, under CAS-covered contracts due to voluntary changes in cost accounting practices made by contractors after contract award. Under the terms and conditions of the Board's implementing contract clauses, a contractor agrees to consistently follow its established cost accounting practices when accumulating and reporting the costs of contract performance after contract award. A contractor also agrees that if a voluntary change is made, the Government will not pay any aggregate increased cost for existing covered contracts whose negotiated prices were predicated on cost estimates that were premised on the consistent application of the contractor's previously established cost accounting practices.

The Board's voluntary change—no increased cost prohibition, limits potential contract price and/or cost adjustments, so that any resultant increased costs to the Government under existing contracts are not paid, i.e., after the change, the amounts paid by the Government in the form of adjusted contract prices and/or increased contract cost accumulations, in the aggregate, can not be more than the aggregate amount the Government would have paid under the terms of the existing CAS-covered contracts if the contractor had continued to consistently apply its established cost accounting practices for the accumulation and reporting of contract costs. In essence, the Board's no increased cost prohibition provides that the Government's liability to pay contractually specified sums, in the aggregate, can not be increased unilaterally by a contractor that makes a voluntary change to its established cost accounting practices after contract award. The objective is to encourage the consistent application of a contractor's established cost accounting practices and to discourage voluntary changes that would otherwise result in the payment of increased costs by the Government under existing covered contracts. It would therefore be inappropriate for the Board to mandate that the cost impact expected to occur on potential future covered contracts, which may or may not be awarded, be considered when determining the cost impact that a voluntary change will have on existing contracts for purposes of mitigating the application of the prescribed no increased cost prohibition provisions to existing contracts.

Since future contract prices will reflect estimated costs that are already based on the application of the new cost accounting practice, they require no adjustments and there is no cost impact calculation required for such contracts. The cost impact calculation due to changes in cost accounting practices is limited to existing covered contracts. The calculation is based on the differences in accumulated contract costs that are expected to result for the existing covered contracts based on the application of the old and new cost accounting practices to the projected ongoing level of costs expected to occur after the practice change is made. For voluntary changes, the no increased cost prohibition is then used to limit any upward contract price or cost adjustments, in the aggregate, to the aggregate amount of downward adjustments being made for the existing CAS-covered contracts.

The Board believes, however, that equitable solutions can be achieved under the rules being proposed today. In cases where a continuing long term relationship between the Government and a contractor is evident and when a voluntary change in cost accounting practice is not otherwise determined to be exempt from contract price or cost adjustment (9903.201–6), a contractor may request the cognizant Federal agency official to determine that the voluntary change is not detrimental to the Government (9903.201–7) so that the affected existing covered contracts and subcontracts desirable change provisions can be applied (9903.405–2(e) and 9903.405–2(f)(3)). To support the request, a contractor should demonstrate to what extent cost accumulations for projected new CAS-covered contract work included in the contractor's forecasted business base are expected to decrease as a result of the voluntary change. The calculations should also be based on the differences in accumulated contract costs that are expected to result for the anticipated future CAS-covered contracts based on the application of the old and new cost accounting practices to the same projected ongoing level of costs expected to occur after the practice change is made that is used to determine the cost impact on existing contracts.

The cognizant Federal agency official may consider such data, from an equity standpoint, when determining if the existing contract prices should be increased, in the aggregate, under a contract's desirable change provisions.

In consideration of the commenters' expressed concerns, the proposed proviso of concern to the Federal

commenter has been deleted. In addition, paragraph 9903.201–7(d) has been expanded to clarify that a desirable change determination may be appropriate to the extent there is a reasonable expectation that the costs of anticipated future CAS-covered contract awards will decrease after a voluntary change is made by a contractor.

*Cognizant Federal Agency Responsibilities*

*Comment:* A Federal agency recommended that the SNPRM–I proposed responsibilities at 9903.201–7(d)(1) and (2) for the cognizant Federal agency official involving the processing of contract price modifications be deleted because it duplicates and conflicts with existing coverage currently included in FAR Part 30, at FAR 30.601(a) and 30.602–1(c).

*Response:* A change in cost accounting practice made by a contractor may affect some or all existing CAS-covered contracts awarded by one or more agencies, e.g., agencies within the Department of Defense or other defense or civilian agencies. The proposed responsibilities in question are premised on the concept that a cognizant Federal agency approach shall be followed to resolve the cost impact that a particular change in cost accounting may have on all affected CAS-covered contracts regardless of the number of awarding agencies involved. The proposed requirements recommended for deletion would, if finalized, require the cognizant Federal agency official to coordinate all actions needed to implement the negotiated cost impact settlement on behalf of the Government with the contractor.

When the cognizant Federal agency official negotiates contract price adjustments to resolve a cost impact, the current FAR provisions cited by the commenter do not establish a coordinated systematic approach to effect the necessary contract price adjustments. The cognizant Federal official is excused from any further actions after the negotiation memorandum is distributed to affected agencies. No follow up action by the cognizant Federal official is required if all the contract prices that the contractor and cognizant Federal agency official have agreed to modify are not so modified. The contractor would have to follow up with the other agencies on an individual basis in order to obtain the necessary contract price adjustments. This could prove to be a difficult task, particularly in cases where the other agencies are expected to increase the price of their CAS-covered contracts. Additionally, the FAR does not require the other agencies to support the cognizant Federal agency official. The proposed provisions are considered appropriate in the circumstances and have been retained at 9903.201–8.

*Contract Clauses*

*Comment:* Federal agencies suggested that the proposed provisions on interest should be conformed throughout the rule to cite Section 6621(a)(2) of the Internal Revenue Code and that the contract clause interest provisions through out the proposed rule be conformed.

*Response:* The suggestions were adopted. The proposed contract clause provisions were conformed for consistency with the interest provisions specified in proposed 9903.4 for estimating noncompliances and cost accumulation noncompliances.

*Comment:* Why was the provision in the contract clause paragraph (a)(4) at 9903.201–4(a) that reads ''* * * agree to an equitable adjustment as provided in the Changes clause * * *'' deleted?

*Response:* The CAS contract clauses' equitable adjustment provisions are not dependent upon another contract clause. The Board's proposed amendments provide for equitable adjustments in accordance with the contract clause and part 9903.

*Comment:* A Federal agency recommended that the contract clauses for educational institutions and United Kingdom contracts be updated and conformed with the amended Full and Modified contract clauses.

*Response:* The Clause for United Kingdom contractors is quite different from the other referenced provisions. In addition, it is both brief and simple. In the absence of any identified implementation problems, that clause does not appear to be in need of modification. The clause for educational institutions was promulgated on November 8, 1994. In response to one related ANPRM comment, the Board asked in the prior NPRM (61 FR 49206) for further comments on the desirability and support for making such revisions. Only one commenter responded to the NPRM and the SNPRM-I on this matter. Accordingly, the Board believes that such amendments are not currently warranted.

*Intermediate Cost Objective Definition*

*Comment:* Commenters suggested that the definition of the term ''intermediate cost objective'' would be easier to implement and understand if the phrase ''* * * included in specific indirect cost pools * * *'' were deleted from the proposed definition.

*Response:* The concept of an intermediate cost objective evolved from the Board's promulgation of CAS 9903.402, in 1972, when a definition of the term ''indirect cost'' was promulgated. That definition introduced the concept that a cost was not direct if it was identified with two or more final cost objectives or with at least one ''intermediate cost objective.'' The latter term, however, remained undefined. How costs are grouped for cost accumulation purposes and their subsequent allocation to intermediate and final cost objectives constitutes a cost accounting practice, i.e., the ''accounting methods or techniques used to accumulate costs'' (9903.302–1(c)). Also, it is recognized that at times, for reasons of economy and efficiency, certain costs of a direct nature may be accumulated in cost pools that are subsequently allocated to final cost objectives as direct cost.

In view of the commenters' concerns, the proposed definition was revised to clarify that different cost elements and the costs of various functions can be accumulated in a varying number of intermediate cost objectives that are included in specific cost pools, e.g., overhead cost pools, G&A expense pools, service center expense pools and other expense pools, and/or cost pools that are allocated as direct costs. All such pooled costs are subsequently allocated to other intermediate and/or final cost objectives in accordance with applicable CAS and/or the contractor's established, and, if required, disclosed cost accounting practices.

*Cost Accounting Practice Change Definitions and Illustrations*

*Comment:* A number of commenters stated that the proposed amendments have improperly expanded the meaning of the term ''cost accumulation'' and that such expansion is unfortunate since almost any change in the flow of cost to contracts will be treated as a cost accounting practice change.

*Response:* The Board does not agree with the commenters' rationale. To accumulate cost, a contractor must apply its established, and, if required, disclosed cost accounting practices, i.e., the accounting methods or techniques used to accumulate cost for CAS-covered contracts. The Board's definition at 9903.302–1(c) presently states that one of the examples of a cost accounting practice involving the allocation of cost to cost objectives are ''the accounting methods or techniques used to accumulate cost . . .'' The Board has not expanded the definition or proposed a new requirement. The reason for the Board's proposed

amendments is that under the present definition, some contractors have concluded that the methods or techniques used to accumulate costs in cost pools are not a cost accounting practice and that changes made to the methods or techniques used to accumulate costs in cost pools are not a change in cost accounting practice. Some contractors, in their responses to the SNPRM–I, specified that they do not believe that a change in cost accounting practice occurs when cost pools are combined or split-out, or when ongoing functions are transferred from one cost pool to another cost pool; based, presumably, on their interpretation of the Board's existing definition. With regard to changes which alter the flow of costs to contracts, the commenters' inferences appear contrary to the basic consistency requirements of CAS 9904.401 or 9905.501, as applicable, which require that a contractor's established cost accounting practices be applied consistently when estimating, accumulating and reporting costs.

The Board's proposed amendments would make it explicit that the methods or techniques used to accumulate costs in cost pools are to be considered a cost accounting practice when a contractor estimates, accumulates and reports costs, and that a change made to the methods or techniques used to accumulate cost in cost pools is a change in cost accounting practice under the Board's rules. In response to the commenters' expressed concerns, some editorial changes were made to clarify the Board's stated concepts regarding use of the phrase ''accumulate cost.''

*Comment:* A Federal agency recommended that the words ''item of cost or a group of items of cost'' proposed for inclusion at 9903.302–1(c) be replaced with the words ''accumulate and distribute.'' They believe that the proposed wording might be interpreted, by some, to mean that the transfer of one direct labor employee from one plant to another plant could be viewed as a change in cost accounting practice. Some contractor representatives also expressed concern that the SNPRM–I proposal introduced uncertainty with regard to the transfer of personnel from one functional activity to another.

*Response:* The agency's suggestion was adopted. The words ''accumulate and distribute'' were previously proposed in the NPRM and appear to more clearly convey the primary cost accounting concept being addressed in this rulemaking, i.e., that the methods and techniques used for the allocation of cost to cost objectives include the selection and use of specific cost pools to accumulate costs for subsequent distribution to other intermediate and final cost objectives.

*Comment:* A Federal agency agreed with the proposed provision at 9903.302–1(c)(2), but recommended that the words ''elements of cost'' be deleted since the composition of cost pools does not include specific elements of cost. This comment also relates to the concern that an individual employee could be an ''element of cost'' and if transferred to another segment might be construed to be a change in cost accounting practice, which would conflict with the proposed illustration at 9903.302–(4)(h). The word ''specific'' in the phrase ''the accumulation of specific costs'' was also recommended for deletion.

*Response:* Cost pools accumulate costs by elements of cost and if required to disclose their cost accounting practices in a disclosure statement, a contractor performing a CAS-covered contract is required to disclose if an element of cost is to be treated as a direct cost or an indirect cost and which elements of cost are included in each indirect cost pool.

With the revised language change, made in response to the preceding comment made by the same agency, and the retention of the cited illustration, it should be clear that the Board does not expect the contracting parties to treat employee transfers as a change in cost accounting practice. This matter was also addressed in the SNPRM–I preamble comments (62 FR 37660, 7/14/97). Accordingly, the words of concern to the commenter were retained.

*Comment:* A Federal agency recommended deletion of the word ''measure'' from the proposed provision used to describe the ''allocation measurement activity'' at 9903.302–1(c)(3) to avoid potential conflict with the cost ''measurement'' term found at 9903.302–1(a). Some contractor representatives recommended similar changes.

*Response:* The words ''measurement,'' ''measure'' and ''activity'' were deleted as suggested in 9903.302–1(c)(3) and where they were used in a similar manner in the illustrations proposed under 9903.302–3(c).

*Comment:* At 9903.302–2(a)(3), the proposed coverage on functional transfers should not be limited to costs in indirect cost pools, and intra-segment transfers.

*Response:* The proposed coverage was revised to address the commenter's concerns.

*Comment:* A Federal agency recommended that the words ''home office'' be added to the exception provision in the last sentence proposed at 9903.302–2(b)(1), because functional transfers to or from intermediate home offices were excluded from the proposed coverage.

*Response:* The recommended change was adopted.

*Comment:* Some commenters objected to the proposed reference to each contract at 9903.302–2(c)(1) and recommended deletion of the proposed coverage.

*Response:* The reference to each CAS-covered contract refers to the terms and conditions contained in each contract. The proposed coverage was retained.

*Comment:* A Federal agency and some contractors commented that the proposed language at 9903.302–2(c)(2) referencing a noncompliant practice change was not clear.

*Response:* The proposed coverage was revised to separately address compliant and noncompliant actions.

*Comment:* Several commenters recommended a number of clarifying edits to the proposed language included at 9903.302–3(c)(4), (6), (7), (8), and (9).

*Response:* Where deemed appropriate, the referenced illustrations were revised for clarity, and to reflect the use of consistent language in similar circumstances.

*Comment:* Delete or revise the illustrations that mention ''intermediate cost objectives'' as the intent of the purpose of the illustration may not be clearly understood.

*Response:* The primary purpose of the illustrated changes was to clarify that a cost accounting practice change results if the costs of an ongoing function (which were accumulated in an intermediate cost objective established for that function) that are originally included in one cost pool are subsequently transferred to and included in a different cost pool. That concept can also be illustrated by stating if the costs of an ongoing function are or are not included in the same cost pool before and after a change is made. The illustrations at 9903.302–3(c)(7) and (9), and at 9903.302–4(h) were therefore so revised. The references to intermediate cost objectives were deleted.

*Comment:* A Federal agency suggested deletion of the comment that the change in cost accounting practice depicted in the proposed illustrations at 9903.302–3(c)(8)(i) and (9)(v) are subject to the acquired CAS-covered contract's contract price and cost adjustment provisions. They opined that incorporation in the proposed illustrations may cause potential confusion and disputes since similar statements were not included in all of

the proposed illustrations of changes in cost accounting practices.

*Response:* All changes in cost accounting practice are subject to the applicable contract clause provisions governing changes in cost accounting practices. In the case of an acquired contract, the additional comment was incorporated to emphasize that an acquiring contractor must abide with the acquired CAS-covered contract's terms and conditions governing changes in cost accounting practices in the event any changes in cost accounting practices are made after the effective date of the acquisition. If the commenter's suggestion were adopted, an acquiring contractor might argue that the referenced contract price and cost adjustment provisions do not apply since they were subsequently deleted from the Board's proposed amendments. The proposed provisions were retained.

*Comment:* A commenter recommended a number of clarifying edits to the proposed language included at 9903.302–4(h), (i), and (j).

*Response:* Where deemed appropriate, the referenced illustrations were revised for clarity.

*Comment:* Some commenters inquired if the use of a ''special allocation'' method (e.g., 9904.410–50(j)) is an initial adoption of a cost accounting practice or a change in cost accounting practice.

*Response:* If a contractor's established cost accounting practices do not include the use of a special allocation methodology when estimating and accumulating costs for CAS-covered contracts, and subsequently the contractor decides to apply a special allocation methodology while performing ongoing CAS-covered contracts, the contractor would no longer be in compliance with the consistency requirements of CAS 9904.401 and 9905.501. However, under the contract clause terms of CAS-covered contracts, the contractor can make a voluntary change to its established cost accounting practices. If material, the resultant cost impact due to the change in cost accounting practice could result in contract price or cost adjustments, at no aggregate increased cost to the Government.

*The Cost Impact Process*

*Comment:* One commenter suggested changes to the definition for ''Increased cost to the Government due to a change in compliant cost accounting practices' included at 9903.403 on the basis that, as proposed, the definition incorrectly implies that increased costs exist only when no action is taken to preclude payment of increased costs.

*Response:* The Board has revised the proposed language to clarify that increased costs resulting from a voluntary change in cost accounting practice represent the increase in cost to the Government that occurs after a change is made, before any actions are taken to preclude the payment of the resultant increased cost by the Government. After a voluntary change in cost accounting practice is made, increased cost to the Government occurs only when a greater amount of costs are accumulated and claimed as contract costs under existing flexibly priced contracts. For existing firm-fixed-price contracts, increased costs to the Government only occur if a lesser amount of cost is accumulated after the practice change is made, before the negotiated contract prices are adjusted downward to reflect the aggregate reduction in accumulated costs. If a downward adjustment is not made, the Government will be charged the resultant increased cost in the form of a higher fixed contract price that provided for the higher allocation of cost to the contract that would have resulted had there not been a change in cost accounting practice.

*Comment:* A Federal agency requested that the Board clearly state in both the preamble and the rule which provisions represent mandates and which provisions are intended to be applied at the discretion of the cognizant Federal agency official.

*Response:* The Board has used the word ''shall'' when referring to an action that is mandatory, and the terms ''may'' and ''should'' when referring to an action that is discretionary.

*Comment:* A Federal agency requested that the Board provide more flexibility with regard to the adjustment of individual contract prices that exceed established materiality thresholds.

*Response:* The Board has eliminated use of words that suggest absolute mandates such as ''required'', ''requirements'' and ''necessary.'' These words have been replaced with terms that make it clear that the provisions included in the rule for adjusting individual contract prices should be followed only when the cognizant Federal agency official decides to resolve a cost impact action by modifying contract prices.

*Comment:* A Federal agency requested that the Board add a provision at 9903.405–2 covering ''Notification of changes in cost accounting practices'' which would require that contractors notify the Government of the proposed effective and applicability dates of a change in cost accounting practice.

*Response:* The Board adopted the suggested change. The addition of the ''effective date'' notification requirement will help clarify which contracts were proposed and/or negotiated after the effective date of the change in cost accounting practice and should therefore not be subject to contract price and/or cost adjustment.

*Comment:* Many industry commenters requested that the Board eliminate the proposed requirement, at 9903.405–4(a), that some individual contract data be included in the General Dollar Magnitude (GDM) settlement proposal. They suggested that the contracting parties attempt to resolve the cost impact action based on the GDM aggregate estimate before requiring the submission of any individual contract data.

*Response:* The Board rejects this suggestion.

Under current Government procurement regulations governing the cost impact process, the required GDM estimate is used solely to determine whether or not the cost impact of a change in cost accounting practice is not material and, therefore, no detailed cost impact proposal will be required. If such an immateriality determination cannot be made, then the contractor must submit a detailed cost impact proposal for all existing covered contracts and subcontracts affected by the change in cost accounting practice or the estimating noncompliance. Originally, the procurement regulations required the submission of a GDM estimate by contract type and Federal agency, with no instruction as to what action the agencies should take based on the contractor's GDM estimate data. Furthermore, the GDM estimate is currently required to be submitted at the same time as the notification of the change in cost accounting practices, with a cost impact proposal to be submitted at a later date. Thus, it appears that the GDM estimate was never intended to serve as the basis for making contract price or cost adjustments to resolve a material cost impact action.

Under the Board's proposal, the contracting parties can resolve a cost impact action based on a three step process. The cost impact resulting from a change in cost accounting practice can be resolved without the submission of any contract cost data if the change is obviously immaterial (9903.405–3(d) in the SNPRM–I), or if not obviously immaterial by the submission of a GDM Settlement Proposal or a detailed cost impact proposal.

When not obviously immaterial, the cost impact of a practice change can be

resolved by the submission of a GDM estimate and some individual contract data, without having to resort to a detailed cost impact proposal. The GDM estimate and Contractor Settlement Proposal were previously proposed as two separate submission requirements in the ANPRM. Based on a public commenter's suggestions, the two submission requirements were proposed in the SNPRM–I as a combined ''GDM Settlement Proposal.'' The Board continues to believe that when material changes result in the amounts of accumulated contract costs, either in the aggregate or for individual contracts, due to a change in cost accounting practice, then the aggregate cost data included in the GDM estimate is insufficient for the cognizant Federal agency official to make an informed judgment on how to best resolve the cost impact. If no individual contract data were required at the time of the GDM estimate submission, the cognizant Federal agency official would need to obtain individual contract data in order to protect the interests of the Government, e.g., in order to: (1) evaluate the accuracy of the GDM estimate amounts by contract type; (2) determine what adjustments may be needed to resolve any resultant contract cost overrun and/or underrun conditions, and/or (3) ascertain if a detailed cost impact proposal should be requested.

The Board believes that the proposed three step process included in this proposed rule provides the contracting parties with the best opportunity to resolve the cost impact action with a minimum of contract data. Under the GDM Settlement Proposal concept, a contractor is expected to make the initial decision as to the number of individual contracts, within each contract type, for which contract data is needed to settle the cost impact action. If the cognizant Federal agency official accepts the contractor's settlement proposal, no further contract data need be submitted. Of course, if agreement to resolve the cost impact action does not occur based on a contractor's proposed settlement approach, then the cognizant Federal agency official may still request data for some additional contracts or a detailed cost impact statement, if deemed necessary. The Board's objective is to permit the contracting parties to resolve the cost impact action without having to resort to the current process which requires the submission of detailed cost impact data for all contracts.

The Board believes that the commenter's suggested approach would only serve to delay the proper resolution of the cost impact for CAS-covered contracts. The suggestions were not adopted. However, the provision at 9903.405–3(f) was revised to emphasize that a GDM Settlement Proposal is not required if the cost impact of a change in cost accounting practice is determined to be obviously immaterial.

*Comment:* One Federal agency recommended revising the provisions for the offset process included at 9903.405–5(b) to be ''general guidelines'' rather than ''rules.'' They stated that general guidelines should normally be followed, but the cognizant Federal agency official should be permitted to deviate from the guidelines, provided the application of the offset process results in adjustments that approximate, in the aggregate, the cost impact that would have resulted had individual contracts been adjusted.

*Response:* Since all of the provisions promulgated by the CASB are in essence and in fact ''rules,'' the Board has deleted the reference to ''rules of offset'' from 9903.405–5(b). The Board believes that this proposal when considered in its totality, including the offset provisions, provides the cognizant Federal agency official with sufficient flexibility to resolve a cost impact action in a manner deemed most appropriate considering both individual circumstances and protection of the Government's interests. The provisions which the Board has included for use of the offset process are designed to insure that the process, whenever used, is applied consistently and in such a way that material cost impact amounts, both in the aggregate and for individual contracts, are appropriately calculated in the prescribed manner.

*Comment:* One commenter suggested that the Board sanction the use of the final indirect expense rate settlement process rather than contract price adjustments as a method to resolve the cost impact action. The commenter expressed the opinion that contract adjustments should only be used as a final resort.

*Response:* The Board's proposed rules provide significant flexibility with regard to the method used by the cognizant Federal agency official to resolve a cost impact action by inclusion of the phrase ''other suitable technique.'' However, the Board would caution the contracting parties with regard to use of any method which results in further inconsistency between the contract price amounts and accumulated contract costs due to the cost accounting practices used to estimate proposed costs and to accumulate costs during contract performance.

Adjustment of indirect expense rates to settle a cost impact action can result in the adjustment of the wrong contracts for the impact of the change in cost accounting practices. This method also results in the establishment of final indirect expense rates that are not consistent with a contractor's established and disclosed cost accounting practices for allocating indirect costs to final cost objectives. Adjusting indirect expense rates to resolve the cost impact would in most cases require an adjustment to the indirect expense pool that exceeds the amount of the actual cost impact adjustment amount in order to ensure that the aggregate cost impact amount calculated for all affected CAS-covered contracts is recovered on the open flexibly-priced contracts being performed during the particular cost accounting period to which the ''adjusted'' rates apply. Use of this approach distorts the accumulation of costs used for contract cost and pricing purposes, in that the resultant accumulated costs recognized for CAS-covered contracts will be greater or less than the costs that would have been accumulated as actual ''booked'' costs in accordance with a contractor's established cost accounting practices had the indirect cost pools, and the indirect cost rates used to allocate such costs to final cost objectives, not been adjusted to reflect the cost impact of a change in cost accounting practice. Such pool adjustments may further distort the difference between the costs that would have originally been allocated to the affected CAS-covered contracts as actual ''booked'' costs and the costs that will be allocated to those contracts for contract costing purposes based on the adjusted final rates if multiple cost accounting periods are involved and/or if the Government's percent of participation in the allocation base is not consistent. The Board therefore disagrees with the position presented by the commenter. Adjustment of contract prices is the method which most consistently reflects the requirements of both the applicable contract clause and CAS 9904.401 or 9905.501, as applicable, regarding consistency in the cost accounting practices used to both estimate and accumulate costs on CAS-covered contracts. The Board finds inappropriate the commenter's suggestion that the Board endorse a position which holds that such adjustments should only be used as a last resort. To the contrary, the Board believes that any method that further distorts the Board's consistency requirements, such as the adjustment of

indirect expense rates, should be a method that is only used as a last resort. If the cognizant Federal agency official determines that adjustment of contract prices is not warranted to resolve the cost impact action, the Board is of the view that a transfer of funds between the Government and a contractor is the most appropriate ''other suitable technique'' that can be used to settle the action.

*Comment:* Federal agency and industry commenters expressed concerns regarding the SNPRM–I prefatory comments stating that:

> The Board is of the opinion that modification of contract and subcontract prices * * * represents the preferred method to be used to resolve material cost impacts due to a change in cost accounting practice. Modification of contract prices enable the contracting parties to establish contract prices for covered contracts that correlate with the increased or decreased cost allocations to such contracts that result due to practice changes * * *

The Federal agency advocated that maximum flexibility be provided for the resolution of the cost impact resulting from a change in cost accounting practice. The contractor commenters recommended that no ''preference'' be stated in the final rule.

*Response:* The Board's contract clauses included in individual CAS-covered contracts require contractors to consistently apply their established cost accounting practices when accumulating and reporting the costs of performing CAS-covered contracts. However, the CAS contract clause provisions also permit a contractor to make a voluntary change to its established cost accounting practices, provided the cost impact resulting from the change is addressed. For voluntary changes, the contractor agrees to contract price and/or cost adjustments which are limited to a no increased cost to the Government provision. If the cognizant Federal agency official determines that the practice change is desirable and not detrimental to the Government, the contract prices can be adjusted to reflect the aggregate change in the amount of accumulated contract costs that is expected to result due to the practice change.

After contract price adjustment and/or actions taken to preclude the payment of increased costs, the cost-based contract prices (FFP or cost ceiling) are once again comparable with the increased or decreased contract costs that will be accumulated consistently in accordance with the changed cost accounting practices, after a voluntary practice change is made. Such actions taken to resolve the cost impact of a practice change also resolve any resultant potential contract cost overrun or cost underrun conditions that are attributable to the practice change. Thus, contract price and cost adjustments are generally the required, not preferred, method for resolving the cost impact resulting from a change in cost accounting practice.

In the SNPRM–I, the Board concluded that ''* * * the decision on how to best achieve an equitable solution, in the aggregate, remains a cognizant Federal agency official responsibility.'' The Board's comments were intended to acknowledge that there may be circumstances where the required contract price and/or cost adjustments need not be made. For example, this might be the case where the cost impact, in the aggregate, is considered material in and of itself, but the cognizant Federal agency determines contract price and/or cost adjustments are not warranted because contract performance would not be jeopardized (no significant cost overrun condition resulted) and the increase or decrease in expected cost accumulations would not distort or adversely impair the usefulness of the contractor's reported contract cost information (actual costs and estimated costs to complete) that is included in contract status reports. However, to achieve equity, some consideration for the cost impact should be obtained or granted. In such cases, another suitable technique may be used to resolve the cost impact, e.g., a monetary exchange between the contracting parties. This alternate approach would also produce administrative cost savings since the contracting parties would not have to process contract modifications or take further actions to preclude the payment of increased costs on individual contracts.

On the other hand, in a case where the cost impact, is considered material and, by not processing contract price and/or cost adjustments, the Government would pay increased costs (as defined by the Board), the contractor's ability to perform the contract is adversely affected, and/or the cost data included in the contractor's status reports would not be meaningful, then the required contract price and/or cost adjustments should be processed.

To address the commenters' expressed concerns, the Board is proposing additional provisions at 9903.405–5(e) to emphasize that the cognizant Federal agency official does have the flexibility to resolve a cost impact due to a change made to a compliant cost accounting practice by use of alternative actions, i.e., other than contract price adjustment or actions taken to preclude the payment of increased costs. Cautionary provisions pertaining to the use of such alternative actions were also included.

*Comment:* A Federal agency recommended deleting the phrase ''and negotiate'' from the description of a cost estimating noncompliance at 9903.406–1(a). They explained that an estimating noncompliance results when the contractor estimates costs using a noncompliant accounting practice. They further stated that under the proposed provision, an estimating noncompliance would exist only if the noncompliance was used for both estimating and negotiating the contract. Such a definition, they believe, will result in significant disputes as to whether a contractor's final price negotiation included or excluded the impact of the change in cost accounting practice.

*Response:* Only those contracts that had their contract price based on a noncompliant practice can be included in the universe of contracts subject to adjustment as a result of an estimating noncompliance. Therefore, it must be demonstrated that not only did the contractor estimate costs using a noncompliant practice for a potential CAS-covered contract, but also that the contract price was established using data that was based on the use of a noncompliant practice. There may be situations in which a contractor estimates costs using a noncompliant practice, but either the Government rejects the use of that practice to negotiate the contract amount or the contractor voluntarily changes to a compliant practice prior to the negotiation of the contract price. In such situations, the negotiated contract price or cost ceiling would not have been based on the use of a noncompliant cost accounting practice. Hence, it would not be appropriate to include these contracts in a cost impact proposal for an estimating noncompliance. For those contracts that were estimated using a noncompliant practice and that noncompliant practice was used to determine the contract price, the contracting parties must determine the impact on those contracts as a result of the noncompliant practice. In order to clarify the Board's position on this matter, the Board has revised the proposed language at 9903.406–1(a).

*Comment:* One commenter recommended that, in order to avoid duplication, the provision regarding situations where a noncompliant practice is used for both cost estimating and cost accumulation purposes be moved to 9903.406–1 rather than including this provision at both 9903.406–3(g) and 9903.406–4(b).

*Response:* The Board agrees and has adopted this recommendation (9903.406–1(b)).

*Comment:* One Federal agency recommended that the proposed table at 9903.406–3(d) address a cost impact due to a noncompliance in terms of the change in allocation that resulted from using a noncompliant cost accounting practice rather than in terms of the change in allocation that would have resulted had a compliant accounting practice been used. Through discussions with contracting officers, they determined that most contracting officers address the cost impact in terms of the change in allocation that resulted from using a noncompliant practice.

*Response:* The Board adopted this recommendation and has revised the table at 9903.406–3(d) accordingly.

*Comment:* One commenter recommended adding the concept of computing interest based on the midpoint of the period for a cost accumulation noncompliance described at 9903.406–4(e) to cost estimating noncompliances at 9903.406–3.

*Response:* Upon further review of this provision, the Board has concluded that inclusion of a method to be used to calculate the amount of interest due to increased costs paid as a result of a noncompliant practice is overly instructional and prescriptive in nature and therefore should not be included in this rule. The Board therefore has deleted the prescribed method of computing interest from the rule. Federal agencies should establish reasonable methods for determining the amount of interest to be recovered based on increased costs paid due to a noncompliant practice.

*Comment:* Several commenters recommended the deletion of the term ''technical'' from the provision at 9903.406–5 describing immaterial noncompliances. A Federal agency recommended deletion of the proposed provision at 9903.406–5(a)(2) which provides that a contractor is not excused from the obligation to comply with the applicable Standards or rules and regulations involved when an immaterial noncompliance exists. An industry commenter further requested deletion of the proposed requirement at 9903.406–5 which requires a contractor to notify the cognizant Federal agency official within 60 days of when the technical noncompliance becomes material.

*Response:* The Board has adopted all of the suggested revisions. The Board agrees that a cost accounting practice is either compliant with applicable Cost Accounting Standards or it is not. The term ''technical noncompliance'' has acquired an accepted usage by various groups that deal with CAS administration matters in referring to noncompliant practices that do not result in material increased costs. However, in order to avoid any confusion by parties not familiar with this terminology, the Board has replaced the term ''technical'' with the term ''immaterial'' in this proposed rule.

Since it should be apparent that, absent the granting of a waiver or exemption, contractors are never ''excused'' from the obligation to comply with applicable CAS Board rules and regulations, the Board proposes to delete the SNPRM–I provision at 9903.406–5(a)(2). The provision retained within 9903.406–5, which allows the cognizant Federal agency official to recover any subsequent increased costs plus applicable interest that may result from the currently immaterial noncompliance, provides adequate protection to the Government in these situations.

*Comment:* A Federal agency recommended deleting the specific reason used by the contractor in the illustration at 9903.407–1(a)(1) as justification for requesting a retroactive applicability date for the change. They explained that inclusion of a specific reason could be interpreted to mean that this specific reason should be determined appropriate justification for approval of a retroactive applicability date in all cases.

*Response:* The Board has deleted the specific reason included in the illustration.

*Educational Institutions*

*Comment:* A Federal agency recommended that the last sentence proposed at 9903.401–2(e) be revised to reflect a one time notification requirement.

*Response:* The suggested language was adopted.

## F. Additional Public Comments

Interested persons are invited to participate by submitting data, views or arguments with respect to the proposed amendments contained in this document. All comments must be in writing and submitted timely to the address indicated in the **ADDRESSES** section of this document.

The Board is considering the establishment of certain new ''exemption'' and ''desirable changes'' provisions that it believes would facilitate the overall process governing compliant changes in cost accounting practices. Therefore, the Board invites interested parties to specifically comment on the following amendments being proposed today:

—Proposed 9903.201–6, Findings—Voluntary changes exempt from contract price and cost adjustment, which proposes to exempt certain voluntary changes to a cost accounting practice from contract price and cost adjustment when specified criteria are met. The submission of specific alternative criteria and/or procedural requirements that commenters believe could result in the establishment of workable regulatory exemption coverage are also welcome.

—Proposed 9903.201–7, Findings—Desirable changes, which proposes to establish criteria for determining when a voluntary change to a cost accounting practice, not otherwise exempt from contract price and cost adjustment under 9903.201–6, can be deemed to be desirable and not detrimental to the Government. Such determinations would permit the equitable adjustment of existing CAS-covered contracts that are materially affected by aggregate ''increased costs'' resulting from a voluntary change made to a cost accounting practice.

—Proposed 9903.201–7(c)(2) which includes a proposal to establish alternative processes for resolving the cost impact associated with a ''desirable'' change.

## List of Subjects in 48 CFR Part 9903

Cost accounting standards, Government procurement.

**Richard C. Loeb,**

*Executive Secretary, Cost Accounting Standards Board.*

For the reasons set forth in this preamble, chapter 99 of title 48 of the Code of Federal Regulations is proposed to be amended as set forth below:

1. The authority citation for part 9903 continues to read as follows:

**Authority:** Pub. L. 100–679, 102 Stat. 4056, 41 U.S.C. 422.

## PART 9903—CONTRACT COVERAGE

## Subpart 9903.2—CAS Program Requirements

2. Section 9903.201–4 is proposed to be amended by revising paragraphs (a)(1) and (c) and the contract clauses immediately following paragraphs (a) and (c), to read as follows:

### 9903.201–4 Contract clauses.

(a) *Cost Accounting Standards—Full Coverage.* (1) The contracting officer shall insert the following clause, Cost Accounting Standards—Full Coverage,

in negotiated contracts, unless the contract is exempted (see 9903.201–1), the contract is subject to modified coverage (see 9903.201–2), or the clause prescribed in paragraphs (d) or (e) of this subsection is used.

(2) * * *

**Cost Accounting Standards—Full Coverage (August 1999)**

(a) The provisions of part 9903 of 48 CFR chapter 99, including the definitions and requirements contained therein, are incorporated herein by reference and the Contractor, in connection with this contract, shall—

(1) Disclosure. Disclose in writing the Contractor's cost accounting practices by submission of a Disclosure Statement as required by 9903.202. The cost accounting practices disclosed for this contract shall be the same cost accounting practices currently disclosed and applied to all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) contract clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets, and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Changes in Cost Accounting Practices. Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any CAS-covered contract or subcontract, the change must be applied prospectively from the date of applicability to this contract and the Contractor's Disclosure Statement must be amended accordingly. If the contract price or cost of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Compliance with Standards. Comply with all CAS contained in part 9904, including any modifications and interpretations thereto, in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed Certificate Of Current Cost Or Pricing Data. The Contractor shall also comply with any CAS, including any modifications or interpretations thereto, which become applicable because of a subsequent award of a CAS-covered contract or subcontract to the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4) Compliant changes in cost accounting practices. As required by subpart 9903.4, provide timely notification of changes in disclosed or established cost accounting practices, provide data concerning the cost impact of such changes and:

(i) Required change. Agree to an equitable adjustment of the price of this contract as provided under this provision if the contract cost is affected by a change to a disclosed or established cost accounting practice which, pursuant to subparagraph (a)(3) of this clause, the Contractor or a subcontractor is required to make.

(ii) Voluntary change. Agree to an adjustment in the price or cost of this contract as provided under this provision if contract cost is affected by a voluntary change made by the contractor or a subcontractor; provided that no agreement may be made under this provision that will result in the payment of any increased costs by the United States in the aggregate for all of the contractor's or a subcontractor's CAS-covered contracts and subcontracts affected by the change.

(iii) Desirable change. Agree to an equitable adjustment of the price of this contract as provided in this provision if contract cost is affected by a change in cost accounting practice made by the contractor or a subcontractor that the cognizant Federal agency official finds to be a desirable change.

(5) Noncompliance. As required by subpart 9903.4, initiate action to correct any noncompliance, provide data concerning the cost impact of the noncompliance and agree to an adjustment of the contract price or cost if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, including any modifications or interpretations thereto, or to follow any cost accounting practice consistently and such failure results or will result in any increased costs paid by the United States. Also, agree to the recovery of any increased costs paid by the United States, together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) for such period, from the time the payment by the United States was made to the time the increased cost payment is recovered by the United States. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to price or cost adjustment, unless the contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) Disputes. If the cognizant Federal agency official and the Contractor disagree as to whether the Contractor or a subcontractor has complied with an applicable CAS in part 9904, including any modifications or interpretations thereto, an applicable provision or requirement in part 9903 or as to any resulting price or cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) Access to records. The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records, regardless of type and regardless of whether such items are in written form, in the form of computer data or in any other form, relating to compliance with the requirements of this clause.

(d) Flowdown to Subcontracts. The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all applicable CAS in effect on the subcontract's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to an entity which pursuant to 9903.201–2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 9903.201–4 shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of $500,000, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 9903.201–1.

(End of clause)

* * * * *

(c) *Cost Accounting Standards—Modified Coverage.* (1) The contracting officer shall insert the following clause, Cost Accounting Standards—Modified Coverage, in negotiated contracts when the contract amount is over $500,000, but less than $25 million, and the offeror certifies it is eligible for and elects to use modified CAS coverage (see 9903.201–2), unless the clause prescribed in paragraphs (d) or (e) of this subsection is used.

(2) The following clause requires the contractor to comply with 9904.401, 9904.402, 9904.405 and 9904.406, to disclose (if it meets certain requirements) actual cost accounting practices, and to follow disclosed and established cost accounting practices consistently.

**Cost Accounting Standards—Modified Coverage (August 1999)**

(a) The provisions of part 9903 of 48 CFR chapter 99, including the definitions and requirements contained therein, are incorporated herein by reference and the Contractor, in connection with this contract, shall—

(1) Disclosure. Disclose in writing the Contractor's cost accounting practices by submission of a Disclosure Statement, if it is a business unit of a company required to submit a Disclosure Statement, pursuant to 9903.202. The cost accounting practices disclosed for this contract shall be the same cost accounting practices currently disclosed and applied to all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) contract clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Changes in Cost Accounting Practices. Follow consistently the Contractor's cost accounting practices in accumulating and

reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any CAS-covered contract or subcontract, the change must be applied prospectively from the date of applicability to this contract and the Contractor's Disclosure Statement must be amended accordingly. If the contract price or cost of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Compliance with Standards. Comply with the requirements of 9904.401, Consistency in Estimating, Accumulating and Reporting Costs; 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose; 9904.405, Accounting For Unallowable Costs; and 9904.406, Cost Accounting Period; including any modifications or interpretations thereto, in effect on the date of award of this contract, or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed Certificate Of Current Cost Or Pricing Data. The Contractor shall also comply with any modifications or interpretations to such CAS which become applicable because of a subsequent award of a CAS-covered contract or subcontract to the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4) Compliant changes in cost accounting practices. As required by subpart 9903.4, provide timely notification of changes in disclosed or established cost accounting practices, provide data concerning the cost impact of such changes and:

(i) Required change. Agree to an equitable adjustment of the price of this contract as provided under this provision if the contract cost is affected by a change to a disclosed or established cost accounting practice which, pursuant to subparagraph (a)(3) of this clause, the Contractor or a subcontractor is required to make.

(ii) Voluntary change. Agree to an adjustment in the price or cost of this contract as provided under this provision if contract cost is affected by a voluntary change made by the contractor or a subcontractor; provided that no agreement may be made under this provision that will result in the payment of any increased costs by the United States in the aggregate for all of the contractor's or a subcontractor's CAS-covered contracts and subcontracts affected by the change.

(iii) Desirable change. Agree to an equitable adjustment of the price of this contract as provided in this provision if contract cost is affected by a change in cost accounting practice made by the contractor or a subcontractor that the cognizant Federal agency official finds to be a desirable change.

(5) Noncompliance. As required by subpart 9903.4, initiate action to correct any noncompliance, provide data concerning the cost impact of the noncompliance and agree to an adjustment of the contract price or cost if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, including any modifications or interpretations thereto, or to follow any cost accounting practice consistently and such failure results or will result in any increased costs paid by the United States. Also, agree to the recovery of any increased costs paid by the United States, together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) for such period, from the time the payment by the United States was made to the time the increased cost payment is recovered by the United States. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to price or cost adjustment, unless the contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) Disputes. If the cognizant Federal agency official and the Contractor disagree as to whether the Contractor or a subcontractor has complied with an applicable CAS in part 9904, including any modifications or interpretations thereto, an applicable provision or requirement in part 9903 or as to any resulting price or cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) Access to records. The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records, regardless of type and regardless of whether such items are in written form, in the form of computer data or in any other form, relating to compliance with the requirements of this clause.

(d) Flowdown to Subcontracts. The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all applicable CAS in effect on the subcontract's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to an entity which pursuant to 9903.201–2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 9903.201–4 shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of $500,000, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 9903.201–1.

(End of clause)

* * * * *

3. Section 9903.201–6 is proposed to be revised to read as follows:

**9903.201–6 Findings—Voluntary changes exempt from contract price and cost adjustment.**

(a) Prior to making any contract price or cost adjustment under the provisions of paragraph (a)(4)(ii) of the contract clauses set forth in 9903.201–4(a), 9903.201–4(c) or 9903.201–4(e), the cognizant Federal agency official shall make a finding that the voluntary change in cost accounting practice can or can not be exempted from contract price and cost adjustment under the exemption criteria specified in this subsection. The cognizant Federal agency official may, however, make a finding that the voluntary change in cost accounting should not be exempted from contract price and cost adjustment under the exemption criteria specified in this subsection when such action would otherwise be detrimental to the Government's interests.

(b) The determination as to whether or not a voluntary change in cost accounting practice should be exempted from contract price and cost adjustment requirements specified in CAS-covered contracts and subcontracts shall be made on a case-by-case basis in accordance with the exemption criteria specified in paragraph (c) or (d) of this subsection.

(c) *Exemption For Voluntary Cost Accounting Practice Changes Associated With Contractor Restructuring Activities That Are Made By Management To Reduce Personnel or Facilities.* Changes in the methods and techniques used for the ''allocation of cost to cost objectives,'' including the transfer of functions from an existing cost pool, cost pool split-outs or cost pool combinations, that are associated with restructuring activities (see 9904.406–61(b)) which are undertaken to improve future operations and reduce overall cost levels in future periods through work force reductions and/or physical realignment or reduction of facilities, including plant relocations, shall not be subject to the contract price or cost adjustment requirements of part 9903, the cognizant Federal agency official determines, in writing, that:

(1) The voluntary change in cost accounting practice is being made concurrently with planned restructuring activities and would not be made but for the restructuring actions being taken.

(2) Future ''cost savings'' to the Government (i.e., the accumulation of less contract costs), in the aggregate, for existing flexibly priced CAS-covered contracts and anticipated and reasonably predictable future CAS-covered contracts, are expected to result from the planned restructuring activities.

(3) The ''cost savings'' calculation(s) represented the difference between:

(i) The total amount of costs that would be accumulated for existing flexibly priced CAS-covered contracts

and reasonably predictable future CAS-covered contracts, in accordance with the contractor's established cost accounting practices, at the estimated operating cost levels that would continue if the planned restructuring activities were not made, and

(ii) The total amount of costs that would be accumulated for such CAS-covered contracts, in accordance with the contractor's new changed cost accounting practices, at the estimated new cost levels that would result if the planned restructuring activities were made.

(d) An agency ''cost savings'' determination, made in accordance with the agency's promulgated regulations, resulting in the approval of proposed contractor restructuring activities may be used in lieu of the cost savings determinations required under paragraph (c) of this subsection.

(e) When a determination is made to grant an exemption, the cognizant Federal agency official shall notify the contractor that the voluntary change(s) to established cost accounting practices required to implement the planned restructuring activities will be exempt from the contract price and cost adjustment provisions contained in existing CAS-covered contracts that are affected by the changes.

(f) When the cognizant Federal agency official determines that a voluntary change to the contractor's cost accounting practices does not meet the exemption criteria specified in this subsection or is otherwise determined detrimental to the Government's interests, the cognizant Federal agency official shall inform the contractor of the determination and initiate the cost impact process in accordance with 9903.405–3 or otherwise proceed to resolve the cost impact pursuant to 9903.201–7(c)(2), if applicable. The contractor may request a desirable change determination in accordance with 9903.201–7 and subpart 9903.4 prior to the submission of a requested cost impact submission.

(g) If a voluntary change in cost accounting practice is made for any reason, even if the voluntary change is exempted from contract price and cost adjustment, the resultant changed cost accounting practices must comply with all applicable Cost Accounting Standards and notification of the change in cost accounting practice must be provided as required by 9903.405–2.

4. Section 9903.201–7 is proposed to be revised to read as follows:

**9903.201–7 Findings—Desirable changes.**

(a) Prior to making any equitable adjustment under the provisions of paragraph (a)(4)(iii) of the contract clauses set forth in 9903.201–4(a), 9903.201–4(c) or 9903.201–4(e), the cognizant Federal agency official shall make a finding that the voluntary change in cost accounting practice is desirable, as defined at 9903.403, i.e., desirable and not detrimental to the interests of the Government, and, if the voluntary change in cost accounting practice is associated with contractor restructuring activities, a finding that the change in cost accounting practice should not be exempted from contract price or cost adjustment process under the provisions of 9903.201–6(a).

(b) The determination as to whether or not a voluntary change in cost accounting practice is desirable should be made on a case-by-case basis in accordance with, but not limited to, one or more of the criteria specified in paragraph (c) of this subsection. The cognizant Federal agency official may, however, determine that a change in cost accounting practice is not desirable under the criteria specified in this subsection when such action would otherwise be detrimental to the Government's interests. Normally, a desirable change determination is only necessary if a voluntary change results in aggregate increased costs to the Government, for existing CAS-covered contracts, and the cognizant Federal agency official contemplates making potential contract price adjustments that would increase, in the aggregate, the existing contract prices that the Government would be obligated to pay. Pending receipt of a written notification that the cognizant Federal agency official has determined that a voluntary change in cost accounting practice will or will not be treated as desirable and not detrimental to the Government, the change shall be considered to be a voluntary change for which the Government will pay no increased costs, in the aggregate.

(c) A voluntary change in cost accounting practice shall be deemed to be desirable and not detrimental to the interests of the Government if the cognizant Federal agency official determines that:

(1) For a Cost Accounting Standard with which the contractor has complied, the change is necessary in order for the contractor to remain in compliance with that Standard.

(2) Cost savings to the Government, in the aggregate, will occur under existing flexibly priced and reasonably predictable future CAS-covered contracts and subcontracts as a result of management changes, and associated cost accounting practice changes where there is a reasonable expectation that more efficient and economical operations will result. In such cases, the contracting officer may proceed to equitably resolve the cost impact of the practice change on all existing individual CAS-covered contracts (i.e., shifts in accumulated contract costs attributable to the practice change) by obtaining a contractor cost impact proposal and negotiating equitable contract price and/or cost adjustments pursuant to 9903.4. Alternatively, the contracting officer may otherwise resolve the matter based on the contractor's previously submitted contract cost accumulation data that was included in the contractor's written request for a desirable change determination (see 9903.405–2(e)). In that case, the contracting officer may forgo the submission of a cost impact proposal and related adjustments of individual contract prices and/or cost allowances, provided a determination is made that an alternate resolution adequately protects the Government's interests.

(3) Circumstances, other than those listed in paragraph (c)(1) and (c)(2) of this subsection, included as justification in the contractor's written request for a desirable change determination, which clearly demonstrate that the change in cost accounting practice is otherwise desirable and not detrimental to the interests of the Government.

(d) The cognizant Federal agency official's finding should not be made solely because of the cost impact that a proposed practice change will have on a contractor's or subcontractor's current CAS-covered contracts. A voluntary change in cost accounting practice may be determined to be desirable and not detrimental to the Government's interest even though existing contract prices and/or cost allowances may increase. However, the amount of increased costs recognized by the Government when making equitable adjustments under paragraph (c)(2) of this subsection will be limited to the estimated amount of cost accumulation reductions that are expected to occur under reasonably predictable future CAS-covered contracts because of the practice change (See illustration at 9903.407–1(h)). To what degree such expected cost accumulation reductions for forecasted CAS-covered contracts may be considered requires case-by-case determinations. Such consideration should be based on data that fully supports such a condition and discussions held with the contractor, the cognizant auditor and affected Federal agency officials. Cognizant Federal agency official determinations of expected future contract cost

reductions shall not be subject to the disputes provisions of CAS-covered contracts.

5. Section 9903.201–8 and is proposed to be added to read as follows:

**9903.201–8 Cognizant Federal agency responsibilities.**

(a) The requirements of 48 CFR chapter 99, shall, to the maximum extent practicable, be administered by the cognizant Federal agency responsible for a particular contractor organization or location, usually the Federal agency responsible for negotiating indirect cost rates on behalf of the Government. The cognizant Federal agency should take the lead role in administering the requirements of chapter 99 and coordinating CAS administrative actions with all affected Federal agencies. When multiple CAS-covered contracts and/or subcontracts or more than one Federal agency are involved, the cognizant Federal agency official and affected agencies shall coordinate their activities in accordance with applicable agency regulations. Coordinated administrative actions will provide greater assurances that individual contractors follow their cost accounting practices consistently under all their CAS-covered contracts and that aggregate contract price and cost adjustments required under CAS-covered contracts for changes in cost accounting practices or CAS noncompliance issues are determined and resolved, equitably, in a uniform overall manner.

(b) Federal agencies shall prescribe regulations and establish internal policies and procedures governing how agencies will administer the requirements of CAS-covered contracts, with particular emphasis on inter-agency coordination activities. Procedures to be followed when an agency is and is not the cognizant Federal agency should be clearly delineated. Agencies are urged to coordinate on the development of such regulations.

(c) Internal agency policies and procedures shall provide for the designation of the agency office(s) or officials responsible for administering CAS under the agency's CAS-covered contracts and subcontracts at each contractor and subcontractor business unit and the delegation of necessary contracting authority to agency individuals authorized to negotiate cost impact settlements under CAS-covered contracts, e.g., Contracting Officers, Administrative Contracting Officers (ACO's) or other agency officials authorized to perform in that capacity.

(d) *Processing changes in cost accounting practices.* (1) The cognizant Federal agency official shall, in accordance with applicable agency regulations:

(i) Make all required determinations for all CAS-covered contracts and subcontracts affected by a change in cost accounting practice, including cost impact materiality determinations, in the aggregate.

(ii) Coordinate with affected agencies on the potential modification of CAS-covered awards, prior to actual negotiations.

(iii) Negotiate the cost impact settlement, in the aggregate, for all CAS-covered contracts and subcontracts materially affected by the change in cost accounting practice.

(iv) Inform the affected agencies of the negotiation results, by distribution of the negotiation memorandum.

(v) When contract and/or subcontract price adjustments are negotiated:

(A) Request affected agencies to prepare implementing contract modifications and to obtain implementing subcontract modifications from the next higher-tier contractor, as appropriate. The modifications shall be predicated on the negotiated cost impact settlement reflected in the negotiation memorandum and are to be forwarded for signature by the contractor through the cognizant Federal agency official.

(B) Concurrently, obtain contractor signatures for all contracts and subcontracts to be modified and distribute the executed modifications to the awarding agencies.

(2) Awarding agencies shall, in accordance with applicable agency regulations:

(i) Coordinate with and support the cognizant Federal agency official.

(ii) Prepare and/or obtain contract modifications needed to implement negotiated cost impact settlements, as requested by the cognizant Federal agency official.

(iii) When the cognizant Federal agency official has properly determined a cost impact settlement on behalf of the Government, make every effort to provide funds required for increased contract price modifications to affected Contracting Officers for obligation so that the cognizant Federal agency official can concurrently execute all the requested contract modification(s) needed to settle the cost impact action in a timely manner.

(3) If the cognizant Federal agency official makes a written determination that funding needed to execute required modifications is not expected to be available, an equitable solution by use of any other suitable technique which resolves the negotiated cost impact settlement may be used (see 9903.405–5(c)(3)).

## Subpart 9903.3—CAS Rules and Regulations

6. Section 9903.301 is proposed to be amended by adding two definitions in alphabetical order to read as follows:

**9903.301 Definitions.**

(a) * * *

* * * * *

*Function,* as used in this part, means an activity or group of activities that is identifiable in scope and has a purpose or end to be accomplished. Examples of functions include activities such as accounting, marketing, research, product support, drafting, assembly, inspection and field services.

* * * * *

*Intermediate cost objective* means a cost objective that is not a final cost objective. Intermediate cost objectives are used to accumulate the costs of specific functions or groups of functions. Costs allocated to specific intermediate cost objectives are accumulated in specific cost pools that include overhead pools, general and administrative expense (G&A) pools, and service center or other expense pools. These accumulated costs are then allocated as pooled cost to other intermediate and/or to final cost objectives. Intermediate cost objectives may also be used to accumulate direct costs that are included in a cost pool and allocated to final cost objectives as a direct charge.

* * * * *

7. Section 9903.302–1 is proposed to be amended by revising paragraph (c) to read as follows:

**9903.302–1 Cost accounting practice.**

* * * * *

(c) *Allocation of cost to cost objectives* as used in this part, refers to the cost accounting methods or techniques used to accumulate and distribute costs to intermediate and final cost objectives. The allocation of cost to cost objectives includes both the direct and indirect allocation of costs.

(1) Examples of cost accounting practices involving the allocation of cost to cost objectives are the accounting methods and techniques used to:

(i) Accumulate cost for cost objectives and cost pools,

(ii) Determine whether a cost is to be directly or indirectly allocated to intermediate or final cost objectives,

(iii) Determine the selection and composition of cost pools, and

(iv) Determine the selection and composition of the appropriate allocation bases.

(2) The selection of cost pools involves the determination to establish one or more cost pools for the accumulation of specific costs to be allocated to other intermediate and/or to final cost objectives for a particular segment, home office, or business unit. The composition of cost pools involves the determinations to accumulate, by elements of cost, the costs of the specific functions or groups of functions to be included within each established cost pool.

(3) The selection of an allocation base involves the determination on what type of allocation base for a cost pool (e.g., labor hours, square footage, labor dollars, total cost input) will be used as the basis for the allocation of the total costs accumulated in each selected pool to intermediate and/or final cost objectives for a particular segment, home office, or business unit. The composition of an allocation base involves the determination to accumulate the selected allocation base data associated with each selected pool that was established. The composition of an allocation base includes the specific functional groupings within the base. The composition of a home office allocation base includes the grouping of segments within the applicable base. Examples of allocation bases include direct engineering labor hours for a specific direct engineering function performed at a specified location, total cost input of a particular segment, total payroll costs for specific segments reporting to the same group or home office.

8. Section 9903.302–2 is proposed to be revised to read as follows:

**9903.302–2 Change to a cost accounting practice.**

(a) *Change to a cost accounting practice*, as used in this part, including the contract clauses prescribed at 9903.201–4, means any alteration in a cost accounting practice, as defined in 9903.302–1, whether or not such practices are covered by a Disclosure Statement, including the following changes in cost accumulation:

(1) *Pool combinations.* The merging of existing indirect cost pools.

(2) *Pool split-outs.* The expansion or breakdown of an existing indirect cost pool into two or more pools.

(3) *Functional transfers.* The transfer of an existing ongoing function in its entirety from an existing cost pool to another cost pool, segment or home office.

(b) *Exceptions.* (1) The initial adoption of a cost accounting practice for the first time a cost is incurred, or a function is created, is not a change in cost accounting practice. This exception shall be applied at the segment or home office level, depending upon the nature of the cost or the function involved. At the segment level, different segments can establish different cost accounting practices for the same type of cost when the cost is incurred for the first time or a function is created by each segment. This exception does not apply to transfers of ongoing functions, e.g., from one pool, segment, or home office to another pool, segment or home office.

(2) The partial or total elimination of a cost or the cost of a function is not a change in cost accounting practice.

(3) The revision of a cost accounting practice for a cost which previously had been immaterial is not a change in cost accounting practice.

(c) *Mergers and acquisitions.* (1) Each CAS-covered contract requires that the performing contractor consistently follow its established or disclosed cost accounting practices over the contract's entire period of performance.

(2) When a business unit or a segment performing a CAS-covered contract is acquired by a different contractor through a merger or acquisition, the acquired business unit or segment shall accumulate and report costs incurred from the effective date of acquisition or merger through completion of the acquired contract consistently in accordance with the cost accounting practices established by the acquired business unit or segment. Compliant changes made to such established and/or disclosed cost accounting practices after the effective date of the merger or acquisition by the acquiring contractor shall be processed as changes in cost accounting practice in accordance with the requirements of part 9903. If a cost accounting practice previously used to estimate, accumulate or report costs of the acquired covered contract(s) before or after the effective date of the merger or acquisition is found to be noncompliant, the cost impact of the noncompliance shall be resolved in accordance with the requirements of part 9903.

(3) This paragraph (c) applies equally to CAS-covered subcontracts acquired by a contractor or subcontractor.

9. Section 9903.302–3 is proposed to be amended by adding a new introductory paragraph, revising introductory paragraphs (a), (b) and (c), revising the illustration at (c)(3) and by adding new illustrations (c)(4) through (c)(9) to read as follows:

**9903.302–3 Illustrations of changes which meet the definition of "change to a cost accounting practice."**

The following illustrations are not intended to cover all possible changes in cost accounting practices nor are the illustrations to be used as limitations for determining if an accounting change has occurred. Further, each illustration is not intended to be all-inclusive. Accordingly, the lack of a mentioned change in cost accounting practice does not mean that there is not a change in cost accounting practice. The decision as to whether a change in cost accounting practice has or has not occurred, requires a thorough analysis of the circumstances of each individual situation based on the definitions and exceptions specified in 9903.302–1 and 9903.302–2.

(a) The cost accounting practice used for the measurement of cost has been changed.

* * * * *

(b) The cost accounting practice used for the assignment of cost to cost accounting periods has been changed.

* * * * *

(c) The cost accounting practice used for the allocation of cost to cost objectives has been changed.

* * * * *

| Description | Accounting treatment |
|---|---|
| * * * * | * * * |
| (3) The contractor changes to a different allocation base ..... | (3)(i) Before change: The contractor used a direct manufacturing labor hours base to allocate costs accumulated in the manufacturing overhead pool to final cost objectives.<br>(ii) After change: The contractor uses a direct manufacturing labor dollars base to allocate costs accumulated in the manufacturing overhead pool to final cost objectives. |

| Description | Accounting treatment |
|---|---|
| | (iii) The described change from a direct labor hours base to a direct labor dollars base represents a change in the selection of the allocation base . |
| (4) A Segment combines the cost pools of two similar ongoing functions.<br>(i) The ongoing assembly operations at Plants A and B are merged. | (4)(i) Before change: The Segment established separate assembly overhead pools to accumulate the indirect costs applicable to Plant A's and Plant B's respective assembly functions. Pooled costs were allocated to individual final cost objectives based on Plant A's and Plant B's respective assembly direct labor dollars allocation bases.<br>(ii) After change: The indirect costs of the two ongoing assembly functions are combined and accumulated in one indirect assembly cost pool. Pooled costs are allocated to individual final cost objectives based on a single assembly direct labor dollars allocation base that is generated by the two plant locations.<br>(iii) The methods and techniques used to accumulate cost changed because the indirect cost pools selected by the segment to accumulate the cost of specific activities changed from two pools to one pool. The composition of the pools changed because the specific activities originally included in the two indirect cost pools are now included in one pool. The composition of the allocation base changed because the selected allocation base originally accumulated separately for Plants A and B is now accumulated in one combined base . |
| (5) Assume the same circumstances as in (c)(4) of this illustration, except that Plants A and B are separate Segments A and B that are combined as Segment C. | (5)(i) Before change: Segments A and B each established an assembly overhead pool to accumulate the indirect costs applicable to their respective assembly functions. Pooled costs were allocated to final cost objectives based on Segment A's and B's respective assembly direct labor dollars.<br>(ii) After change: Segment C establishes a single assembly overhead pool to identify and accumulate the costs of Segment A's and Segment B's ongoing indirect assembly functions. Pooled costs are allocated to final cost objectives based on Segment C's total assembly direct labor dollars generated by the two ongoing but separate assembly operations.<br>(iii) For the same reasons cited in (c)(4) (iii) of this illustration, a cost accounting practice change has occurred. |
| (6) The contractor changes how the ongoing indirect costs of the manufacturing and assembly operations are accumulated and allocated to final cost objectives by a segment. | (6)(i) Before change: The indirect costs applicable to the manufacturing and assembly functions were accumulated in a plant-wide indirect cost pool and allocated to final cost objectives by use of a direct labor dollars base comprised of manufacturing and assembly direct labor dollars. During each cost accounting period, a single plant-wide indirect cost rate was used to allocate the accumulated indirect costs to individual final cost objectives.<br>(ii) After change: The ongoing indirect costs of the manufacturing and assembly functions are split-out and accumulated separately in a manufacturing cost pool and an assembly cost pool. The costs accumulated in each pool are allocated to final cost objectives by use of a manufacturing direct labor dollars base and an assembly direct labor dollars base, respectively. Two indirect cost rates are now used to allocate the ongoing indirect costs to individual final cost objectives.<br>(iii) The methods and techniques used to accumulate costs have changed because the indirect cost pools selected to accumulate the costs of specific functions have changed from one pool to two pools. The composition of the pools changed because the two specific functions originally included in one pool are now split-out and included in two pools. The composition of the allocation base changed because the selected allocation base previously accumulated in one plant-wide base is now accumulated separately, in two allocation bases, for the manufacturing and assembly operations. |
| (7) The contractor transfers the incoming materials inspection function<br>(i) Incoming materials are inspected in the same manner before and after the change. | (7)(i) Before change: The cost of performing the incoming inspection function was accumulated in the Segment's manufacturing overhead expense pool. Accumulated pool costs were allocated to final cost objectives based on manufacturing direct labor dollars.<br>(ii) After change: The accumulated cost of the incoming inspection function is included in the Segment's materials handling overhead pool. These pooled costs are allocated to final cost objectives based on direct material costs. |

| Description | Accounting treatment |
|---|---|
| | (iii) The decision to include the accumulated cost of the ongoing inspection function in a different cost pool represents a change in the methods and techniques used to accumulate indirect cost because the incoming inspection function is now included in a different pool, i.e., the composition of each pool has changed. The decision to allocate incoming inspection costs to final cost objectives by use of a material cost base rather than a labor dollars base represents a change in the selection of the allocation base for the incoming inspection function. |
| (8) A contractor establishes a new product line by acquiring another company. Both entities are performing CAS-covered contracts.<br>(i) The acquired company will be treated as a new segment. The acquired segment will complete the CAS-covered contracts that were novated from the prior company to the contractor. It will not perform any work associated with the contractor's existing lines of business. | (8) As of the effective date of acquisition, the contractor requires the new segment to accumulate and report the continuing costs of the acquired ongoing functions differently, e.g., the acquired company's single overhead pool is split into two new pools. The pool split-out resulted in changes to the acquired segment's previously established cost accounting practices.<br>(i) The cost accounting practice changes are subject to the contract price and cost adjustment provisions of the acquired CAS-covered contracts.<br>(ii) The initial adoption exception provided by 9903.302–2(b)(1) would not apply because this is not a first time incurrence of cost or creation of a function, with regard to the ongoing acquired CAS-covered contracts. |
| (9) A contractor expands the existing product line of Segment A by acquiring another company. Both entities are performing CAS-covered contracts.<br>(i) Segment A will operate and manage the acquired company's ongoing operations<br>(ii) Segment A will complete the acquired CAS-covered contracts that were novated from the prior company to the contractor. | (9)(i) As of the effective date of acquisition, Segment A merges the continuing functions of the acquired company with Segment A's similar functions and merges the indirect costs of the acquired company's ongoing functions into Segment A's indirect cost pools, in accordance with Segment A's established cost accounting practices. The acquired company's allocation base is similarly merged into Segment A's allocation base.<br>(ii) The cost accounting practices that will be used to accumulate and report costs of Segment A's existing and acquired contracts will be different than the practices that were previously used to estimate, accumulate and report contract costs.<br>(iii) The methods and techniques used to accumulate costs changed because the indirect cost pools selected for the accumulation of costs has changed from two pools to one pool. The composition of Segment A's pool changed because the specific functions originally included in the two indirect cost pools are now included in the one pool. The composition of the allocation base changed because the selected allocation base originally accumulated separately for Segment A and the acquired company is now accumulated in one combined allocation base.<br>(iv) The cost accounting practice changes are subject to the contract price and cost adjustment provisions of the existing and acquired CAS-covered contracts. |

10. Section 9903.302–4 is proposed to be amended by adding an introductory paragraph, and illustrations (h) through (j) to read as follows:

**9903.302–4 Illustrations of changes which do not meet the definition of ''Change to a cost accounting practice.''**

The following illustrations are not intended to cover all possible events that are not changes in cost accounting practice nor are the illustrations to be used as limitations for determining that an accounting change has not occurred. The decision as to whether a change in cost accounting practice has or has not occurred, requires a thorough analysis of the circumstances of each individual situation based on the definitions and exceptions specified in 9903.302–1 and 9903.302–2.

* * * * * * *

| Description | Accounting treatment |
|---|---|
| * * * * * * * | |
| (h) The contractor transfers an inspection department employee from Plant A to Plant B. | (h)(1) Before the transfer, the employee's salary was accumulated as indirect inspection labor and was included in Plant A's overhead pool.<br>(2) After the transfer, the employee's salary is similarly accumulated in Plant B's overhead pool. The salaries of all employees performing the inspection function at Plants A and B continue to be accumulated in their respective overhead pools.<br>(3) Since the cost of the ongoing inspection functions at Plants A and B continue to be accumulated within the same indirect cost pools and the selection and composition of the pools has not changed, before and after the employee transfer, no change in cost accounting practice has occurred. |

| Description | Accounting treatment |
|---|---|
| (i) A contractor with a corporate home office creates a new segment for the purpose of entering a new line of business. The new segment will not perform any work associated with the contractor's existing CAS-covered contracts. | (i)(1) After change: The costs of the contractor's home office continue to be accumulated and allocated to segments in accordance with the contractor's established cost accounting practices. The new segment is added to the applicable home office allocation base or bases used to allocate home office costs to segments.<br>(2) The addition of the new segment to the applicable home office allocation base represents an initial adoption of a cost accounting practice for the segment when it was created (see exception at 9903.302–2(b)(1)). Since the selection and composition of the home office pool and applicable allocation bases were not otherwise changed, the described increase in the base for the allocation of home office costs represents an initial adoption of a cost accounting practice that is not subject to the contract price or cost adjustment process. |
| (j) Assume the same circumstances as in (i) of this illustration, except that:<br>(1) The contractor acquired a new segment from another company that is performing CAS-covered contracts..<br>(2) The acquired segment will continue to estimate, accumulate and report costs in accordance with the original company's compliant and previously disclosed cost accounting practices for that segment. A new Disclosure Statement is filed to that effect. Also disclosed is the contractor's home office cost allocation to the segment. | (j)(1) For the reasons stated in (i) of this illustration, the described home office change is not a cost accounting practice change.<br>(2) At the segment level, the first time incurrence of the acquiring contractor's home office cost allocation is an initial adoption of a cost accounting practice (see exception at 9903.302–2(b)(1). Since the contractor adopted the acquired segment's previously established cost accounting practices, no change in established cost accounting practices occurred for the acquired CAS-covered contracts. |

11. Section 9903.306 is proposed to be revised to read as follows:

**9903.306 Applicable interest rate**

The interest rate applicable to any contract price or cost adjustment shall be the annual rate of interest established under section 6621(a)(2) of Title 26 (26 U.S.C. 6621(a)(2)) for such period. Such interest shall accrue from the time the payment by the United States was made to the time the increased cost payment is recovered by the United States.

12. A new subpart 9903.4 is proposed to be added to read as follows:

**Subpart 9903.4—Contractor Cost Accounting Practice Changes and Noncompliances**

9903.401 Applicability of subpart.
9903.401–1 CAS-covered contracts and subcontracts.
9903.401–2 Educational institutions.
9903.402 Purpose.
9903.402–1 Changes in cost accounting practice.
9903.402–2 Failure to comply (noncompliances) with an applicable cost accounting standard or to follow any cost accounting practice consistently.
9903.403 Definitions.
9903.404 Materiality determination for making adjustment.
9903.405 Changes in cost accounting practice.
9903.405–1 General.
9903.405–2 Notification of changes in cost accounting practices.
9903.405–3 Determinations, approvals and initiating the cost impact process.
9903.405–4 Contractor cost impact submissions.
9903.405–5 Negotiation and resolution of the cost impact.
9903.406 Noncompliances.
9903.406–1 General types of noncompliances.
9903.406–2 Noncompliance determinations and initiating the cost impact process.
9903.406–3 Cost estimating noncompliance.
9903.406–4 Cost accumulation noncompliance.
9903.406–5 Immaterial noncompliances.
9903.407 Illustrations.
9903.407–1 Changes in cost accounting practice—illustrations.
9903.407–2 Noncompliance illustrations.

## Subpart 9903.4—Contractor Cost Accounting Practice Changes and Noncompliances

**9903.401 Applicability of subpart.**

**9903.401–1 CAS-covered contracts and subcontracts.**

(a) This subpart 9903.4 applies uniformly to all CAS-covered contracts and subcontracts affected by a compliant change in cost accounting practice and/or a noncompliant cost accounting practice. By accepting the first CAS-covered contract or subcontract that incorporates part 9903, which includes this subpart 9903.4, the contractor agrees to process cost accounting practice changes and noncompliance actions occurring after the award of that contract or subcontract in accordance with this subpart for all existing CAS-covered contracts and subcontracts affected by the change or noncompliance.

(b) To aid in meeting the requirements set forth in this subpart 9903.4 for processing cost accounting practice changes and noncompliance actions, the contractor shall maintain a system for identifying all existing CAS-covered contracts and subcontracts, and their periods of performance.

**9903.401–2 Educational institutions.**

(a) This subpart 9903.4 applies to all CAS-covered contracts and subcontracts awarded to educational institutions. Such CAS-covered contracts and subcontracts incorporate part 9903 by reference and contain specific terms and conditions that require the educational institution to disclose its cost accounting practices (if specified criteria are met), provide notification if a change to a cost accounting practice is made and to agree to contract price or cost adjustments for material cost impacts attributable to compliant changes in cost accounting practices and/or to noncompliant practices. This subpart 9903.4 establishes procedures for providing such notifications, the submission of requested cost impact data, and determining the required adjustments.

(b) On April 26, 1996, the Office of Management and Budget (OMB) incorporated in OMB Circular A–21, Cost Principles for Educational Institutions (61 FR 20880, May 8, 1996), the Disclosure Statement (Form CASB DS–2) and the CAS applicable to educational institutions that were promulgated by the Board at 48 CFR chapter 99 (59 FR 55746, November 8, 1994). As amended, Circular A–21 also contains certain requirements and guidance regarding the notification to be provided when an educational institution changes a cost accounting practice and the cost adjustments that may be required or other actions to be taken by the cognizant Federal agency

when Federally sponsored agreements (contracts, grants and cooperative agreements) are affected by compliant practice changes or noncompliant practices.

(c) The amended CASB and OMB requirements were intended to be compatible and are to be administered by the cognizant Federal agency official in a uniform and cost effective manner. To the maximum extent feasible, the cognizant Federal agency official should apply a single set of procedures when obtaining notifications, cost impact data and when determining the adjustments that may be required for individual CAS-covered contracts and other Federally sponsored agreements subject to amended OMB Circular A–21 that are affected by the same practice change or noncompliance. The procedures applied to all Federally sponsored agreements, including CAS-covered contracts and subcontracts, should be consistent with this subpart 9903.4 requirements and objectives. The cognizant Federal agency official may use applicable portions of this subpart 9903.4 as guidance and, if mutually agreed to by the educational institution, the contracting parties may elect to apply the 9903.4 provisions as deemed appropriate in the circumstances.

(d) *Waiver Authority*. When an educational institution changes a compliant cost accounting practice or fails to comply with an applicable Cost Accounting Standard that affects CAS-covered contracts and other Federally sponsored agreements, the cognizant Federal agency official may waive or modify, on a case-by-case basis, applicable subpart 9903.4 requirements for affected CAS-covered contracts and subcontracts as deemed necessary in order to establish appropriate alternative procedures or methods for obtaining notifications of practice changes, the submission of cost impact data or determining contract price or cost adjustments in a uniform manner for all Federally sponsored agreements. The basis for the waiver and the alternate procedures utilized shall be documented in a written determination. This waiver authority does not apply to the adequacy and compliance determinations required by 9903.405–3(a).

(e) A written determination to apply the provisions of this subpart 9903.4, OMB Circular A–21, or other appropriate procedural guidance to educational institutions shall be made by the cognizant Federal agency official. Educational institutions should contact their cognizant Federal agency for specific instructions within 60 days after receipt of the first CAS-covered contract that is subject to this subpart.

**9903.402 Purpose.**

**9903.402–1 Changes in cost accounting practice.**

The contract clauses prescribed in 9903.201–4, Contract clauses, set forth the requirements for changes in cost accounting practices that a contractor may be required to make in order to comply with a standard, modification or interpretation thereof that becomes applicable to existing covered contracts for the first time due to the subsequent award of a covered contract or may otherwise decide to make, e.g., a voluntary change from an established or disclosed compliant cost accounting practice to another compliant cost accounting practice. Section 9903.405 establishes the specific actions to be taken by the contracting parties for such compliant cost accounting practice changes. Section 9903.405 also establishes procedures for adjusting contract amounts that are materially affected by compliant changes in cost accounting practices, while not requiring adjustment of all contracts that are affected by such changes.

**9903.402–2 Failure to comply (Noncompliances) with an applicable Cost Accounting Standard or to follow any cost accounting practice consistently.**

The contract clauses prescribed in 9903.201–4, Contract clauses, require the contractor or subcontractor to agree to an adjustment of the contract price or cost if the contractor or subcontractor fails to comply with an applicable Cost Accounting Standard, modification or interpretation thereto, or to follow any cost accounting practice consistently, and such failure results or will result in any increased cost paid, in the aggregate, by the United States, under CAS-covered contracts and subcontracts. Section 9903.406 establishes the actions to be taken by the contracting parties in order to resolve the noncompliant condition and/or effect recovery of any increased costs paid as a result of the noncompliance.

**9903.403 Definitions.**

This section 9903.403 defines terms as used in this part 9903, including the contract clauses prescribed at 9903.201–4. Where the defined terms refer to a ''contractor'' or ''contract'' the definition is intended to apply equally, as applicable, to a ''subcontractor'' or ''subcontract.''

*Applicability date* means—

(1) For required cost accounting practice changes, the date on which a contractor is first required to accumulate and report costs in accordance with an applicable Standard, modification or interpretation thereto; or

(2) For voluntary cost accounting practice changes, the date on which a contractor begins to use a new cost accounting practice for cost accumulation and reporting purposes.

*Contracts subject to adjustment* means CAS-covered contracts and subcontracts, including definitized contract options, that:

(1) Have contract performance beyond the applicability date of a change in cost accounting practice, and have their current contract prices based on a previous cost accounting practice; or

(2) Are affected by the application of a noncompliant practice that was used to estimate or accumulate costs.

*Cost impact* means the increase or decrease in estimated or actual costs allocable to a CAS-covered contract or subcontract due to a compliant change in cost accounting practices, a noncompliance with a Cost Accounting Standard, or a failure to follow cost accounting practices consistently.

*Desirable change* means a voluntary change to a contractor's established or disclosed cost accounting practices that the cognizant Federal agency official finds is desirable and not detrimental to the Government pursuant to 9903.201–7 and is therefore not subject to the voluntary change—no increased cost prohibition provisions of CAS-covered contracts affected by the change.

*Detailed cost impact proposal* means a proposal that shows the cost impact of a change in cost accounting practice for contracts subject to adjustment that have an estimate-to-complete which exceeds a threshold amount specified by the cognizant Federal agency official.

*Effective date* means:

(1) For compliance with Standards, modifications and interpretations thereto, the date on which a contractor is first required to estimate proposed contract costs in accordance with an applicable standard, modification or interpretation, as specified by the CAS Board; or

(2) For voluntary cost accounting practice changes, the date on which a contractor begins using a new cost accounting practice for cost estimating purposes.

*General dollar magnitude estimate* means an estimate of the aggregate cost impact, by contract type, of a change in cost accounting practice, or a noncompliant practice on contracts subject to adjustment.

*Immaterial noncompliance* means a noncompliant cost accounting practice

that does not currently result in material increased costs to the Government.

*Increased costs due to a cost accumulation noncompliance* means the increase in cost to the Government that results from a contractor's failure to comply with applicable Cost Accounting Standards, modifications or interpretations thereto, or to follow its disclosed or established cost accounting practices consistently when accumulating costs under CAS-covered contracts, and such failure results in a higher amount of costs allocated to these CAS-covered contracts than would have been allocated to the contracts had the contractor complied with applicable Standards, modifications or interpretations thereto, or followed its cost accounting practices consistently.

*Increased costs due to a cost estimating noncompliance* means the increased costs to the Government resulting from a contractor's failure to comply with applicable standards, modifications or interpretations thereto, or to follow its disclosed or established cost accounting practices consistently when estimating proposal costs for a contemplated CAS-covered contract, and such failure results in a higher contract price than would have been negotiated had the contractor complied with applicable Standards, modifications or interpretations thereto, or followed its cost accounting practices consistently.

*Increased costs due to a voluntary change in cost accounting practice* means the increase in cost to the Government that occurs:

(1) For flexibly priced CAS-covered contracts, when a greater amount of cost will be allocated to the contract than would have been allocated to it had the contractor not changed its cost accounting practice, before any actions are taken to preclude the payment of the increased costs; or

(2) For firm-fixed-price CAS-covered contracts, when the costs to be allocated to the contract are less than the amount of costs that would have been allocated to it had the contractor not changed its cost accounting practice, before any contract price adjustment is made to reflect the contractor's lesser allocation of cost to the contract.

*Increased costs paid* means the amount the Government actually pays, in the aggregate, for increased costs resulting from compliant cost accounting practice changes or noncompliant cost accounting practices used to estimate or accumulate costs.

*Notification date* means the date on which the contractor formally notifies the cognizant Federal agency official of a planned change in cost accounting practices.

*Offset process* means the combining of cost increases to one or more affected contracts of a given type with cost decreases to one or more affected contracts of the same type, for the purpose of mitigating action that needs to be taken due to changes in cost accounting practices.

*Required change* means a change in cost accounting practice that a contractor is required to make in order to comply with applicable Standards, modifications or interpretations thereto, that subsequently become applicable to an existing CAS-covered contract due to the receipt of another CAS-covered contract or subcontract.

*Voluntary change* means a change in cost accounting practice from one compliant practice to another that a contractor with CAS-covered contracts elects to make that has not been deemed desirable by the cognizant Federal agency official and for which the Government will pay no increased costs.

**9903.404 Materiality determination for making adjustment.**

Contract price adjustments or actions to preclude or recover the payment of increased costs resulting from compliant changes in cost accounting practice, or failure to comply with an applicable Cost Accounting Standard, modification or interpretation thereto, or to follow any cost accounting practice consistently, shall only be required if the amounts are material. In determining materiality, the cognizant Federal agency official shall use the criteria specified in 9903.305. The cognizant Federal agency official should forego contractor cost impact submissions (9903.405–4), and not adjust contracts, if the cognizant Federal agency official determines that the amounts involved are immaterial.

**9903.405 Changes in cost accounting practice.**

**9903.405–1 General.**

A CAS-covered contractor shall make changes to its established or disclosed cost accounting practices when required in order to comply with applicable Cost Accounting Standards, including any modification and interpretations promulgated thereto. A contractor may change its established cost accounting practices voluntarily, provided the cognizant Federal agency official is notified of the change and the new practice complies with applicable Cost Accounting Standards. CAS-covered contracts and subcontracts affected by changes in cost accounting practices that are either required to comply with Cost Accounting Standards, modifications or interpretations thereto, or are made voluntarily for which the cognizant Federal agency official has made a finding that the change is desirable in accordance with 9903.201–7 are subject to equitable contract price adjustments. For all other voluntary accounting changes, disclosed in accordance with 9903.405–2, the cognizant Federal agency official shall take action to preclude the payment of increased costs by the United States as a result of the change, as prescribed in 9903.405–5(d). With the exception of such action to preclude the payment of increased costs for voluntary changes, the administrative procedures for handling potential contract price or cost adjustments will be consistent for all compliant accounting changes, as set forth in subsections 9903.405–2 through 9903.405–5. Implementation of any change in cost accounting practice without submission of the notification required under 9903.405–2 shall be considered a failure to follow a cost accounting practice consistently, and shall be processed as a noncompliance condition in accordance with 9903.406.

**9903.405–2 Notification of changes in cost accounting practices.**

(a) The contractor shall submit to the cognizant Federal agency official a description of any planned change in cost accounting practices. Such notification shall include the proposed effective and applicability dates. The date of submission is hereafter referred to as the notification date.

(b) The contractor shall notify the cognizant Federal agency official in accordance with the following:

(1) Required changes shall be disclosed as soon as it becomes known that a required change must be made, but no later than the date of submission of the price proposal in which the contractor must first use the required change to estimate costs for a potential CAS-covered contract.

(2) Voluntary changes (including those ultimately deemed desirable) shall be disclosed as soon as the contractor decides to change an established or disclosed cost accounting practice. Notification shall be provided no later than 60 days before the applicability date or on the date of submission of the price proposal in which the contractor first uses the changed practice to estimate costs for a potential CAS-covered contract.

(c) If a contractor proposes to make the applicability date of a voluntary change (including those ultimately deemed desirable) retroactive to the beginning of the current fiscal year in

which the notification is made, the contractor must submit rationale for such action and obtain the cognizant Federal agency official's approval. The rationale must state the reasons for making a retroactive change.

(d) When providing notification of a voluntary change, the contractor shall provide sufficient information to support the cognizant Federal agency official's determination that the planned voluntary change should or should not be exempted from contract price and cost adjustment (9903.201–6). The contractor shall state if the cost accounting practice change is or is not associated with restructuring activities; and if it is, the contractor shall:

(1) Submit a comprehensive description of the planned restructuring activities.

(2) Demonstrate, in summary fashion, to what extent the contractor's total operating cost levels are expected to decrease (or increase) as a result of the planned restructuring activities.

(3) Demonstrate that changes to the contractor's established cost accounting practices are associated with the planned restructuring activities and the resultant practice changes would not be made but for the management actions being taken.

(4) Demonstrate that aggregate cost accumulations for existing CAS-covered contracts and reasonably predictable future CAS-covered contracts, by contract types, will decrease, increase or remain the same after the planned restructuring activities are implemented. The required cost comparison calculation methodology is summarized as follows:

| | Fixed-price contracts | Flexibly priced contracts, by contract type |
|---|---|---|
| 1. Total amount of costs that would be accumulated for existing and future CAS-covered contracts, in accordance with established cost accounting practices, at the estimated operating cost levels that would continue if the contemplated restructuring activities were not made. | | |
| 2. Total amount of costs that would be accumulated for existing and future CAS-covered contracts, in accordance with the new changed cost accounting practices, at the estimated new cost levels that would result if the planned restructuring activities were made. | | |
| 3. Difference (1. minus 2.). | | |

(5) In lieu of the methodology in paragraph (d)(4) of this section, the contractor may refer the cognizant Federal agency official to its ''cost savings'' proposal otherwise submitted in accordance with applicable agency regulations governing restructuring activities.

(e) When requesting that a voluntary change be deemed desirable, the contractor shall provide rationale and data demonstrating that the accounting change is desirable and not detrimental to the Government's interests or that the change in cost accounting practice was necessary to remain in compliance with an applicable Cost Accounting Standard (9903.201–7). The contractor shall state if the cost accounting practice change is or is not associated with planned management changes; and if it is, the contractor shall:

(1) Submit a comprehensive description of the planned management changes.

(2) Demonstrate, in summary fashion, to what extent the contractor's total operating cost levels are expected to decrease (or increase) as a result of the planned management changes.

(3) Demonstrate that changes to the contractor's established cost accounting practices are associated with the planned management changes and the resultant practice changes would not be made but for the management actions being taken.

(4) Demonstrate that aggregate cost accumulations for existing CAS-covered contracts and reasonably predictable future CAS-covered contracts, by contract type, will decrease, increase or remain the same after the planned management changes are implemented. The required cost comparison calculation methodology is summarized as fellows:

| | Fixed-price contracts | Flexibly priced contracts, by contract type |
|---|---|---|
| 1. Total amount of costs that would be accumulated for existing and future CAS-covered contracts, in accordance with established cost accounting practices, at the estimated operating cost levels that would continue if the contemplated management changes were not made. | | |
| 2. Total amount of costs that would be accumulated for existing and future CAS-covered contracts, in accordance with the new changed cost accounting practices, at the estimated new cost levels that would result if the planned management changes were made. | | |
| 3. Difference (1. minus 2.). | | |

(f) *Data submission requirements:* The contractor shall submit a complete description of any change in cost accounting practice, including the relevant Disclosure Statement page revisions and amendments required to disclose the new practice (9903.202–3); any additional information which will help the cognizant Federal agency official make a determination of adequacy and compliance; and if applicable, data demonstrating that the change is:

(1) Obviously immaterial because the change in practice will not result in a greater or lesser allocation of cost to individual CAS-covered contracts affected by the change, i.e., after the change, the amounts of cost allocated to individual covered contracts will approximate the amounts that would have been allocated if the change were not made,

(2) A voluntary change that is or is not exempt from contract price and cost adjustment,

(3) Desirable and not detrimental to the interests of the Government, and/or

(4) One that warrants retroactive implementation.

**9903.405–3 Determinations, approvals and initiating the cost impact process.**

(a) *Adequacy and compliance determination.* Upon receipt of the

contractor's notification, the cognizant Federal agency official, with the assistance of the auditor, shall review the planned cost accounting practice change concurrently for adequacy and compliance. If the cognizant Federal agency official identifies any area of inadequacy, a revised description of the new accounting practice shall be requested. Problems of adequacy should be resolved between the parties as soon as possible after the initial notification of the accounting change. If the cognizant Federal agency official determines that the disclosed practice is noncompliant with any Cost Accounting Standards, modifications or interpretations thereto, and the contractor implements the practice, the accounting change will be handled as a noncompliance under the provisions of 9903.406. Once the cognizant Federal agency official has determined that the accounting change is both adequate and compliant, the cognizant Federal agency official shall immediately notify the contractor.

(b) *Voluntary change exemption determinations.* When a contractor provides notification of a planned voluntary change and submits the data required by 9903.405–2, the cognizant Federal agency official should, in accordance with 9903.201–6, determine if the voluntary change can be exempted from contract price and cost adjustment, and notify the contractor of the determination made. Notification should be made promptly after the change is determined to be adequate and compliant.

(c) *Desirable change determinations.* When the contractor's notification includes a request that a planned voluntary change be deemed desirable and not detrimental, the cognizant Federal agency official should, in accordance with 9903.201–7, make a decision with regard to this finding promptly after the change is determined to be adequate and compliant. The cognizant Federal agency official shall notify the contractor in writing regarding the decision of desirability, and concurrently request the contractor to submit a GDM Settlement Proposal, or initiate actions required to otherwise resolve the matter (see 9903.201–7(c)(2)). The notification shall also include a statement indicating that the potential modification of CAS-covered contracts are subject to the availability of funds.

(d) *Approval of retroactive application date.* When a contractor notification pertains to a planned voluntary change with a retroactive applicability date, the cognizant Federal agency official should review the contractor's submitted rationale and promptly determine if the requested retroactive application date should be approved or rejected. The cognizant Federal agency official shall notify the contractor in writing regarding the decision made.

(e) *Obviously immaterial changes.* If the cognizant Federal agency official determines that the cost impact of a change in cost accounting practice is obviously immaterial based on data submitted by the contractor pursuant to 9903.405–2(f)(1), or otherwise decides that the cost impact is immaterial, the decision will be documented, the contractor will be so notified, and the cost impact process will be concluded.

(f) *Request for GDM Settlement Proposal.* When the cost impact of a change in cost accounting practice is not determined to be obviously immaterial, the cognizant Federal agency official will request a GDM Settlement Proposal, as described in 9904.405–4(a), after the determination of adequacy and compliance has been made. The request should specify a date for submission of the GDM Settlement Proposal. The contractor shall submit the GDM Settlement Proposal on or before the date specified or other mutually agreeable date. The cognizant Federal agency official will use the contractor's GDM Settlement Proposal to resolve the cost impact of a change in cost accounting practice on existing CAS-covered contracts and subcontracts, without requiring a detailed cost impact proposal, provided the official determines that the GDM Settlement Proposal is adequately supported and contains sufficient data.

**9903.405–4 Contractor cost impact submissions.**

(a) General Dollar Magnitude (GDM) Settlement Proposal. (1) The purpose of the GDM Settlement Proposal is to provide information to the cognizant Federal agency official on the estimated overall impact of a change in cost accounting practice on affected CAS-covered contracts and subcontracts that were awarded based on the previous accounting practice. It provides the contractor an opportunity to propose specific adjustments to settle the cost impact of changes in cost accounting practices. It also provides a sufficient number of individual contract and/or subcontract cost impact estimates to support the general dollar magnitude aggregate estimate by contract type and to assist the cognizant Federal agency official in determining whether any individual contract or subcontract price adjustments will be required. The GDM Settlement Proposal is used to determine if the change in cost accounting practice has resulted in material increased or decreased costs to existing contracts, and to attempt to resolve the cost impact of the change in cost accounting practice without requiring a detailed cost impact settlement proposal as described in paragraph (b) of this subsection.

(2) The contractor, in the GDM Settlement Proposal, shall show a reasonable estimate of the aggregate impact of the change on CAS-covered contracts and subcontracts subject to adjustment, by contract type, from the applicability date of the change to completion of the contracts subject to adjustment. The individual contracts selected by the contractor for inclusion in the GDM Settlement Proposal shall be those contracts with the largest dollar impact. The contractor should submit specific adjustments to settle the cost impact of the cost accounting practice change(s). The proposed adjustment amounts shall be determined in accordance with the requirements of this subpart and may include proposed revisions to the profit, fee or incentive provisions of affected contracts.

(3) In computing the cost impact, the contractor shall use a consistent cost data baseline for the before and after change amounts. The cost impact data should generally be based on the latest forecasted direct and indirect cost data used for forward pricing purposes unless other data is considered preferable and agreed to by both the contractor and cognizant Federal agency official. In most cases, the after change cost data baseline should be used because this is the same cost data baseline that will be used to determine the revised forward pricing rates and current contract estimates-to-complete based on the new cost accounting practice.

(4) Any format which reasonably shows the aggregate impact by contract type and provides sufficient contract data to settle the cost impact is acceptable. In most situations, the grouping of the CAS covered contracts by contract type within the GDM Settlement Proposal may be limited to the following contract types: firm-fixed-price (FFP); time-and-material (T&M); incentive-type (FPI/CPIF); and other cost-reimbursement contracts (CPFF, CPAF, CR, etc). One acceptable GDM Settlement Proposal format is illustrated as follows:

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SUMMARY - GDM SETTLEMENT PROPOSAL
OF TOTAL COST IMPACT ON ALL COVERED CONTRACTS
AWARDED PRIOR TO APPLICABILITY DATE

REQUIRED CHANGES, VOLUNTARY CHANGES (1) , DESIRABLE CHANGES (1)

| | ESTIMATE TO COMPLETE (2) | | DIFFERENCE | PROPOSED |
|---|---|---|---|---|
| | OLD PRACTICE (3) (A) | NEW PRACTICE (4) (B) | COST IMPACT (A-B) | ADJUSTMENT AMOUNTS (5) |
| AGGREGATE | | | | |
| FFP | | | | |
| T&M | | | | |
| FPI/CPIF | | | | |
| OTHER COST TYPE | | | | |
| TOTAL | | | | |
| CONTRACTS (6) | | | | |
| FFP | | | | |
| 1. | | | | |
| 2. | | | | |
| "ALL OTHER" | | | | |
| TOTAL | | | | |
| T&M | | | | |
| 1. | | | | |
| 2. | | | | |
| "ALL OTHER" | | | | |
| TOTAL | | | | |
| FPI/CPIF | | | | |
| 1. | | | | |
| 2. | | | | |
| "ALL OTHER" | | | | |
| TOTAL | | | | |
| OTHER COST TYPE | | | | |
| 1. | | | | |
| 2 | | | | |
| "ALL OTHER" | | | | |
| TOTAL | | | | |

**Instructions:**

1. **Indicate whether the cognizant Federal agency official has made a finding that the change is desirable, and, if not, attach an explanation detailing the proposed actions(s) that will be taken to preclude the payment of aggregate increased costs, if any, pursuant to 9903.405-5(d).**

2. **The estimates to complete must be based on the same contract scope of effort, to be performed from the applicability date of the change until contract completion.**

3. **Enter the total estimated cost to complete all of the CAS-covered contract backlog based on the existing cost accounting practice. This estimate should be based on the CAS-covered contracts' allocable share of the total direct and indirect costs forecasted for all cost accounting periods during which the backlog of CAS-covered contracts estimated under the old practice will be performed.**

4. **Enter the total estimated cost to complete the CAS-covered contract backlog based on the new cost accounting practice. This estimate should also be based on the backlog contracts' allocable share of the total direct and indirect costs forecasted for all cost accounting periods during which the backlog of CAS-covered contracts estimated under the old practice will be performed. However, that forecasted data must first be recast to reflect application of the new cost accounting practice, e.g., determine the effect on indirect cost pools and allocation bases, recalculate rate(s) and apply the new rate(s) to the recast allocation base(s), as appropriate.**

5. **The amounts in this column indicate the contractor's proposal to settle the cost impact. Enter the proposed adjustment amounts in the aggregate by contract type and for individual contracts listed, as well as for the "All Other" contract category. Proposed revisions to profit, fee, or incentive provisions may also be included. (Attach explanatory schedule.)**

6. **List each contract needed to resolve "material" amounts identified in the GDM estimate and, based on the individual contract cost impact computations, enter the indicated data and proposed adjustment amount.**

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(5) The illustrated GDM Settlement Proposal format is an example of one method and does not preclude the use of any other format or method that displays a reasonable estimate of the cost impact by contract type and provides sufficient contract data to settle the cost impact. The GDM Settlement Proposal shall be adequately supported. If a GDM Settlement Proposal is not adequately supported, or cannot be adequately supported by the contractor, the cognizant Federal agency official shall request a detailed cost impact proposal in accordance with paragraph (b) of this subsection.

(6) The cognizant Federal agency official should attempt to use the contractor's GDM Settlement Proposal to resolve the cost impact to the maximum extent possible. If additional individual contract data is determined necessary to resolve the cost impact, the cognizant Federal agency official should request the contractor to submit a revised GDM Settlement Proposal that includes the specific additional data needed, e.g., contracts with a dollar impact exceeding a specific dollar amount. The contractor should then submit the revised GDM Settlement Proposal on or before the date specified by the cognizant Federal agency official or other mutually agreeable date.

(7) If the cognizant Federal agency official determines that the cost impact is immaterial in both the aggregate by contract type and for the individual contracts included in the GDM Settlement Proposal, the cost impact process may be concluded without any adjustments. If the cost impact either in the aggregate by contract type or on individual contracts is determined to be material, the procedures in 9903.405–5, Negotiation and Resolution of the Cost Impact, should be followed.

(8) Upon receipt, the cognizant Federal agency official should promptly evaluate the contractor's GDM Settlement Proposal and, if the cost impact is determined to be material, proceed to either negotiate and resolve the cost impact, request additional data or request a detailed cost impact proposal in a timely manner.

(b) Detailed cost impact proposal. (1) A detailed cost impact proposal will be requested by the cognizant Federal agency official when the GDM Settlement Proposal cannot be adequately supported or does not contain sufficient data to resolve a cost impact due to a change in cost accounting practice. It will be used by the cognizant Federal agency official in lieu of the GDM Settlement Proposal to determine the magnitude of the impact of the change on existing CAS-covered contracts and subcontracts subject to adjustment and to determine which, if

any, should be adjusted for the impact of the change. The determination by the cognizant Federal agency official of the need for a detailed cost impact proposal is final and binding, and not subject to the Disputes clause of the contracts affected by the practice changes.

(2) The detailed cost impact proposal need not include every contract and subcontract subject to adjustment as a result of the change in cost accounting practices. It typically will include all contracts and subcontracts having an estimate-to-complete, based on the old accounting practice, exceeding a specified amount established by the cognizant Federal agency official. The specified individual contract impact amount should be high enough so that the detailed cost impact proposal does not contain an excessive number of contracts and subcontracts. However, it should contain a sufficient number so that it includes a reasonably high percentage of both the backlog of these contracts and the aggregate impact amount by contract type. The established individual contract estimate-to-complete amount should be specified in the formal written request for a detailed cost impact proposal.

(3) A detailed cost impact proposal will normally include the following:

(i) Cost estimates-to-complete based on the old (established) and new (changed) cost accounting practice and the resultant cost impact, grouped by contract type, for each CAS-covered contract and subcontract exceeding the specified amount.

(ii) Aggregate cost estimates to complete based on the old and new cost accounting practice and the aggregate cost impacts, by contract type, for ''all other'' CAS-covered contracts and subcontracts that are below the specified amount. The ''all other contract'' amounts are the difference between the aggregate amounts by contract type and the net sum totals of the impact of the submitted individual contracts by contract type.

(iii) Aggregate cost estimates to complete based on the old and new cost accounting practice and the aggregate cost impacts, by contract type, for all CAS-covered contracts and subcontracts that are affected by the change in cost accounting practice.

(4) The contractor shall submit the detailed cost impact proposal on or before the date specified by the cognizant Federal agency official or other mutually agreeable date.

(5) After analysis of the cost impact proposal, with the assistance of the auditor, the cognizant Federal agency official shall promptly negotiate and resolve the cost impact.

**9903.405–5 Negotiation and resolution of the cost impact.**

(a) *General.* (1) The cognizant Federal agency official shall negotiate any required contract price or cost adjustments due to changes in cost accounting practices or noncompliances on behalf of all Government agencies. Negotiation of price and cost adjustments may be based on a GDM Settlement Proposal or a detailed cost impact proposal.

(2) The Cost Accounting Standards Board's rules, regulations and Standards do not in any way restrict the capacity of the contracting parties to select the method by which the cost impact attributable to a change in cost accounting practice is resolved. A cost impact may be resolved by modifying a single contract, several but not all contracts, or all contracts subject to adjustment, or any other suitable technique which resolves the cost impact in a way that approximates the amounts that would have resulted if individual contracts had been adjusted.

(b) *Offset process.* The offset process of combining cost impact increases with cost impact decreases may be used to reduce the number of individual contract price or cost adjustments or preclusion of increased cost actions required as a result of a change in cost accounting practice. In applying this process, the following provisions apply:

(1) Use of the offset process shall not result in aggregate cost to the Government which is materially different from that which would result if individual contract prices had actually been adjusted to reflect the aggregate impact of the practice change.

(2) The offset process shall only be applied to contracts that are of the same contract type, e.g., FFP, T&M, incentive (FPI/CPIF) or other cost-reimbursement contracts.

(3) The offset process should not be used to materially reduce the amount of the price adjustment to any one contract that exceeds the individual contract cost impact materiality threshold established for individual contract price adjustments (9903.405–5(c)(1)). It also should not be used to reduce the adjustment for these contracts to an amount below the established threshold. The offset process is used to determine the action required for contract adjustment purposes for the ''all other contract'' category.

(4) Within a segment, the effect of several changes may be combined in the offset consideration if the changes all take place at the same time. Such offsets may be used to determine:

(i) If the aggregate impact within the same contract exceeds the individual contract's materiality threshold;

(ii) On an overall basis, the aggregate ''all other contract'' amounts by contract type for all changes; or

(iii) If any action is required to preclude increased costs for concurrent voluntary changes.

(5) Offsets affecting incentive contracts may be applied, provided that the incentive provisions of these contracts are retained or not materially altered.

(6) To minimize action required to resolve cost impacts, cost increases at one segment of a company may be offset by decreases at another segment within the same contract types if the change causes costs to flow between segments either directly or via a higher organizational level such as a home office, or is made simultaneously at the direction of a higher organizational level such as a home office. For such changes, the cost impact proposal should generally be submitted at the home office level so that the cognizant Federal agency official may determine the appropriate course of action.

(c) *Contract price and cost adjustments.* (1) Once the GDM Settlement Proposal or detailed cost impact proposal has been analyzed, the cognizant Federal agency official shall determine, with the auditor's assistance, whether contract price or cost adjustments are warranted. Any adjustments should be limited to amounts that are material. The determination to require or not to require adjustments should be based on separate materiality thresholds for: individual contracts; the ''all other contracts'' amounts; and the aggregate by contract type. The threshold for individual contract price adjustments may be based on cost impact dollar thresholds, a percentage of the contract price, or a combination of the two criteria, e.g., contracts with cost impacts exceeding a certain dollar amount provided that the impact exceeds a certain percentage of the contract price. The materiality thresholds, as used in this paragraph, are the amounts below which no adjustments are required.

(2) If the accounting change produces a material cost increase or decrease in the aggregate by contract type, it may be necessary to adjust the prices of one or more contracts of each contract type affected by the change. The required adjustments to contract prices (including fixed-price contracts) may increase or decrease contract prices depending on whether estimated contract costs increase or decrease. For voluntary changes, the sum of the

adjustments of all contract prices shall not result in net increased costs paid, in the aggregate, by the Government or net upward adjustments to contracts. Even if a change produces a zero aggregate impact on the costs of all affected contracts, it still may be necessary to adjust the prices of one or more contracts of each contract type. Such adjustments may be made to:

(i) Maintain consistency between the negotiated contract costs and the costs to be allocated to the contract using the new practice, while at the same time reducing potential contract cost overrun and underrun conditions resulting from the change in cost accounting practices;

(ii) Preclude increased cost payments under affected flexibly priced contracts;

(iii) Preclude an enlargement of profit on affected firm-fixed-price contracts beyond the level negotiated; or

(iv) Avoid distortions of incentive provisions and relationships between target costs, ceiling costs and actual costs on incentive type contracts.

(3) Whether the cognizant Federal agency official decides to resolve the cost impact by adjusting the price of one or more contracts of each contract type, or selects some other method for settlement in accordance with paragraph (a)(2) of this subsection, the negotiated net adjustment for each contract type should approximate the amounts that would result if the individual contract prices were adjusted to reflect the cost impact of the change in cost accounting practice.

(4) If the resolution of the cost impact action will be accomplished by means of contract price adjustments, the cognizant Federal agency official should analyze the contractor's cost impact submission to determine if the proposed adjustment amounts exceed the materiality thresholds established in accordance with paragraph (c)(1) of this subsection, and adjust individual contract prices accordingly.

(5) The cognizant Federal agency official, with the assistance of the auditor, should evaluate the aggregate amount by contract type, as well as the ''all other contracts'' amount, to determine if these amounts exceed the aggregate or ''all other contracts'' materiality thresholds established. If these amounts exceed the threshold, adjustments may be made by either adjusting contract prices or use of an alternate technique which accomplishes the same approximate result as if all individual contracts were adjusted. If these amounts do not exceed the established aggregate or ''all other contracts'' threshold, no adjustments are required, unless individual contracts exceed the established individual contract cost impact threshold or adjustments are otherwise considered necessary to achieve equity.

(6) Whenever contract price adjustments are anticipated, the cognizant Federal agency official should coordinate the Government cost impact resolution plan with affected Procuring Contracting Officers, Contracting Officers or other authorized officials performing in that capacity within each affected Federal agency.

(7) At the discretion of the cognizant Federal agency official, contract fee or profit may be adjusted when resolving the cost impact through contract price adjustments. Whether fee or profit is or is not considered, in addition to the cost impact, in making contract price adjustments, is a matter to be determined by the cognizant Federal agency official based on the circumstances surrounding the particular change in accounting practices, terms of the contract, and requirements of law.

(d) *Action to preclude increased costs paid for voluntary changes.* (1) In the absence of a finding pursuant to 9903.201–7 that a voluntary change is desirable, no agreement may be made with regard to a voluntary change in cost accounting practice that will result in the payment of increased costs by the United States. For these changes, the cognizant Federal agency official shall, in addition to the procedures specified in 9903.405–2 through 9903.405–5(c) which apply to all compliant accounting changes, take action to ensure that increased costs are not paid as a result of a change.

(2) For individual CAS-covered firm-fixed-price contracts, increased costs are precluded by adjusting the contract price downward by the amount of the estimated lower allocation of costs to the contracts as a result of a voluntary change in cost accounting practice.

(3) To decide if action is required to preclude the payment of increased costs, the cognizant Federal agency official shall determine, with the assistance of the auditor, to what extent the United States would pay a higher level of costs, in the aggregate, once all potential contract price adjustments are considered. This occurs when the estimated aggregate higher allocation of costs to contracts subject to adjustment exceeds the estimated aggregate lower allocation of costs to other contracts subject to adjustment.

(4) The cognizant Federal agency official may preclude the payment of increased costs resulting from voluntary changes by limiting any upward contract price adjustments to affected contracts to the amount of any downward contract price adjustments to other affected contracts, i.e., no net upward contract price adjustments. The Government may also preclude increased costs by not paying the estimated amount of increased costs to be allocated to affected flexibly-priced contracts that exceeds the estimated reduction of costs to be allocated to affected firm-fixed-price contracts. The following illustrates the actions required so that increased costs are not paid by the Government.

BILLING CODE 3110–01–U

**Voluntary Change In Cost Accounting Practice**

| Cost Shift By Contract Type | | Actions To Be Taken To Preclude The Payment of Increased Costs |
|---|---|---|
| Flexibly-Priced | Firm-Fixed-Price | |
| Higher (1) | Higher (1) | No upward price adjustments. Preclude payment of the higher level of costs on flexibly-priced contracts. |
| Lower (2) | Higher (1) | Limit FFP upward price adjustments to amount of downward adjustments made to flexibly-priced contract cost ceilings and/or target costs. |
| Lower (2) | Lower (2) | Adjust FFP and flexibly-priced contract cost ceilings and/or target costs downward by the amount of the net downward price adjustment. |
| Higher (1) | Lower (2) | Limit upward adjustments on flexibly-priced contracts to amount of downward adjustments on FFP contracts. Preclude payment of any excess increased costs on flexibly-priced contracts. |

**Notes:**

**(1) "Higher" indicates that a greater amount of cost will be allocated to the contracts than would have been allocated to them had the contractor not changed its cost accounting practices. This represents increased costs to flexibly priced contracts.**

**(2) "Lower" indicates that the costs to be allocated to the contracts are less than the amount that would have been allocated had the contractor not changed its cost accounting practices. This represents increased costs to firm-fixed-price contracts.**

BILLING CODE 3110–01–C

(5) As stated in 9903.404, action to preclude or recover increased costs due to changes in cost accounting practices are required only if the amounts are material. If materiality dictates that action needs to be taken to preclude increased costs paid, in the aggregate, adjustments of contract prices or any other suitable technique which precludes payment of the increased costs may be used.

(6) For required or desirable changes, the sum of all adjustments to prices of affected contracts may result in an aggregate increase or decrease in CAS-covered contract prices because such changes are subject to equitable adjustments.

(e) *Use of another suitable technique.* The cognizant Federal agency official may otherwise resolve the cost impact of a change in cost accounting practice (e.g., by a monetary exchange between the contracting parties), when the cognizant Federal agency official determines, in writing, that contract price and/or cost adjustments or actions to preclude the payment of increased costs are not warranted because:

(1) Contract performance would not be jeopardized (the contractor agrees to absorb any resultant contract cost overrun conditions),

(2) Cost ceilings or target price reductions for flexibly priced contracts are not desired by the Government,

(3) The impact on incentive fee or profit that results from failure to adjust the target cost on incentive contracts is not material, or is otherwise considered in the cost impact settlement, and

(4) The increase or decrease in expected contract cost accumulations would not distort or adversely impair the usefulness of the contractor's reported contract cost information (actual costs and estimated costs to complete) that is included in contract status reports.

(f) *Failure to agree.* If the parties fail to agree on the price or cost adjustments, the cognizant Federal agency official may make unilateral adjustments, subject to appeal as provided in the Disputes provision of each affected contract's CAS contract clause.

**9903.406 Noncompliances.**

**9903.406–1 General types of noncompliances.**

(a) A contractor's cost accounting practices may be in noncompliance with applicable Cost Accounting Standards, modifications or interpretations thereto, as a result of using a noncompliant cost accounting practice to estimate

proposed costs on CAS-covered contracts and the noncompliant practice was used to determine the contract prices, i.e., a cost estimating noncompliance; or by using a noncompliant cost accounting practice to accumulate and report costs on CAS-covered contracts, i.e., a cost accumulation noncompliance.

(b) Noncompliant cost accounting practices that result in material increased costs to the Government require correction and may result in contract price and/or cost adjustments as specified in 9903.406–3 for a cost estimating noncompliance or 9903.406–4 for a cost accumulation noncompliance. If the noncompliance requires a change in a disclosed or established cost accounting practice that was used for estimating and cost accumulation, two distinct actions are required, one to resolve the cost estimating noncompliance in accordance with 9903.406–3 and one to resolve the cost accumulation noncompliance in accordance with 9903.406–4.

(c) Noncompliant cost accounting practices that do not result in material increased cost to the Government should be processed as an immaterial noncompliance in accordance with 9903.406–5.

**9903.406–2 Noncompliance determinations and initiating the cost impact process.**

(a) When a Government representative encounters a potential noncompliance, the representative should, after sufficient discussion with the contractor to ensure all relevant facts are known, immediately issue a report to the cognizant Federal agency official describing the cost accounting practice and the basis for the opinion of noncompliance. The representative's opinion on whether correction of the potential noncompliant practice would or would not have a material cost impact on existing or future CAS-covered contract costs, if known, should also be expressed in the report.

(b) The cognizant Federal agency official should make an initial finding of compliance or noncompliance and advise the cognizant auditor and contractor in a timely manner after the receipt of the audit report of potential noncompliance.

(c) If the cognizant Federal agency official makes a determination of compliance, no further action is necessary other than to notify the contractor and the cognizant auditor of the determination.

(d) If an initial finding of noncompliance is made, the cognizant Federal agency official should immediately notify the contractor in writing of the exact nature of the noncompliance. The contractor will either agree to the noncompliance determination, or disagree and submit reasons why the existing practices are considered to be compliant. The contractor shall respond by a date specified by the cognizant Federal agency official or other mutually agreeable date.

(e) If the contractor agrees with the initial finding of noncompliance, the contractor shall correct the noncompliance and submit a noncompliance cost impact submission as requested by the cognizant Federal agency official.

(f) If the contractor disagrees with the initial noncompliance finding, the contractor shall provide the cognizant Federal agency official with reasons why it disagrees with the initial finding. The cognizant Federal agency official shall evaluate the reasons why the contractor considers the existing practice to be compliant and again make a determination of compliance or noncompliance, and notify the contractor and auditor in writing. If the cognizant Federal agency official makes a determination of compliance, no further action is necessary other than to notify the contractor and auditor.

(g) Once the cognizant Federal agency official reaches a final position that a noncompliance exists, the official shall issue a final determination to inform the contractor of the Government's position and that failure to agree will constitute a dispute under the Disputes provision included in each affected contract's CAS contract clause. A final determination of noncompliance should also include a request for corrective action and a noncompliance cost impact submission showing the impact of the noncompliance on CAS-covered contracts and subcontracts. If the contractor agrees with the noncompliance determination, the procedures in paragraph (e) of this subsection shall be followed.

(h) If the cognizant Federal agency official issues an initial determination of noncompliance on a revised accounting practice, and ultimately determines that the practice is compliant, the revised cost accounting practice should be handled in accordance with the procedures established in 9903.405.

(i) *Contractor cost impact submissions.* The cognizant Federal agency official shall normally request a GDM Settlement Proposal and attempt to resolve the noncompliance without requiring a detailed cost impact proposal. If a GDM Settlement Proposal is not adequately supported, or cannot be adequately supported by the contractor, the cognizant Federal agency official shall request a detailed cost impact proposal for the CAS-covered contracts materially affected by the noncompliance. The contractor's cost impact submission shall show the impact of the noncompliance on the affected CAS-covered contracts. It may be in a format that is similar to the GDM Settlement Proposal shown at 9903.405–4(a)(4), the detailed cost impact proposal specified at 9903.405–4(b) or it may be in another mutually agreeable format. The chosen format must result in the submission of cost impact data that will enable the cognizant Federal agency official to accomplish the objectives of 9903.406–3(c) and (d) for a cost estimating noncompliance or of 9903.406–4(c) and (d) for a cost accumulation noncompliance. The following illustration is one acceptable GDM Settlement Proposal format that may be used for a noncompliant action. The illustrated format is only one example of a noncompliance cost impact submission and does not preclude the use of any other mutually agreeable cost impact submission format.

BILLING CODE 3110–01–U

**SUMMARY - GDM SETTLEMENT PROPOSAL**
**OF TOTAL COST IMPACT ON ALL COVERED CONTRACTS**
**AFFECTED BY A COST ESTIMATING NONCOMPLIANCE**

| | CONTRACT COST AMOUNT | | DIFFERENCE | PROPOSED |
|---|---|---|---|---|
| | NONCOMPLIANT PRACTICE | COMPLIANT PRACTICE | COST IMPACT | ADJUSTMENT AMOUNTS |
| | (1) | (2) | | (3) |
| | (A) | (B) | (A-B) | |
| **AGGREGATE** | | | | |
| FFP | | | | |
| T&M | | | | |
| FPI/CPIF | | | | |
| OTHER | | | | |
| COST TYPE | | | | |
| **CONTRACT** | | | | |
| (4) | | | | |
| FFP | | | | |
| 1. | | | | |
| 2. | | | | |
| "ALL OTHER" | | | | |
| TOTAL | | | | |
| T&M | | | | |
| 1. | | | | |
| 2. | | | | |
| "ALL OTHER" | | | | |
| TOTAL | | | | |
| FPI/CPIF | | | | |
| 1. | | | | |
| 2. | | | | |
| "ALL OTHER" | | | | |
| TOTAL | | | | |
| ALL OTHER COST | | | | |
| 1. | | | | |
| 2. | | | | |
| "ALL OTHER" | | | | |
| TOTAL | | | | |

**Instructions for an estimating noncompliance:**

1. **Insert the estimated cost amounts that resulted from the application of the noncompliant cost accounting practice and were included in the cost proposal(s) used to negotiate the contract price of affected contracts. If the proposed cost and negotiated contract cost were materially different, insert the negotiated contract cost amount that resulted from the application of the noncompliant cost accounting practice(s). Include the estimated cost amounts both in the aggregate and for individual contracts listed.**

2. **Insert the estimated cost amounts (reconstructed based on the same estimated cost levels to which the noncompliant practice was applied) to reflect the estimated costs that would have been proposed (or negotiated, if the estimated costs based on the noncompliant practice in 1 above are based on negotiated costs) if a compliant practice had been used.**

3. **Show amounts proposed for adjustment in order to settle the cost estimating noncompliance. The proposed adjustment amounts should include both adjusted costs and appropriate adjustments for profit, fee, or the contracts' incentive provisions.**

4. **List all contracts that were materially overstated or understated as a result of using the cost estimating noncompliant practice based on the use of a materiality threshold, i.e. all contracts that have contract prices overstated or understated by an amount in excess of a specified threshold.**

5. **Submit a separate schedule that shows the amount of aggregate increased cost actually paid by the United States due to the contract prices that were established based on the noncompliant practice; and, the contractor's proposed amounts, including applicable interest, to be paid or otherwise credited to the United States in settlement of the increased cost payments received by the contractor.**

BILLING CODE 3110–01–C

**9903.406–3 Cost estimating noncompliance.**

(a) After a final determination of a cost estimating noncompliance is issued by the cognizant Federal agency official, the contractor shall correct the practice by changing to a compliant cost accounting practice. If the contractor believes the cost impact of the noncompliance is obviously immaterial, the contractor shall submit data demonstrating the immateriality. If the cognizant Federal agency official agrees that the noncompliance does not result in a material impact on CAS-covered contracts, the procedures in 9903.406–5 shall be followed. Otherwise, paragraphs (b) through (f) of this subsection shall be followed.

(b) If the noncompliance occurs because the cost accounting practice used for estimating purposes is different than the disclosed and established cost accounting practice used for cost accumulation purposes, and the cognizant Federal agency official has found the cost accumulation practice to be compliant, the contractor shall first correct the noncompliance by replacing the noncompliant practice used to estimate costs with the compliant cost accounting practice used to accumulate and report actual contract costs. Where a previously submitted contract cost proposal based on the noncompliant cost estimating practice has not yet been negotiated, the contractor shall also take action to ensure that any subsequent contract cost negotiations of such proposals will be based on cost estimates that reflect the corrected and compliant cost accounting practice.

(c) Once the cognizant Federal agency official determines that the contractor's cost accounting practices used to estimate and accumulate costs will henceforth be consistent and compliant, the cognizant Federal agency official shall request the contractor to submit a noncompliance cost impact submission (9903.406–2(i)), for CAS-covered contracts that were negotiated based on the noncompliant practice. The cost impact submission will show the estimated contract cost amounts that were predicated upon the application of the noncompliant cost accounting practice, by contract type, and the estimated contract cost amounts that would have resulted had the compliant practice been used. The cognizant Federal agency official may establish contract thresholds so that any contracts with an immaterial cost impact may be omitted from the cost impact submission. The cost impact submission shall be in sufficient detail for the cognizant Federal agency official to determine whether:

(1) Any individual contracts are significantly overstated or understated as a result of the estimating noncompliance;

(2) The affected CAS-covered contract prices, by contract type, are, in the aggregate materially overstated; and

(3) Any net increased costs were paid under CAS-covered contracts as a result of the noncompliant practice, and if so, the period of overpayment.

(d) The cognizant Federal agency official should use the materiality guidelines established in 9903.305 and

9903.404 to determine whether any individual contract price adjustments, or adjustments for the net overstatement or understatement of contract amounts by contract type, due to use of the noncompliant practice are warranted. Adjustments should be limited to amounts that are material. In no case shall the Government recover costs greater than the increased costs, in the aggregate, on the relevant contracts. While individual contract prices, including cost ceilings or target costs, as applicable, may be increased as well as decreased to resolve an estimating noncompliance, the aggregate value of all contracts affected by the estimating noncompliance shall not be increased. The following schedule illustrates how to determine the contract price adjustments to be required.

BILLING CODE 3110–01–U

**Requiring Contract Price Adjustments For An Estimating Noncompliance**

| Change In Contract Cost Estimate By Contract Type Due To The Noncompliance | | Actions To Be Taken |
|---|---|---|
| **Flexibly-Priced** | **Firm-Fixed-Price** | |
| Lower (2) | Lower (2) | No contract price adjustments are required since there are no increased costs to the Government and upward price adjustments, in the aggregate, are not permitted. |
| Higher (1) | Lower (2) | Adjust flexibly priced contract cost ceilings or target costs down to recover increased cost to Government. Limit FFP upward price adjustments to amount of flexibly-priced downward price adjustments. |
| Higher (1) | Higher (1) | Adjust FFP and flexibly-priced contract ceiling or target prices downward by the amount of the increased cost to the Government. |
| Lower (2) | Higher (1) | Adjust FFP prices downward to recover the increased cost to the Government. Limit upward adjustments on flexibly-priced contracts to amount of downward adjustments on FFP contracts. |

**Notes:**

**(1) "Higher" indicates the estimated costs submitted in the contract cost proposal were higher, due to the contractor's use of a noncompliant cost accounting practice to estimate the proposed contract costs. This represents increased cost to the Government.**

**(2) "Lower" indicates that the estimated costs submitted in the contract cost proposal were lower, due to the contractor's use of a noncompliant practice to estimate the proposed contract costs.**

BILLING CODE 3110–01–C

**9903.406–4 Cost accumulation noncompliance.**

(a) After a final determination of a cost accumulation noncompliance is issued by the cognizant Federal agency official, the contractor shall correct the practice by changing to a compliant cost accounting practice. If the contractor believes the cost impact of the noncompliance is obviously immaterial, the contractor shall submit data demonstrating the immateriality. If the cognizant Federal agency official agrees the noncompliance does not result in a material impact on Government contracts, the procedures in 9903.406–5 shall be followed. Otherwise, paragraphs (b) through (e) of this subsection shall be followed.

(b) Once the corrective action has been implemented, and the cognizant Federal agency official has determined that the accounting change, if any, meets the test of adequacy and compliance, the cognizant Federal agency official will request the contractor to submit a noncompliance cost impact submission (9903.406–2(i)). The submission shall identify the cost

impact on CAS-covered contracts and any increased costs paid as a result of the cost accumulation noncompliance. Although overpayments due to cost accumulation noncompliances are generally recovered when the actual costs are adjusted to reflect a compliant practice (except for closed contracts), the cost impact submission must show the total overpayments made by the United States during the period of noncompliance, so that the proper interest amount can be calculated and recovered as required by paragraph (d) of this subsection.

(c) The level of detail to be submitted with a cost impact submission for a cost accumulation noncompliance will vary with the circumstances. Normally, the cost impact submission will identify the aggregate costs by contract type that were accumulated under the noncompliant cost accounting practice and the costs that would have been accumulated if the compliant cost accounting practice had been applied from the time the noncompliant practice was first applied until the date the noncompliant practice was replaced with a compliant practice. The cost impact submission for a cost accumulation noncompliance is primarily used by the cognizant Federal agency official to determine if, and to what extent, increased costs were paid in the aggregate on covered contracts during the period of noncompliance. The level of detail required to adequately support this determination should be based on discussions between the contractor and the cognizant Federal agency official, with assistance from the auditor, and included in the cognizant Federal agency's official request for the cost impact submission.

(d) Interest applicable to the increased costs paid to the contractor as a result of the noncompliance shall be computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) for such period, from the time the payments by the United States were made to the time the increased cost payments are recovered.

(e) Negotiation and resolution of the cost impact should be accomplished in accordance with 9903.405–5(a).

**9903.406–5 Immaterial noncompliances.**

If a noncompliance cost impact is not material in the aggregate, the cognizant Federal agency official shall notify the contractor in writing that:

(a) The practice is noncompliant via a final determination of noncompliance;

(b) Corrective action should be taken; and

(c) If the noncompliant practice subsequently results in materially increased costs to the Government, action will be taken to recover the increased costs plus applicable interest.

**9903.407 Illustrations.**

The following illustrations are not intended to cover all possible situations, but rather to provide some guidelines in applying the procedures specified in 9903.405 and 9903.406. The illustrations are intended to be considered only as examples. In actual cases, the individual circumstances need to be reviewed and considered to ensure equity for both parties.

**9903.407–1 Change in cost accounting practice—Illustrations.**

(a) *Notification.* (1) The contractor provides notification of a change in cost accounting practice in April with a proposed retroactive applicability date of the beginning of the current year. In accordance with 9903.405–2(c), the contractor provides rationale for the beginning of the current year applicability date. The cognizant Federal agency official approves of the proposed applicability date (9903.405–3(d)). After determination of adequacy and compliance, the cognizant Federal agency official requests a GDM Settlement Proposal for contracts negotiated based on the previous accounting practice, including those negotiated after the applicability date of the change.

(2) The contractor provides notification of a voluntary change in cost accounting practice in June with a planned retroactive applicability date of the beginning of the current year. The cognizant Federal agency official finds that the rationale for the retroactive applicability date does not justify retroactive implementation (9903.405–3(d)). The contractor is informed that for cost accumulation purposes the new practice can be applied no earlier than 60 days after the contractor's notification of the accounting change, and that a retroactive applicability date will result in a noncompliance with disclosed practices and disallowance of any resulting increased costs. The contractor notifies the cognizant Federal agency official that, to avoid a noncompliance condition, it will change the applicability date to the beginning of its next cost accounting period.

(b) *GDM Settlement Proposal.* (1) In accordance with 9903.405–3(f), the cognizant Federal agency official requests a GDM Settlement Proposal by contract type, which would include the impact on a sufficient number of contracts of each contract type to negotiate the impact of a change in cost accounting practice. The contractor supports the GDM Settlement Proposal by using a contract cost profile which shows the percentage of the three year forward pricing rate base data which consists of existing CAS-covered contracts subject to adjustment, and the percentage of the CAS-covered contracts subject to adjustment for each contract type. No contracts other than some of the individual contracts submitted with the GDM Settlement Proposal extend out beyond the three year period. The cognizant Federal agency official, with the assistance of the auditor and using the GDM Settlement Proposal individual contract data, determines that the general dollar magnitude estimate developed by the contractor reasonably approximates the aggregate impact, by contract type, of the accounting change on contracts subject to adjustment, i.e., contracts negotiated based on the previous practice. Pursuant to 9903.405–4(a)(6), the Government and contractor resolve the impact without a detailed cost impact proposal.

(2) The contractor reports a change in accounting practice which changes a direct cost element to an indirect expense. The cognizant Federal agency official, with the assistance of the auditor, determines that the GDM Settlement Proposal data submitted by the contractor does not adequately support the aggregate cost impact, by contract type, of the change in accounting practice. Therefore, in accordance with 9903.405–4(b)(1) and (2), the cognizant Federal agency official requests a detailed cost impact proposal to include a sufficient number of contracts, by contract type, to resolve the cost impact.

(3) The contractor submits a GDM Settlement Proposal which includes several contracts of each contract type showing the cost impact of the change in accounting practice. The impact is developed by computing the difference in the estimate-to-complete on these contracts using the old and new accounting practices. The cost impact settlement proposal includes all contracts that have a cost impact in excess of $1,000,000. The cognizant Federal agency official determines that the cost impact on each submitted contract was accurately computed. In accordance with 9903.405–4(a)(6), the cognizant Federal agency official decides that, based on the circumstances, contracts having an impact in excess of $500,000 are significant enough to require adjustment. The cognizant Federal agency official requests the contractor to submit a revised GDM Settlement

Proposal that includes contracts having an impact in excess of $500,000 so that the cost impact can be resolved without a detailed cost impact proposal. The cost impact is ultimately negotiated based on the contractor's revised GDM Settlement Proposal.

(4) The same situation described in paragraph (b)(3) of this subsection occurs except that the aggregate impact by contract type in the GDM Settlement Proposal can not be reconciled with the aggregate net impact of the individual contracts by contract type submitted with the proposal. In accordance with 9903.405–4(a)(5), the cognizant Federal agency official requests a detailed cost impact proposal to include a sufficient number of contracts by contract type to resolve the cost impact.

(5) After reviewing the GDM Settlement Proposal for a change in a cost allocation practice, the cognizant Federal agency official decides in accordance with 9903.405–4(a)(7) that, due to materiality, no additional data is needed and no contract price or cost adjustments are warranted.

(c) Detailed cost impact proposal. (1) In accordance with 9903.405–4(b)(2), the cognizant Federal agency official submits a written request for a detailed cost impact proposal to include all contracts with an estimate-to-complete based on the old practice in excess of $5,000,000 summarized by contract type. After evaluation of the detailed cost impact proposal, the cognizant Federal agency official determines whether contract price and/or cost adjustments are required in accordance with 9903.405–5(c).

(2) [Reserved]

(d) *Offset Process.* (1) In analyzing the contractor's cost impact proposal, the cognizant Federal agency official determines that one firm-fixed-price contract is the only contract that exceeds the threshold established for contract price adjustment purposes. The impact on that contract is a reduced allocation of $1,000,000, requiring a downward adjustment to the contract price. When the cognizant Federal agency official applies the offset process to all other firm-fixed-price contracts subject to adjustment by combining the increases and decreases, the result is a higher allocation in the aggregate amount of $400,000 on all other firm-fixed-price contracts. Although no individual contracts making up this aggregate amount exceed the established threshold, the cognizant Federal agency official decides, in accordance with 9903.405–5(c)(5), that to achieve equity, an upward adjustment in the amount of $400,000 is warranted. Rather than offset this amount against the one contract exceeding the individual contract cost impact threshold, the cognizant Federal agency official, in accordance with 9903.405–5(b)(3), selects two firm-fixed-price contracts for upward adjustment, in addition to the $1,000,000 downward adjustment to the contract exceeding the threshold.

(2) The same situation exists as described in paragraph (d)(1) of this subsection except that the cost impact on the one individual firm-fixed-price contract has a cost impact showing a reduced allocation of $10,000,000 which significantly exceeds the individual contract threshold established. The cognizant Federal agency official decides to offset the $400,000 impact on the ''all other'' contracts against the impact on the contract exceeding the threshold and makes a downward adjustment of $9,600,000 thereby reducing the number of contracts requiring adjustment, while still following the provisions of 9903.405–5(b)(3).

(3) The contractor makes simultaneous accounting practice changes at three of its business units at the direction of the next higher tier home office. The cognizant Federal agency official at the home office segment decides to handle this change as a voluntary change which cannot result in increased costs paid by the United States. Business Unit A has a cost impact on contracts subject to adjustment which results in a higher level of costs on flexibly-priced contracts of $1,000,000 in excess of the lower level of costs on firm-fixed-price contracts. The impact on flexibly-priced contracts at Business Unit B and Business Unit C is a combined lesser allocation of costs of $1,200,000 in excess of the higher level of costs on firm-fixed-price contracts, resulting in net decreased costs on Government flexibly-priced contracts at the three business units. To demonstrate that the accounting change did not result in aggregate increased costs to the Government, the contractor submits a consolidated GDM Settlement Proposal for the three business units at the home office level. As a result of considering the aggregate impact at the three business units at the home office level, the cognizant Federal agency official, in accordance with 9903.405–5(b)(6), takes no action to preclude the increased costs on flexibly-priced contracts at Business Unit A. Individual contracts at each business unit that had cost impacts exceeding established thresholds were adjusted upward or downward, as appropriate, for the amount of the cost impact in accordance with 9903.405–5(c)(2)(i).

(4) After determining the individual contracts subject to adjustment where the cost impact exceeded the established threshold for a change in an actuarial cost method for computing pension costs, the contractor computes an aggregate impact for ''all other contracts'' amounting to $1,000,000 of lesser allocation of costs for flexibly-priced contracts and $1,200,000 of lesser allocation of costs on firm-fixed-price contracts. The cognizant Federal agency official considers these amounts significant enough to warrant an adjustment. Since the impact on the flexibly-priced contracts represents decreased costs to the Government and the impact on the firm-fixed-price contract represents increased costs to the Government, the contractor asks the cognizant Federal agency official to offset the increases and decreases and make a downward adjustment on the fixed-price contracts for only $200,000. The cognizant Federal agency official determines that by doing this, the cost to the Government of a lesser pension cost paid of $1,200,000 would be materially different than if the individual contracts making up these aggregate amounts had been individually adjusted downward resulting in a lesser cost paid of $2,200,000 (the sum of the $1,000,000 cost impact on the flexibly-priced contract and the $1,200,000 cost impact on the fixed-priced contract). Therefore the contractor's proposed resolution would not result in the same aggregate cost impact as the amount that would result from adjustment of individual contracts. To achieve the desired result, the cognizant Federal agency official, in accordance with 9903.405–5(b) (1) and (2), selects a number of high dollar contracts and adjusts flexibly-priced contracts downward by $1,000,000 and firm-fixed-price contracts downward by $1,200,000. In accordance with 9903.405–5(a)(2), an alternative technique, in lieu of adjusting contract prices, which achieves the same result of lesser cost paid of $2,200,000 could also have been used for the aggregate ''all other contract'' cost impact adjustment.

(e) *Contract price and cost adjustments.* (1) After considering the materiality criteria in 9903.305, the cognizant Federal agency official decides that only contracts that have an impact that exceeds both $500,000 and .5% of the contract value will be subject to adjustment based on the impact of the accounting change. Of the individual contracts submitted with the GDM Settlement Proposal, only nine contracts exceed this threshold. The aggregate

impact of all other contracts by contract type is considered insignificant. In accordance with 9903.405–5(c)(4), the cognizant Federal agency official resolves the cost impact by adjusting only those contracts that exceed the individual contract cost impact threshold, and making no other adjustments, without the need for a detailed cost impact proposal.

(2) The same situation described in paragraph (e)(1) of this subsection occurs except that the aggregate amount for all other contracts not exceeding the established individual contract cost impact threshold is considered significant enough by the Government to warrant adjustment. The Government had established $500,000 as the ''all other contract'' threshold. The cognizant Federal agency official selects two of the largest contracts that do not exceed the threshold, for each contract type, for adjustment in the amount of the aggregate ''all other contract'' impact. In order to avoid additional contract price adjustment action, the contractor, in accordance with 9903.405–5(a)(2), proposes an alternative adjustment technique to resolve the aggregate ''all other contract'' impact amount. The cognizant Federal agency official determines that the proposed alternative adjustment technique accomplishes the same approximate result as adjusting the two selected contracts. The cognizant Federal agency official, in accordance with 9903.405–5(c)(3), agrees to use the alternative technique, in addition to adjusting the individual contracts that exceed the threshold, to resolve the impact of the change in cost accounting practice.

(f) *Increased cost.* (1) In analyzing the contractor's cost impact proposal, the cognizant Federal agency official determines that only two firm-fixed-price contracts exceed the threshold for contract price adjustment purposes. All other amounts related to the cost impact are considered immaterial. The change is a voluntary change, i.e., the no increased cost limitation applies. The impact on the two contracts are a lower allocation of costs in the amount of $1,000,000 for contract A and a higher allocation of costs of $2,000,000 for contract B. In order to preclude increased costs paid by the United States as a result of the change, the cognizant Federal agency official, in accordance with 9903.405–5(d)(4), adjusts Contract A downward by $1,000,000, and limits the upward adjustment on Contract B to $1,000,000. This action adjusts the contracts to reflect the impact of the change to the maximum extent possible, while precluding a higher level of costs being paid by the United States.

(2) The same situation described in paragraph (f)(1) of this subsection occurs except that contract B is a CPFF contract. In accordance with 9903.405–5(d)(4), the cognizant Federal agency official adjusts the firm-fixed-price contract downward by $1,000,000, and the estimated contract cost ceiling on the CPFF contract upward by $1,000,000. In accordance with 9903.405–5(d)(1), action must be taken to preclude the additional $1,000,000 of increased cost on the CPFF contract. An appropriate adjustment technique is used to preclude the payment of the additional $1,000,000 of increased costs in accordance with 9903.405–5(d)(4).

(3) After analyzing the contractor's GDM Settlement Proposal for a voluntary change, the cognizant Federal agency official determines that five contracts exceed the threshold established for contract price adjustment purposes. The cost impact on all other contracts, both individually and in the aggregate, is considered insignificant. The five contracts requiring adjustment are 3 firm-fixed-price contracts and 2 CPFF contracts. The total impact on the 3 firm-fixed-price contracts is a lower allocation of costs amounting to $3,000,000. The total impact on the 2 CPFF contracts is a higher allocation of costs of $2,000,000. The cognizant Federal agency official adjusts the contracts upward and downward for the amount of the impact. In accordance with 9903.405–5(d)(1) and (3), no further action is needed to preclude increased costs paid, since the impact to the Government after contract price adjustments are made is a lesser cost paid in the amount of $1,000,000.

(g) *GDM Settlement Proposal based on contractor cost model and profile.* (1) The contractor has developed a cost model and profile which is used for the GDM Settlement Proposal. The cost model and profile data are updated whenever circumstances change and dictate revision to the data.

(2) For a voluntary accounting change, the contractor's cost model and profile is based on same three year forecast of direct and indirect cost data that supports the contractor's forward pricing rates used to estimate indirect costs in price proposals. The profile shows that 80% of the forecasted allocation base amounts in year 1 are comprised of existing covered contracts subject to adjustment, 50% of the amounts in year 2 are comprised of existing covered contracts subject to adjustment, and 20% of the amounts in year 3 are comprised of existing covered contracts subject to adjustment. Of the amounts applicable to CAS-covered contracts subject to adjustment, the contractor's cost model and profile shows the following breakdown by contract type:

| | In percent | | |
|---|---|---|---|
| | Year 1 | Year 2 | Year 3 |
| **Direct Labor Base:** | | | |
| CPFF | 30 | 25 | 20 |
| CPIF/FPI | 20 | 21 | 22 |
| FFP | 50 | 54 | 58 |
| **Total Cost Input Base:** | | | |
| CPFF | 25 | 22 | 21 |
| CPIF/FPI | 15 | 16 | 17 |
| FFP | 60 | 62 | 62 |

(3) The voluntary accounting change, which the cognizant Federal agency official has determined to be adequate and compliant, results in a transfer of a $5 million activity from the G&A pool to the overhead pool. The cognizant Federal agency official has determined that only individual contracts that have a cost impact in excess of $100,000 will be considered for adjustment, provided that the impact exceeds .5% of the contract value. The cognizant Federal agency official has also determined that $500,000 will be the adjustment threshold for the ''all other contracts'' amounts by contract type. To support the GDM Settlement Proposal, the contractor includes three (3) contracts having the largest estimate-to-complete, by contract type. Based on the cost model and profile the contractor computes the following general dollar magnitude impact by contract type:

| | Year 1 | Year 2 | Year 3 | Aggregate Impact * |
|---|---|---|---|---|
| CPFF | $ 242 | $ 77 | $ (4) | $ 315 |
| CPIF/FPI | 225 | 110 | 43 | 378 |
| FFP | (310) | (189) | (18) | (517) |

* Dollars in thousands.
( ) Denotes lesser allocation of costs.

(4) The aggregate impact amounts show a higher allocation of $693,000 on flexibly-priced contracts and a lesser allocation of $517,000 on firm-fixed-price contracts. Only one contract of each contract type submitted with the GDM Settlement Proposal exceeds the threshold established. K1 is a CPFF contract with an impact of a higher allocation of $200,000. K2 is a CPIF contract having an impact of a higher allocation of $300,000. And, K3 is an FFP contract having an impact of a lesser allocation of $400,000. After deducting the impact of the three contracts exceeding the threshold, the ''all other contracts'' amounts are a higher allocation of $115,000 for CPFF contracts, a higher allocation of $78,000 for incentive type contracts, and a lesser allocation of $117,000 for FFP contracts.

(5) Since the ''all other contracts'' amounts are less than the threshold for each contract type, the cognizant Federal agency official requires no adjustments for these amounts. The cognizant Federal agency official adjusts the FFP contract downward by $400,000 to preclude the increased costs on this contract. Because this is a voluntary change with no increased costs to be paid by the Government, the upward adjustments to the flexibly-priced contracts must be limited to $400,000. The cognizant Federal official decides to adjust the target cost on the CPIF contract upward by $300,000, with an appropriate upward adjustment of the target fee, in order to avoid distortions of contract incentive provisions based on the estimated higher allocation of costs (9903.405–5(b)(5)). The cognizant Federal agency official then limits the upward adjustment to the CPFF contract to $100,000. Action must also be taken to preclude payment of the additional $100,000 of costs on the CPFF contract in accordance with 9903.405–5(d)(4).

(h) *Desirable change determination.* A contractor provides notification of a proposed voluntary change in cost accounting practice and requests a cognizant Federal agency official determination that the change is desirable and not detrimental to the Government. The request is supported with data that demonstrates that aggregate cost accumulations for existing flexibly priced CAS-covered contracts and reasonably predictable future CAS-covered contracts will decrease after the planned management changes are implemented. The cost impact of the practice change on all existing individual CAS-covered contracts (i.e., shifts in accumulated contract costs attributable to the practice change) results in $500,000 of increased cost to the Government. There are expected cost reductions of $200,000 on future CAS-covered contracts. The cognizant Federal agency official determines that there is a continuing long-term relationship with the contractor and that, after the change is made, there is a reasonably predictable expectation that the estimated costs of anticipated future CAS-covered contracts, as reflected in the contractor's forecasted business base used to develop the projected indirect cost rates applied in contract cost proposals, will be lower than the estimated future contract costs that would result if the voluntary change were not made. In accordance with 9903.201–7(d), the cognizant Federal agency official determines the voluntary change is desirable and not detrimental to the Government and provides equitable adjustments in the aggregate amount of $200,000 to resolve the increased costs on existing CAS-covered contracts caused by the voluntary change.

**9903.407–2 Noncompliance illustrations.**

(a) *Estimating noncompliance.* (1) The cognizant Federal agency official determines that a cost accounting practice that the contractor has used for estimating and negotiating costs on CAS-covered contracts is noncompliant with an applicable Cost Accounting Standard. The practice is also different than the compliant, disclosed and established practice used for cost accumulation purposes. Therefore, the impact of the noncompliance only affects negotiated contract amounts under which the contractor used the noncompliant practice to estimate contract costs and any outstanding cost proposals not yet negotiated. The cognizant Federal agency official directs the contractor to change its estimating practices so that costs will be estimated, accumulated and reported consistently based on the contractor's established cost accounting practices, and not use as a basis for the negotiation of contract prices any previously submitted contract cost estimates which were predicated on the noncompliant cost accounting practice. The cognizant Federal agency official then proceeds to request a cost impact submission for the impact of the noncompliant practice on covered contracts, as well as the amount of the increased costs paid as a result of the noncompliance. In accordance with 9903.406–3(d), the cognizant Federal agency official determines that the impact on contracts valued at less than $10,000,000 would be immaterial, and limits the cost impact submission to contracts of $10,000,000 or more in amount. The contractor's cost impact submission shows that the contract amounts are overstated (in the

aggregate) by a significant amount due to use of the noncompliant practice. The contracts are adjusted downward in the aggregate to reflect use of the compliant practice. Of the total amount of the overstatement in contract prices, the cognizant Federal agency official determines that 50 percent had been paid as of the date of the adjustment of the contract values. The cognizant Federal agency official, with the assistance of the auditor, computes and recovers interest applicable to the increased costs paid, for the period from date of payment to date of recovery of the increased costs paid.

(2) The cognizant Federal agency official determines that the cost accounting practice used by the contractor to estimate costs is noncompliant and different than the contractor's compliant, disclosed and established cost accounting practice. An analysis of the noncompliance cost impact submission developed by the contractor shows that, except for two large fixed-price contracts, the effect on negotiated contract values is immaterial. The cognizant Federal agency official determines that the impact on the two large fixed-price contracts is material enough to warrant an adjustment to reflect the application of the compliant disclosed practice. Since the amount of the understatement of the one contract exceeds the amount of the overstatement of the other contract, the cognizant Federal agency official, in accordance with 9903.406–3(d), limits the upward adjustment of the understated contract to the amount of the downward adjustment of the overstated contract. The cognizant Federal agency official further determines that the noncompliant practice did not result in increased cost paid by the United States. Therefore, no action was required to recover increased cost paid and applicable interest.

(b) *Cost accumulation noncompliance.* (1) The cognizant Federal agency official makes a final determination that the contractor is using an accounting practice for cost accumulation purposes that is noncompliant with an applicable Cost Accounting Standard. The cognizant Federal agency official further determines that the cost accounting practices used for cost estimating purposes are compliant. The noncompliant practice relates to the accumulation of actual indirect expenses. The contractor implements the same compliant practice used to estimate costs for cost accumulation and reporting purposes. The change to the compliant method for cost accumulation and reporting purposes results in automatic adjustment of actual costs and recovery of all increased cost paid due to the noncompliance. The contractor submits a noncompliance cost impact submission showing the amount of the increased cost paid during the period of noncompliance by using a method that does not require submission of individual contract data. The cognizant Federal agency official, with the assistance of the auditor, determines that the cost impact submission reasonably reflects the extent of the increased costs paid. It is also determined that the increased costs were paid evenly over the period of the noncompliance and the interest on the increased costs paid is computed using the midpoint of the noncompliance as a baseline. Since the increased costs have already been recovered through the adjustment of actual costs, the Government takes action only to recover the applicable interest by requesting a payment for the amount of the interest from the contractor.

(2) The cognizant Federal agency official determines that the contractor has accumulated costs based on a cost accounting practice that is not compliant with CAS 9904.402 and is not consistent with its disclosed and established practice for its CAS-covered contracts. Since the noncompliance involves accounting for direct costs as indirect costs on some but not all of its CAS-covered contracts, the cognizant Federal agency official determines that individual contract data is required in order to compute the extent of increased costs paid, if any, as a result of the noncompliance. In accordance with 9903.406–4(c), the cognizant Federal agency official, with the assistance of the auditor, determines and discusses with the contractor the level of detail needed to compute the impact on costs paid as a result of the noncompliance. The cognizant Federal agency official submits a written request to the contractor for a noncompliance cost impact submission that specifies the level of detail required. After analyzing the cost impact submission, the cognizant Federal agency official determines that the amount of the increased costs paid is immaterial and does not warrant action to recover the increased costs, plus applicable interest. The cognizant Federal agency official takes action in accordance with 9903.406–5, Immaterial noncompliances.

(3) The cognizant Federal agency official determines that the contractor is using a practice for cost accumulation purposes that is noncompliant with an applicable Cost Accounting Standard. The cognizant Federal agency official further determines that the noncompliant practice was also used for estimating purposes. In order to determine the extent of increased costs, if any, due to both overstated contract prices and billings of costs accumulated on CAS-covered contracts, the official, in accordance with 9903.406–1(b), requests two separate contractor cost impact submissions (9903.406–2(i)). The cost impact submission for the overstated contract prices will be as described in 9903.406–3(c), and the cost impact proposal for the overbilled accumulated costs will be as described in 9903.406–4(c).

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# Part V

# Department of Education

## National Institute on Disability and Rehabilitation Research; Notices of Final Long-Range Plan for Fiscal Years 1999–2004

## DEPARTMENT OF EDUCATION

### National Institute on Disability and Rehabilitation Research; Notice of Final Long-Range Plan for Fiscal Years 1999–2004

**SUMMARY:** The Secretary presents a Final Long-Range Plan (the Plan) for the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years (FY) 1999–2004. As required by the Rehabilitation Act of 1973, as amended, the Secretary takes this action to outline priorities for rehabilitation research, demonstration projects, training, and related activities, and to explain the basis for these priorities.

**DATES:** This Long-Range Plan is effective September 20, 1999.

**FOR FURTHER INFORMATION CONTACT:** Donna Nangle, U.S. Department of Education, 400 Maryland Avenue SW, Room 3423 Switzer Building, Washington, DC 20202. Telephone: (202) 205–4880. If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475. Internet: Donna__Nangle@ed.gov

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

**SUPPLEMENTARY INFORMATION:** The final Pland presents a five-year agenda anchored in consumer goals and scientific initiatives. The Plan has several distinct purposes:

(1) To set broad general directions that will guide NIDRR's policies and use of resources as the field of disability enters the 21st century;

(2) To establish objectives for research and dissemination that will improve the lives of individuals with disabilities and from which annual research priorities can be formulated;

(3) To describe a system for operationalizing the Plan in terms of annual priorities, evaluation of the implementation of the Plan, and updates of the Plan as necessary; and

(4) To direct new emphasis to the management and administration of the research endeavor.

The Plan was developed with the guidance of a distinguished group of NIDRR constituents—individuals with disabilities and their family members and advocates, service providers, researchers, educators, administrators, and policymakers.

The authority for the Secretary to establish a 5-year Plan is contained in sections 202(h) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 762(h).

On October 26, 1998 we published a notice of proposed Long-Range Plan for fiscal years 1999–2004 (63 FR 57190).

**Summary of Comments and Responses**

In response to our invitation in the notice of proposed Long-Range Plan, we received 78 letters commenting on the Plan. Most of these comments stated support for the Plan, particularly in its conceptual approach to disablement and enablement. Some comments requested the addition of specific research topics or strategies, while others urged NIDRR to elaborate on or further emphasize some research areas. In responding to these suggestions, NIDRR has attempted to incorporate many of the compelling ideas, while at the same time not adding significantly to the length of the Plan or diverting from the concept of a 5-year research agenda. NIDRR appreciates the thoughtful nature of many of the comments and believes that will be useful in future planning efforts.

An analysis of the comments and of the changes in the Plan since publication of the proposed Plan follows.

*General Comments*

*Comment:* Several commenters requested that NIDRR either repeat certain concepts, such as self-direction, in all segments of the Plan or add detailed elaboration to some concepts.

*Discussion:* The Secretary believes that such an approach would unduly lengthen the Plan. Since it is clear that the commenters identified and understood that those concepts are included in the Plan, these additions were not made.

*Changes:* None.

*Comment:* One commenter emphasized the need for controlled experimental studies to evaluate rehabilitation interventions at both the individual and environmental levels. This commenter noted that the proposed plan appears to reject those studies in favor of descriptive and qualitative studies that would not suffice to determine causality or efficacy.

*Discussion:* NIDRR agrees that the rehabilitation field would benefit from increased use of controlled experiments. At the same time, NIDRR acknowledges the concerns of the Long-Range Plan Steering Committee about the increasing difficulty of conducting those studies in the disability field. These concerns include ethical considerations in withholding or delaying promising interventions; difficulties in obtaining samples of sufficient size; abbreviated access to sample populations; and the cost of this type of research. NIDRR also recognizes the important role of other Federal agencies in supporting controlled studies, particularly in medical rehabilitation research. NIDRR is committed to improving the value of disability research by strengthening the methodological tools in use. This includes controlled experiments, if appropriate and possible, and also more rigorous descriptive and qualitative research, appropriately used to suggest hypotheses, build theory, and reflect consumer concerns.

It should also be noted that the Secretary generally does not prescribe methodologies, but rather presents rehabilitation issues and leaves decisions about methods to the applicants for research support and to the peer reviewers. NIDRR also supports the development of improved methodological tools for the disability research field and training new researchers in the use of those tools.

*Changes:* The Plan has been modified to indicate the importance of controlled experiments, particularly to evaluate efficacy and outcomes of rehabilitative interventions.

*Comment:* Two commenters noted that the aging of the population has significant implications for disability and that the issues of aging should be emphasized more in the Plan, perhaps through a separate chapter.

*Discussion:* The importance of an aging population is noted throughout the Plan. For example, aging of the population contributes to the emerging universe of disability and will affect not only the prevalence of disability but also the frequency of certain conditions and the consequences of those conditions for independence and participation. The aging of the population, in conjunction with changes in certain social policies, is resulting in greater demand for continued employment among older age groups. The focus on a continuum of care and long-term care acknowledges the aging population, as does specific reference to the technology needs and preferences of older persons and their ability to benefit from universal design.

There is also clear reference to the study of aging in special populations, such as individuals with mental retardation. Participants in the development of this Plan elected to focus on outcomes desired by all population groups of disabled persons, rather than the population groups themselves. NIDRR will consider more intensive and extensive focus on aging and disability for a future Plan.

*Changes:* None.

*Comment:* On commenter noted that some parts of the NIDRR plan are

disability-specific, while other sections or topics are cross-disability or address multiple disabilities. The commenter asked for a rationale for this variation.

*Discussion:* NIDRR believes that, in some cases, research is best organized around a single disability. Examples include research on interventions specific to certain conditions or their complications. Medical research or the development of technologies to replace functions such as mobility or vision, for example, may require equipment or expertise that is organized around certain body systems or types of functional loss. Other research may require access to substantial populations of individuals with similar impairments. However, research on general issues of participation, service delivery, and employment opportunities may consider individuals from many disability populations. NIDRR approaches these topics as comprehensively as possible to avoid fragmenting beneficiary populations. In some cases, specific disabilities are referenced as examples only.

*Changes:* None.

*Comment:* One commenter suggested that NIDRR should define parents of children with disabilities as consumers and ensure that research will be conducted on the population over a longer time period. A second commenter urged that research on families be specified in all areas of the Plan, particularly employment, transition, and access to services.

*Discussion:* the Secretary agrees that research on families of disabled children that provides useful knowledge to support these families. In fiscal year 1998, NIDRR funded a Rehabilitation Research and Training Center (RRTC) on families of children with disabilities, with a funding period of 60 months. In 1999, NIDRR will fund an RRTC to continue research and training on families of children with serious behavior disorders. Many other centers and projects also address in part issues related to families of disabled children. One center provides support for disabled adults in their family role. The role of families in rehabilitation is widely acknowledged. NIDRR believes this is clear indication of its commitment to research on families throughout the period of this Plan.

*Changes:* None.

*Comment:* Several commenters noted that the Plan did not address certain areas of NIDRR activity, including international activities, interagency collaboration, peer review, and evaluation activities.

*Discussion:* NIDRR regards these activities as integral parts of its Plan for the next five years.

*Changes:* A final chapter entitled Enhancing NIDRR's Management of Research has been added to the Plan. This chapter includes international research, the Interagency Committee on Disability Research (ICDR), improvements to peer review, and NIDRR's program evaluation and continuous participatory planning activities.

*Comment:* Two commenters suggested that it would be important to estimate the costs of implementing the Plan.

*Discussion:* NIDRR believes this would be a useful but complex activity. NIDRR recognizes not only the difficulty of estimating future costs, but also that other research entities will play a role in accomplishing some of the objectives outlined in the Plan. NIDRR also is mindful of the nature of the annual federal budget setting process and believes it would be inappropriate for NIDRR to preempt that process.

*Changes:* None.

*Introduction and Background*

*Comment:* Several commenters suggested that the proposed Plan does not stress sufficiently the significance of NIDRR research to persons with cognitive disabilities, particularly those with mental retardation, and specifically recommended that examples of improvements through research for this population be included.

*Discussion:* NIDRR agrees that important improvements in the quality of life and integration into the community for individuals experiencing cognitive impairment have been achieved through research, including research sponsored by NIDRR.

*Changes:* The Plan has been amended to reference research-based improvements for this population.

*Comment:* One commenter stated that the description of Rehabilitation Research and Training Centers (RRTCs) appeared to emphasize characteristics typical of academic institutions that might indicate a bias in favor of funding RRTCs at academic institutions.

*Discussion:* The statute clearly spells out the qualifications and eligibility criteria for an RRTC. In funding RRTCs, NIDRR implements the statute by funding RRTCs at organizations that meet the statutory criteria and whose applications are highly rated by independent peer review panels.

*Changes:* None.

*Dimensions of Disability*

*Comment:* Several commenters discussed the inadequacy of demographic data related to individuals with disabilities, including deficiencies in estimating the prevalence of low-incidence disabilities, or the prevalence of disability in discrete ethnic sub-populations such as Pacific Islanders or individual American Indian or Alaskan native tribes. Two commenters suggested that NIDRR work toward the creation and adoption of a minimum data set about disability that could be included in all Federal surveys and data collection efforts. One urged that NIDRR undertake surveys to create demographic databases on certain minority populations.

*Discussion:* The Plan recognizes the inadequacy of existing national databases about disability. NIDRR does not have a mission or resources to undertake national or regional surveys to generate comprehensive primary demographic data files. However, NIDRR believes that smaller scale, intensive studies of the distribution of disability in discrete populations such as racial or ethnic sub-populations is an appropriate topic for exploration under field initiated projects. In addition, NIDRR is aware of the need to incorporate appropriate questions about disability into all relevant Federal data collection efforts and is working with other Federal agencies to achieve this objective.

*Changes:* The new final chapter on NIDRR management initiatives discusses the Interagency Committee on Disability Research (ICDR) as a mechanism for working to improve Federal data collection efforts regarding disability.

*Comment:* Several commenters noted that women with disabilities constitute a population whose circumstances and needs are substantially different from those of men with disabilities, and request that disabled women be identified as a population for targeted study, perhaps under the category of emergent disability populations.

*Discussion:* NIDRR supports research on problems that are unique to, or more significant for, women with disabilities,including areas as diverse as reproduction and sexuality, fibromyalgia, multiple sclerosis, violence and abuse, and childcare. NIDRR will continue to support research on specific conditions affecting women and girls with disabilities.

*Changes:* The Plan has been amended to include specific reference to women with disabilities under appropriate topics.

*Comment:* Two commenters urged that NIDRR specifically include chronic fatigue syndrome and multiple chemical sensitivies in its description of emerging disabilities.

*Discussion:* The discussion of emergent disabilities in the Plan was intended to be illustrative of the concept of a changing disability population, with new conditions or impairments emerging to create a new or greater need for rehabilitation. The selection of specific conditions to be addressed in this context will be made either, in the case of field initiated projects, by applicants setting forth the need for study and peer reviewers evaluating the proposals or, in the case of directed research, through NIDRR's participatory priority development process.

*Changes*: The discussion of emergent disabilities has been amended to suggest that chronic fatigue as well as multiple chemical sensitivity may be investigated as emergent disabilities.

*Comment*: One commenter stated that the Plan should include specific references to the involvement of State Vocational Rehabilitation (VR) agencies in setting annual research priorities.

*Discussion*: It is NIDRR's practice to involve a full spectrum of relevant stakeholders in the formulation of the annual priorities. This certainly includes State Vocational rehabilitation agencies as relevant stakeholders.

*Changes:* The final section of the chapter on enhancing NIDRR management, which has been added to the Plan, specifies a broad range of constitutents to be involved in continuous participatory planning, including State Vocational Rehabilitation Agencies.

*Comment:* Several commenters remarked on data excerpted from the National Health Interview Survey, questioning whether the delineation of only two ethnic groups indicated that only white and African-American individuals were expected to benefit from the Plan.

*Discussion:* Within this chapter of the Plan, NIDRR has commented on the inadequacy of national data sets to elucidate disability conditions among a full range of ethnic groups. Table Three in the Plan was intended merely to illustrate that there are differences along ethnic lines, and at the same time it illustrates that the national data sets are inadequate. NIDRR is committed, as is emphasized in the Plan, to the exploration of the impact of ethnic background and associated characteristics on disability.

*Changes:* None.

*Comment:* Several commenters remarked on the need for demographic data useful to industry in estimating and identifying markets for assistive technology and other products.

*Discussion:* NIDRR agrees that there is a dearth of reliable data on disability for market research purposes. NIDRR's data centers are frequently queried by private industry sources seeking to estimate markets.

*Changes:* NIDRR has added a reference to the need for market related data in this chapter.

*Employment Outcomes*

*Comment:* One letter of comment recommended that personal assistance services be cited in all areas of the Plan in which they could be relevant, such as the sections on employment, health, and technology.

*Discussion:* NIDRR recognizes the potential significance of personal assistance services in employment and health maintenance, as well as in independent living and community integration. However in the interest of brevity, NIDRR has elected to discuss personal assistance services in only one chapter, referring therein to the role of PAS in employment, health maintenance and independent living.

*Changes:* None.

*Comment:* One commenter recommended that the improvement of the State and Federal vocational rehabilitation program be an integral part of NIDRR's research in employment trends and a target for the dissemination of that research.

*Discussion:* The chapter on Employment Outcomes includes enhancement of the State and Federal vocational rehabilitation program as a key research objective. The chapter on knowledge dissemination refers to the importance of developing partnerships with state vocational rehabilitation agencies in order to tailor dissemination activities to their specific needs.

*Changes:* None.

*Comment:* Several commenters suggested an emphasis on assistive technology and telecommunications technology as job accommodations to improve employment outcomes.

*Discussion:* Development of work-related technological devices and work site modifications have been key elements of NIDRR's engineering research program for many years. NIDRR has also supported specialized dissemination efforts to make employers and vocational rehabilitation counselors aware of technology appropriate for the workplace.

*Changes:* The Plan now includes references to technological supports in the employment outcomes chapter and to employment as an intended outcome in the chapter on technology for access and function.

*Comment:* One commenter urged a more explicit and extensive reference to research on the role of self-employment and small business ownership in improving long-term employment outcomes for individuals with disabilities.

*Discussion:* In Chapter 3, Employment Outcomes, NIDRR notes the alterations in the labor market that have resulted in a larger contingent workforce; more contract work, temporary or part-time positions and consultancies, and the decline in the percentage of stable jobs with full benefits. Self-employment, entrepreneurship, telecommuting, and home-based employment are all options to be evaluated for various segments of the disability population. At present, not enough is known about the characteristics of individuals or occupations that lend themselves to these solutions, nor is there definitive evaluation of these options in terms of financial stability and security, long-term outcomes, and consumer satisfaction.

*Changes:* The plan, in Chapter 3, now includes the evaluation of these options as a priority under ''Employer and Workplace Issues'' and a reference to the role of the State and Federal VR system in using these approaches with individual consumers.

*Health and Function*

*Comment:* Several commenters emphasized the significance of pain and fatigue, including Chronic Fatigue Syndrome or Chronic Fatigue Immune Deficiency Syndrome (CFIDS), in the rehabilitation and quality of life of persons with disabilities. They pointed out that many disabled individuals have chronic or deteriorating conditions.

*Discussion:* NIDRR agrees that chronic pain, chronic fatigue, and impaired stamina are common secondary complications of disability and should be addressed.

*Change:* The Plan has been amended to include references to pain and fatigue in this chapter, and reference to chronic fatigue syndrome as a potential emerging disability in the Dimensions of Disability chapter.

*Comment:* One commenter discussed the significance of obesity to health and disability, and urged that NIDRR direct research to this topic.

*Discussion:* NIDRR agrees that obesity is a significant risk factor for both primary disability and secondary conditions, and may complicate efforts at rehabilitation. As NIDRR does not have a mission in the primary prevention of disability or in the

maintenance of health in non-disabled populations, NIDRR will address the issue of obesity in terms of its impact on secondary conditions and health maintenance.

*Changes:* The Plan has been amended to include obesity in the list of secondary conditions.

*Comment:* One commenter noted that the Plan does not address dental and oral health interventions or services delivery, and recommends that research in these areas be added to the Plan.

*Discussion:* NIDRR acknowledges that the presence of disability may confound the delivery of oral health care, and that the presence of dental problems may contribute to secondary conditions and may, in itself, interfere with successful employment and participation in the community. In addition, certain craniofacial or maxillofacial conditions may themselves constitute disability.

*Changes:* The Plan has been amended to recognize the importance of research on dental and oral health interventions and service delivery.

*Comment:* Several commenters noted that the chapter on health and function appears to emphasize physical disabilities, with few references to cognitive, behavioral, or sensory impairments.

*Discussion:* It is NIDRR's intent to exclude research on the full range of disabilities from its agenda. Much of the research that NIDRR supports relative to these cited disability populations is in the Plan's chapters on Community Integration and Independent Living, Technology for Access and Function and Employment. However, within the scope of the health and function chapter, health case service delivery and rehabilitation interventions are also important to these populations.

*Changes:* NIDRR has added references to individuals with sensory, behavioral or cognitive impairments, or a combination of those impairments in the chapter on Health and Function.

*Comment*: Several commenters made suggestions about the importance of outcome measures in medical rehabilitation, including the recommendation that priority should be given to the refinement of existing measures of medical rehabilitation effectiveness to make them more applicable across the wide range of disability populations.

*Discussion*: NIDRR agrees with the need for improved measures of the effectiveness of rehabilitation interventions across disabilities and in a variety of settings.

*Changes*: An additional priority has been inserted under the heading ''Research on Rehabilitation Outcomes'' to focus on measures of effectiveness.

*Technology for Access and Function*

*Comment*: Several commenters noted their agreement with the concept of universal design. Some of these commenters suggested that the Plan did not sufficiently recognize the importance of accessible housing through universal design. A number of these commenters also discussed the difficulties of infusing universal design concepts into private industry and suggested a variety of strategies.

*Discussion*: The Plan indicates a commitment to research on universal design in accessible buildings, including housing, over the next five years. The Plan also includes a recognition of the barriers to general acceptance of universal design and proposes to support activities to reduce the barriers. NIDRR acknowledges that marketing of universal design concepts is different from technology transfer of devices and techniques, and believes the Plan indicates that this is a component of work to be supported by NIDRR.

*Changes*: None.

*Comment*: Several commenters noted the rapid developments in information technology and the World Wide Web, and the emergence of convergent media combing aspects of computers and televisions. These commenters also emphasized the role of universal design in information technologies.

*Discussion*: NIDRR is currently providing support to the World Wide Web Consortium (W3C) and also maintains a major commitment to the infusion of universal design principles into information technology and the telecommunications infrastructure. NIDRR believes this commitment has already been expressed in the Plan.

*Changes*: None.

*Comment*: Two commenters stressed the need to develop technologies to assist in the performance of cognitive functions, for individuals with impairments resulting from stroke, mental retardation, and traumatic brain injury, for example, and observed that this research direction was absent from the Plan.

*Discussion*: NIDRR agrees that there are important opportunities to enhance cognitive functioning through neural prostheses and assistive technology to perform cognitive functions. This area represents a very significant scientific challenge and opportunity.

*Changes*: Research on technology to improve cognitive performance for individuals with mental retardation as well as cognitive deficits from other causes has been added to the Plan.

*Comment*: Two commenters recommended that NIDRR consider appointing various types of advisory councils, including an industry advisory council to assist in the formulation of NIDRR's plans and priorities in the area of assistive technology and universal design.

*Discussion*: NIDRR continuously seeks input from a broad constituency, including industry. NIDRR recognizes the need to have industry more closely involved with the research activities of its grantees. However, because advisory councils are governed by the Federal Advisory Council Act (FACA), this Plan cannot commit NIDRR to establish an advisory council.

*Changes*: None.

*Comment:* One commenter suggested that NIDRR monitor the activities of Federal agencies in the implementation of section 508 of the Rehabilitation Act.

*Discussion:* The Office of Special Education and Rehabilitative Services has placed a high priority on strategies to ensure full implementation of section 508. The Access Board and the General Services Administration have responsibility for providing technical assistance on Section 508. NIDRR will cooperate with those agencies in the provision of technical assistance as needed. NIDRR has no authority to monitor other Federal agencies in their implementation of Section 508.

*Changes:* None.

*Comment:* One commenter stated support for the development of appropriate quality assurance mechanisms for assistive technology, and asked for further elaboration addressing the new provisions of Section 204 of the Rehabilitation Act, as amended.

*Discussion:* Section 204(17)(A) provides that research grants may be used to conduct a research program related to quality assurance in the area of rehabilitation technology. NIDRR is very concerned with this issue, and has added language to the Plan to implement suggested activities under this section of the statute.

*Changes:* References to the development of evaluation methodologies and identification of outcome measurement models have been added in Chapter 7; reference to models for service provider training has been added to Chapter 9, and reference to tools to enhance consumer decision-making about technology has been added to Chapter 6.

*Comment:* Two commenters stated that it was inappropriate to couple the terms ''information technology'' and

''telecommunications'' throughout this Chapter. The commenters argued that while it is true that, in the future, society will be using the same appliances for both, the core issues to be addressed are quite different.

*Discussion:* NIDRR recognizes that while these areas are related, the research issues are different.

*Changes:* The Plan has been modified to indicate that these two areas, while converging, have some significantly different research issues. Some of these research issues are listed in the Plan to illustrate these differences.

*Comment:* One commenter suggested that the priorities related to information technology should include some reference to research on new types of computers and display technologies.

*Discussion:* NIDRR agrees that the rapid pace of developments in this area generates many more priorities for research, and that the relative emphasis on various priority topics may change more than once over the course of this Plan. Therefore, NIDRR refrained from detailing a large number of priorities in this area. However, it may be helpful to specify that there will be some priority placed on ensuring accessibility of new computer technologies emerging onto the market.

*Changes:* New priorities in information technology now include references to research on the accessibility of wearable and implantable computers and personal systems, 3–D display technologies, and cognitive factors such as language and comprehension levels.

*Comment:* One commenter reminded NIDRR that it is important to ensure that assistive technology is culturally responsive and appropriate for use in rural and isolated areas. The commenter urged the creation of an explicit project to develop technology to address the needs of specific cultural groups.

*Discussion:* NIDRR agrees that there is a danger that assistive technology will not be acquired or used if it is not sensitive to cultural and life-style concerns. However, NIDRR believes that it is important to infuse those considerations into all of its technology research and development. No one project could develop all types of technology for all cultural minorities. Furthermore, NIDRR's statute requires that each applicant for funding specify how its proposed activities will address the needs of disabled individuals from diverse minority backgrounds.

*Changes:* NIDRR has inserted a general admonition in this chapter concerning the need to consider variations in culture and life-style in the design and development of assistive technology, and in universal design of public technological systems as well.

*Independent Living and Community Integration*

*Comment:* A number of commenters discussed the issue of home ownership and affordable housing. Many of these comments focused on assisting persons with mental retardation or other developmental disabilities to achieve home ownership. Many of the comments urged NIDRR to replace an institute for this purpose that was formerly supported by another Federal agency, or to create a Rehabilitation Research and Training Center for this purpose.

*Discussion:* NIDRR recognizes the importance of accessible housing in the community in its discussion of universal design and accessible housing and also in its focus on self-determination and research on physical inclusion. The Plan discusses the identification and evaluation of models that facilitate physical inclusion, including housing models that are consistent with consumer choice. As NIDRR is a research Institute, it is not in a position to implement service and advocacy demonstrations that were funded elsewhere. NIDRR does believe that research questions related to housing are potential areas for research investigation under its program of Field Initiated Projects.

*Changes:* None.

*Comment:* Two commenters remarked that independent living services for older individuals who are blind were not specified as subjects of research priorities. One commenter noted commonality of objectives between these programs and other independent living services programs.

*Discussion:* NIDRR prefers to address research on community integration and independent living globally and, whenever possible, across disabilities. Because, as the commenter noted, the objectives of the independent living services for older blind persons are similar to the objectives of independent living programs generally, no priority restricted to those programs has been predetermined. Research on this topic is appropriate for conduct under the Field-Initiated Projects program.

*Changes:* None.

*Comment:* One commenter observed that institutions and nursing homes are used frequently and inappropriately for placements of individuals with traumatic brain injury, and urged that NIDRR support investigations of the scope of this problem and develop other options for community integration.

*Discussion:* NIDRR supports research on community integration for individuals with traumatic brain injury, as well as for those with other disabilities. This topic is one that can be investigated within the scope of NIDRR's research agenda on community integration, and further specification is not necessary.

*Changes:* None.

*Knowledge Dissemination and Utilization*

*Comment:* One commenter stated that the Plan's emphasis on accessible media, which is lauded, points up the need for research on Braille literacy and requests that the Plan include a specific priority in that area.

*Discussion:* NIDRR has established key objectives in such areas as employment, function, access, and integration. NIDRR's agenda responds to the Department of Education goals supporting lifelong learning and preparation for employment in a competitive world economy. NIDRR finds it impossible to detail every specific tactic to reach those objectives for every individual disability population. Furthermore, in line with key recommendations of the Long-Range Plan Steering Committee, NIDRR plans to increase its emphasis on Field-Initiated projects, meaning that there will be fewer resources for discrete prioritized research projects. Thus, there are many important topics such as Braille literacy that may be addressed under the Field-Initiated program. In addition, in the continuous participatory planning process, there will be an opportunity to consider these recommendations in planning future center or project priorities.

*Changes:* None.

*Capacity Building*

*Comment:* One commenter recommended that funds earmarked under Section 21 of the Rehabilitation Act for minority institutions should also be directed to other institutions that are serving some minority students.

*Discussion:* The statute is specific about the uses of these funds and the eligibility criteria. The commenter appears to be requesting a legislative change that is beyond the scope of this Plan.

*Changes:* None.

*Comment:* Two commenters discuss the need to use distance learning strategies in training and in the dissemination of information and recommended that this approach be specified in the plan.

*Discussion:* NIDRR is currently supporting pioneering research into

telerehabilitation and supports distance learning approaches to training in its ADA program and several of its RRTCs. While the commenter correctly noted that NIDRR's primary mission is not training, NIDRR does agree that innovative approaches to capacity building are necessary.

*Changes:* Evaluation of the appropriateness and effectiveness of web-based training and distance learning models to increase capacity for rehabilitation research has been added as a priority in this chapter.

*Comment:* One commenter noted that there was no reference to Rehabilitation Engineering Research Centers (RERCs) as mechanisms for advanced training of researchers, and recommended that RERCs be included in this activity.

*Discussion:* Historically, RERCs have not had the explicit statutory mission for training that was part of other NIDRR funded centers. However, it is certainly true that the need for individuals trained in technological and engineering research is greater than ever, and NIDRR agrees that the RERCs must be involved increasingly in researcher, consumer, and provider training.

*Changes:* Reference to the RERCs as a mechanism for advanced research training has been added.

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## Applicable Program Regulations

34 CFR Parts 350, 356, and 359.

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Dated: August 13, 1999.

**Judith E. Heumann,**

*Assistant Secretary for Special Education and Rehabilitation Services.*

*NIDRR Long-Range Plan*

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## Section One

### Chapter 1: Introduction and Background

''Research has the potential to reinvent the future for millions of people with disabilities and their families'' (Richard W. Riley, U.S. Secretary of Education).

Two developments have converged to enhance the significance of disability research. First, breakthroughs in biomedical and technological sciences have changed the nature of work and community life. As these breakthroughs provide the potential for longer and more fulfilling lives for individuals with disabilities, they reinforce the second major development—successful independent living and civil rights advocacy by disabled persons. this intersection of scientific progress and empowerment of disabled persons has generated momentum for disability research. These developments highlight the importance of more fully integrating disability research into the mainstream of U.S. science and technology policy, and into the Nation's economic and health care policies.

An estimated 43 million Americans are significantly limited in their capacity to participate fully in work, education, family, or community life because they have a physical, cognitive, or emotional condition that requires societal accommodation. Public Law 101–336, the Americans with Disabilities Act (ADA) of 1990, declares that individuals with disabilities have fundamental rights of equal access to public accommodations, employment, transportation, and telecommunications. The recognition of these rights, and of society's obligation to facilitate their attainment, provides the opportunity for major improvements in the daily lives of individuals with disabilities.

It is the mission of the National Institute on Disability and Rehabilitation Research (NIDRR) to generate, disseminate, and promote the full use of new knowledge that will improve substantially the options for disabled individuals to perform regular activities in the community, and the capacity of society to provide full opportunities and appropriate supports for its disabled citizens.

*NIDRR's Statutory Purpose*

The inception of a Federal rehabilitation research program was part of the legacy of the late Mary E. Switzer, pioneering director of the Federal-State vocational rehabilitation program.

By establishing NIDRR [1] in 1978, through Amendments to the Rehabilitation Act of 1973 (Public Law 93–112), Congress realized Switzer's vision and created a research institute in the public interest. As such, NIDRR must generate scientifically based knowledge that furthers the values and goals of the disability community, the knowledge needs of service providers, and the creation of rational public policy.

In confounding NIDRR, Congress recognized both the opportunities for technological and scientific advances to improve the lives of individuals with disabilities and the need for a comprehensive and coordinated approach to research, development, demonstration, information dissemination, and training. The Rehabilitation Act of 1973, as amended (with significant changes in 1992 and 1998), charged this Institute with the responsibility to provide a comprehensive and coordinated program of research and related activities to maximize the full inclusion and social integration, employment, and independent living of individuals of all ages with disabilities, with particular emphasis on improving the coordination and effectiveness of services authorized under the Act. Related activities were mandated to include the widespread dissemination of research-generated knowledge and practical information to rehabilitation

[1] Established as the National Institute of Handicapped Research, the Institute's name was changed to NIDRR by the 1986 Amendments to the Rehabilitation Act.

professionals, individuals with disabilities, researchers, and others; the promotion of the transfer of rehabilitation technology; and an increase in opportunities for researchers who are individuals with disabilities or members of minority groups.

NIDRR is ideally positioned to facilitate the transfer of new knowledge into practice given its administrative co-location with two major service programs—the Rehabilitation Services Administration (RSA) and the Office of Special Education Programs (OSEP)—in the Office of Special Education and Rehabilitative Services (OSERS). NIDRR's linkage to the greater science community through its leadership of the Interagency Committee on Disability Research (ICDR) affords an opportunity to facilitate the transfer of advances in basic research into the agenda for applied research and knowledge diffusion.

To further advance work in the field of applied research, the legislation requires a Plan,[2] updated every five years, describing NIDRR's future research agenda. This Long-Range Plan presents a five-year agenda anchored in consumer goals and scientific initiatives. The plan has several distinct purposes:

(1) To set broad general directions that will guide NIDRR's policies and use of resources as the field of disability enters the 21st century;

(2) To establish objectives for research and dissemination that will improve the lives of individuals with disabilities and from which annual research priorities can be formulated;

(3) To describe a system for operationalizing the Plan in terms of annual priorities, evaluation of the implementation of the Plan, and updates of the Plan as necessary; and

(4) To direct new emphasis to the management and administration of the research endeavor.

This Plan was developed with the guidance of a distinguished group of NIDRR constituents—individuals with disabilities and their family members and advocates, service providers, researchers, educators, administrators, and policymakers, including the Commissioner of the Rehabilitation Services Administration, members of the National Council on Disability, and representatives from DHHS. It draws upon public hearings and planning activities conducted under the prior NIDRR administration (Dr. William H. Graves, Director) and on papers prepared for the Plan by more than a dozen authors. The Plan addresses a range of diverse objectives, including:

(1) The needs of individuals with disabilities for knowledge and information that will enable them to achieve their aspirations for self-direction, independence, inclusion, and functional competence;

(2) The needs of rehabilitation service providers for information on new techniques and technologies that will enable them to assist in the rehabilitation of individuals with disabilities;

(3) The needs of researchers to advance the capabilities of science as well as the body of scientific knowledge;

(4) The needs of society, and its leadership, for strategies that will enable it to facilitate the potential contributions of all citizens; and

(5) The need to transfer findings from basic to applied research.

*Accomplishments of the Past*

In creating NIDRR, Congress recognized that research has contributed substantially to improvements in the lives of individuals with disabilities and their families. Individuals with disabilities live longer, have a better quality of life, enjoy better health, and look forward to more opportunities than they did 30 years ago, and more advances occur every day. Today it is commonplace to find people in wheelchairs traveling in airplanes and private vehicles, people who are blind using computers, and people who are deaf attending the theater, while individuals who have significant disabilities are being recognized as world leaders in the arts and sciences. These developments owe much to research advances at both the individual and societal levels.

*Advances at the Individual Level*

Research, and its use to improve practice, inform policy, and raise awareness, has changed the lives and the outlook for individuals with disabilities and their families. For example, the life expectancy of individuals who paralysis from spinal cord injury has risen continuously in the past 25 years (DeVivo & Stover, 1995). The concerted efforts of U.S. researchers, most of whom received NIDRR support, have succeeded in greatly reducing the number of severe urinary tract infections and other urinary tract complications in this population, thereby reducing renal failure as a cause of death for these individuals from 1st to 12th place over the past two decades. Decubitus ulcers also have been a serious problem for persons with spinal cord injury, as well as for those with stroke, multiple sclerosis, and other immobilizing conditions. Decubitus ulcers are destructive and costly to treat, resulting in lost workdays, high medical expenses, hospitalizations, and further secondary complications. Through the efforts of medical researchers and rehabilitation engineers, preventive measures have been developed including seating, cushioning, and positioning devices; behavioral protocols; and improved treatment methods. These efforts have greatly reduced the length of time needed for medical treatment of decubiti, and the cost of this treatment.

Rehabilitation engineering research has been responsible for the application of new materials in the design of wheelchairs and orthotic and prosthetic devices that render these technologies comfortable and serviceable, and allow their users to accomplish many important personal goals. For example, wheelchairs racers using the newest sports wheelchairs can complete races longer than 800 meters at speeds faster than those of Olympic runners. In the Paralympics, runners using prosthetic legs repeatedly have demonstrated impressive speeds. In everyday life, people who use wheelchairs have benefited from lightweight, transportable chairs as well as powered chairs that greatly increase the independence of some users.

*Advances at the Environmental-Societal Level*

In the last two decades, NIDRR has participated in an unprecedented expansion of opportunities and possibilities for persons with disabilities. During this period, technology has greatly enhanced the accommodation of disability, self-awareness has raised the expectation of and for persons with disabilities, and advocacy has resulted in recognition of the rights of persons with disabilities to societal access and reasonable accommodations.

NIDRR has supported research that has facilitated the inclusion of persons with mental retardation and those with emotional disabilities in communities, workplaces, and lifelong learning. In

[2] As a component of the Department of Education within OSERS, NIDRR is guided by the Department's Strategic Plan, the OSER's Strategic Plan, and NIDRR's own strategic goals and objectives as laid out in its performance plan for the Government Performance and Results Act (GPRA). The Rehabilitation Act, however, calls for a plan from NIDRR—one that identifies research needs and sets forth priorities. This Long-Range Plan describes the issues related to the content and management of NIDRR's research and other activities that will constitute the substantive portion of NIDRR's strategies to achieve its GPRA performance objectives.

doing so, NIDRR researchers have documented patterns of deinstitutionalization; developed techniques for behavior management that have enabled individuals to leave institutions and live and work in the community; strengthened self-advocacy and peer-support programs; developed technological solutions to improve access to housing, communications, and work; and developed strategies to increase employment and to support families in their important roles.

Today's research on the application of the principles of universal design to the built environment, information technology and telecommunications, transportation, and consumer products is based on the concept of an environment that is usable by persons with a very broad range of function. For example, after years of research, all television sets are not equipped with decoders that allow people with hearing loss to access most programs. In addition, ergonomic research undergirds the development of workplace designs and the standards for building codes, consumer products, and the telecommunications infrastructure. These advances have been instrumental in leading to a change in the disability paradigm, expanding the focus of disability to include environmental factors, as well as individual factors.

NIDRR's research activities also have led to the development of small businesses in hearing aids, prosthetics, communication devices, and instructional software. NIDRR research provides an important stimulus in a field of orphan products with small markets.

*Expectations for the Future: A New Paradigm of Disability*

The identification of trends in the distribution of disabilities, the emergence of new disabilities, and the prevalence of disability in the nation's aging population further challenge the disability research field. Additionally, the research field must develop ways to measure and address the impact of environmental factors on the phenomenon of disability.

NIDRR has provided leadership in research leading to a new conceptual foundation for organizing and interpreting the phenomenon of disability—a ''New Paradigm'' of disability. This paradigm is a construction of the disability and scientific communities alike and provides a mechanism for the application of scientific research to the goals and concerns of individuals with disabilities. The new paradigm of disability is neither entirely new nor entirely static. Thomas Kuhn defines paradigm as ''universal achievements that for a time provide model problems and solutions to a community of practioners'' (Kuhn, 1962). The term paradigm is used here in the quasi-popular sense it has acquired over the last 40 years to indicate a basic concensus among investigators of a phenomenon that defines the legitimate problems and methods of a research field. NIDRR posits that the paradigm in this case applies not to a single field, but to a single phenomenon—''disability''—as it is investigated by multiple disciplinary fields. The disability paradigm that undergirds NIDRR's research strategy for the future maintains that disability is a product of an interaction between characteristics (e.g., conditions or impairments, functional status, or personal and social qualities) of the individual and characteristics of the natural, built, cultural, and social environments. The construct of disability is located on a continuum from enablement to disablement. Personal characteristics, as well as environmental ones, may be enabling or disabling, and the relative degree fluctuates, depending on condition, time, and setting. Disability is a contextual variable, dynamic over time and circumstance. Environments may be physically (in)accessible, culturally (ex) (in)clusive, (un)accommodating and (un)supportive. For example, on a societal level, institutions and the built environment were designed for a limited segment of the population. Researchers should explore new ways of measuring and assessing disability in context, taking into account the effect of physical, policy, and social environments, and the dynamic nature of disability over the lifespan and across environments.

Perhaps the new paradigm can be understood best in contrast to the paradigm it replaces and through a clarification of the importance the paradigm has for all aspects of research and policy (see Table 1). The ''old'' paradigm, which was reductive to medical condition, and is reflected in many aspects of the Nation's policy and service delivery arenas, has presented disability as the result of a deficit in an individual that prevented the individual from performing certain functions or activities. This underlying assumption about disability affected many aspects of research, rehabilitation, and services.

The new paradigm of disability is integrative and holistic, and focuses on the whole person functioning in an environmental context. This new paradigm of disability is reflected in the ADA and sets a goals framework for research, policy, and delivery of services and supports relative to disability. The new paradigm with its recognition of the contextual aspect of disability—the dynamic interaction between individual and environment over the lifespan that constitutes disability—has significant consequences for NIDRR's research agenda over the next decade. These consequences include: Changes in the ways disability is defined and conceptualized; new approaches for measuring and counting disability; a focus on new research issues; and changes in the way research is managed and conducted.

*Definitional Issues*

One of the fundamental consequences of the new paradigm is the need for the reformulation of definitions. The definition of disability is critical to building a conceptual model that identifies relevant components of disablement and their relationships to each other, and the dynamic mechanisms by which they change. Typically, definitions of disability have varied depending on their intended use. From a research perspective, definitions used for counting and describing disabled people have been important, while definitions establishing eligibility for benefits and services have been critical from the policy perspective.

The majority of Federal definitions of disability, including those in the Rehabilitation Act, the ADA, and the National Health Interview Survey (NHIS), derive from the old paradigm. These definitions all attribute the cause of limitations in daily activities or social roles to characteristics of the individual, that is, ''conditions'' or ''impairments.'' Even the ADA, which promotes accessibility and accommodations, locates the disability with the individual. This is understandable not only because of the time involved in changing a paradigm, but because of the lack of a system to define, classify, and measure the environmental components of disability and the absence of a model to describe and quantify the interaction of environmental and individual variables. This need for a change in definitions must be addressed by activities such as the attempt to revise the International Classification of Impairments, Disabilities, and Handicaps (ICIDH) (1980), to better define and measure the factors external to the individual that contribute to disability.

TABLE 1.—CONTRAST OF PARADIGMS

| | 'Old' paradigm | 'New' paradigm |
|---|---|---|
| Definition of Disability | An individual is limited by his/her impairment or condition. | An individual with an impairment requires an accommodation to perform functions required to carry out life activities. |
| Stragegy to Address Disability | Fix the individual, correct the deficit | Remove barriers, create access through accommodation and universal design, promote wellness and health. |
| Method to Address Disability | Provision of medical, vocational, or psychological rehabilitation services. | Provision of supports, e.g., assistive technology, personal assistance services, job coach. |
| Source of Intervention | Professionals, clinicians, and other rehabilitation service providers. | Peers, mainstream service providers, consumer information services. |
| Entitlements | Eligibility for benefits based on severity of impairment. | Eligibility for accommodations seen as a civil right. |
| Role of Disabled Individual | Object of intervention, patient, beneficiary, research subject. | Consumer or customer, empowered peer, research participant, decision-maker. |
| Domain of Disability | A medical ''problem'' | A socio-environmental issue involving accessibility, accommodations, and equity. |

**Note:** Adapted from materials prepared for this Long-Range Plan by Gerben DeJong and Bonnie O'Day.

*Measurement Issues*

Sources of data, including demographic studies and national surveys, should be adjusted to reflect new definitions or concepts, and to take into account contextual variables in survey sampling techniques. Survey questions must reflect environmental factors as well as individual factors such as socioeconomic characteristics or impairments. Under the new paradigm, questions about employment status, for example, should focus on the need for accommodations as well as on the existence of an impairment. Measures must enable researchers to predict and understand changes in the prevalence and distribution of disabilities—the emerging universe of disability—which illustrates the link between underlying social and environmental conditions such as poverty, race, culture, isolation, the age continuum, and the emergence of new causes of disability, new disability syndromes, and the differential distribution of disability among various population groups in our society.

Concern increasingly is focused on vulnerable populations as researchers find more evidence that disability, and risk thereof, are disproportionately concentrated in populations in poverty, populations that lack access to state-of-the-art preventions or interventions, and populations that are exposed to additional external or lifestyle risk factors. There are new impairments, exacerbated impairments, or new etiologies that are associated with socioeconomic status, education levels, access to health care, nutrition, living conditions, and personal safety. Individuals from racial, linguistic, or cultural minority backgrounds are more likely to live in poverty and to lack adequate nutrition, pre-natal and other health care, access to preventive care, and health information. These individuals also have more exposure to interpersonal violence and intentional injury. The new paradigm's recognition of environmental factors leads to a focus on underserved minority populations—part of the emerging universe of disability discussed in Chapter Two.

*New Focus of Research Inquiries*

The new paradigm adds, or increases the relative emphases on, certain areas of inquiry. Research must develop new methods to focus on the interface between person and society. It is not enough simply to shift the focus of concern from the individual to the environment. What is needed are studies of the dynamic interplay between person and environment; of the adapting process, by the society as well as by the individual; and of the adaptive changes that occur during a person's lifespan. The aging of the disabled population in conjunction with quality of life issues dictates a particular focus on prevention and alleviation of secondary disabilities and co-existing conditions and on health maintenance over the lifespan. Research must focus on the development and evaluation of environmental options in the built environment and the communications environment, including such approaches as universal design, modular design, and assistive technology that enable individuals with disabilities and society to select the most appropriate means to accommodate or alleviate limitations. Research must lead to a better understanding of the context and trends in our society that affect the total environment in which people with disabilities will live and in which disability will be manifested. These include: economy and labor market trends; social, cultural, and attitudinal developments; and new technological developments. Research must develop ways to enable individuals with disabilities to compete in the global economy, including education and training methods, job accommodations, and assistive technology.

Research must develop an understanding of the public policy context in which disability is addressed, ignored, or exacerbated. General fiscal and economic policies, as well as more specific policies on employment, delivery and financing of health care, income support, transportation, social services, telecommunications, institutionalization, education, and long-term care are critical factors influencing disability and disabled persons. Their frequent inconsistencies, contradictions, and oversights can inhibit the attainment of personal and social goals for persons with disabilities.

*Research Management*

The new paradigm requires new models for the management of the research enterprise that include stakeholder participation, interdisciplinary and collaborative efforts, more large-scale and longitudinal research, and new research methodologies to conduct meaningful studies in the emerging policy environments. Training in disability and rehabilitation research must be expanded to include disciplines such as architecture and business. There will be new venues for the conduct of research, and a need for validated methodologies to conduct research on dynamic person-environment interactions and under

constricted circumstances. Through training programs, the disability and rehabilitation research field also should work to increase the number of disabled and minority researchers.

The role of disabled consumers in research under the new paradigm, as well as in policy and services, is proactive and participative. Consumers have a role in shaping their environments and in managing the supports and services they require. Research must be more inclusive and participatory, involving not only consumers but also other stakeholders in understanding and interpreting research, in disseminating and applying research findings, and in planning, conducting, and evaluating research. Consumer satisfaction with research as well as services will be subject to assessment.

Moreover, interdisciplinary and collaborative research are important for explicating the multidimensional qualities of disability. It is only through research coordination and collaboration that the findings of basic research can be translated into the knowledge base of disability research.

Regardless of its auspices, research is a cumulative and integrative process; new knowledge comes from many sources, often in response to concerted pursuit, but also sometimes serendipitously. Research is often slow-moving and always painstaking; one of the ironies of the research effort is that a disproved hypothesis may constitute a successful project, particularly if it diverts the time and resources of others from an unfruitful direction. As one participant in the planning process put it, ''sometimes the new questions you stimulate are more important than the ones you answer in your research project.'' NIDRR is pleased to have collaborated with many other Federal and private agencies that sponsor various aspects of disability and rehabilitation research, and is committed to making research an inclusive, collaborative, and coordinated undertaking.

*Organization of the Plan*

This introductory chapter has set the framework for understanding NIDRR's mission and approach. After the next chapter, ''Dimensions of Disability,'' the Plan will discuss, in Section Two, an agenda for research that provides opportunities for leadership and innovation. NIDRR will implement this research agenda in conjunction with excellent management strategies, a dynamic program of knowledge dissemination, and a vigorous effort to build capacity of the field through training researchers and users of research. Section Three will focus on these activities.

NIDRR intends this five-year research Plan to balance the competing demands of consumer relevance and scientific rigor, and to present an agenda for research that is responsive, scientifically sound, and accountable, and which makes a contribution to the refinement of the Nation's science and technology policy.

**Chapter 2: Dimensions of Disability**

''Policy issues at the forefront of the disability agenda require accurate data, routinely repeated measures, sophisticated analysis, and broad dissemination'' (National Council on Disability, Action Steps for Changes to Federal Disability Data Collection Activities, draft report, Sept. 19, 1997).

This chapter of the Plan presents NIDRR's operative definitions of disability, discusses several analytical frameworks for the categorization of disability, and highlights deficits in current definitions and data collection. The chapter then presents data about the prevalence and distribution of disability in the nation and includes selected demographic data related to the major NIDRR goals of independence, inclusion, and employment.

*Definitions and Concepts of Disability and Disablement*

The definition of an individual with a disability under which NIDRR operates is contained in the Rehabilitation Act of 1973, (Public Law 93–112) as amended, and is as follows: any person who (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment (29 U.S.C. 706(8)(B)). This definition is similar to those contained in the ADA and the Technology-Related Assistance for Individuals with Disabilities Act (Tech Act).

The impairments that lead to limitations in activities may be related to genetic conditions or to acquired diseases or traumas that may occur throughout the lifespan. The extent of disability, and the conditions associated with disability, are significant to individuals and their families, and to the Nation.

Prevailing definitions, based in statute and supporting program authorities, clearly do not reflect new paradigm concepts of disability. Nearly all definitions identify an individual as disabled based on a physical or mental impairment that limits the person's ability to perform an important activity. Note that the complementary possibility—that the individual is limited by a barrier in society or the environment—is never considered. This Plan suggests that it is useful to regard an individual with a disability as a person with an impairment who requires an accommodation or intervention rather than as a person limited solely by a condition. This new approach derives from the interaction between personal variables and environmental conditions. Because accommodations can address person-centered factors as well as socio-environmental factors, a ''need for accommodation'' is a more adaptable concept for the new paradigm.

The various definitions of disability that have formed the basis for both program eligibility and survey data collection do not have explanatory power for research purposes. The field of disability research lacks a widely accepted conceptual foundation for the measurement of disability as well as consistent definitions for data collection. In recent years, however, a number of efforts to develop conceptual frameworks to organize information about disability have been initiated (see Table 2). Among these efforts are:

(1) The ICIDH, which was developed in 1980 by the WHO. The ICIDH was designed to provide a framework to organize information about the consequences of disease. An ongoing revision process is considering social, behavioral, and environmental factors to refine the concept of ''handicap;''

TABLE 2.—CONCEPTS IN MODELS OF DISABILITY

| ICIDH | Nagi/1991 IOM | NCMRR |
|---|---|---|
| Disease—Something abnormal within the individual; etiology gives rise to change in structure and functioning of the body. | Active pathology—Interruption or interference of normal bodily processes or structures. | Pathophysiology—Interruption or interference with normal physiological and developmental processes or structure. |

TABLE 2.—CONCEPTS IN MODELS OF DISABILITY—Continued

| ICIDH | Nagi/1991 IOM | NCMRR |
|---|---|---|
| Impairment—Any loss or abnormality of psychological, physiological, or anatomical structure or function at the organ level. | Impairment—Anatomical, physiological, mental or emotional abnormalities or loss. | Impairment—Loss or abnormalities of cognitive, emotional, physiological, or anatomical structure or function, including losses or abnormalities, not those attributable to the initial pathophysiology. |
| Disability—Any restriction or lack (resulting from an impairment) of ability to perform an activity in the manner or range considered normal for a human being. | Functional limitation—Restriction or lack of ability to perform an action or activity in the manner or within the range considered normal that results from impairment. | Functional limitation—Restriction or lack of ability to perform an action in the manner or within the range consistent with the parts of an organ or organ system. |
| Handicap—A disadvantage resulting from an impairment or disability that limits or prevents fulfillment of a normal role depending on age, sex, and sociocultural factors. | Disability—Inability or limitation in performing socially defined activities and roles expected of individuals within a social and physical environment. | Disability—Inability or limitation in performing tasks, activities, and roles to levels expected within the physical and social context. |
| | | Societal limitation—Restrictions attributable to social policy and barriers (structural or attitudinal) which limits fulfillment of roles and denies access opportunities that are associated with full participation in society. |

**Note:** Information in column 1 is from International Classification of Impairments, Disabilities, and Handicaps, by the World Health Organization, 1980, Geneva, Switzerland: Author.

Information in column 2 is from Disability Concepts Revisited: Implications for Prevention, by S.Z. Nagi, 1991, (p. 7) in Disability in America: Toward A National Agenda for Prevention by A.M. Pope and A.R. Tarlov (Eds.), 1991, Washington, DC: National Academy Press.

Information in column 3 is from Research Plan for the National Center for Medical Rehabilitation Research, (p. 33), by the National Institute of Child Health and Human Development (1993) (NIH Publication No. 93–3509), Washington, DC: U.S. Government Printing Office.

(2) The ''Nagi model'' (Nagi, 1991), which was presented by the Institute of Medicine (IOM) in its 1991 Disability in America report (Pope & Tarlov, 1991). The model was revised in the 1997 report entitled Enabling America (Brandt & Pope, 1997). The IOM (1997) also posits that disability is a function of the interaction of individuals with the social and physical environments. The revised Nagi model describes the environment as including the natural environment, the built environment, culture, the economic system, the political system, and psychological factors. The new model includes a state of ''no disabling condition.'' The state of disability is not included in this model because disability is not viewed as inherent in the person, but rather as a function of the interaction of the individual and the environment; and

(3) The schematic adopted by the National Center for Medical Rehabilitation research (NCMRR) in its Research Plan (1993, p.33), which added the concept of societal limitation.

*Continuum of Enablement-Disablement*

The most widely used conceptual frameworks applied to disability and rehabilitation research have in common a continuum that progresses from some underlying etiology or disease to limitations in physical or mental function. These functional limitations, when combined with external or environmental conditions, may lead to some deficit in the performance of daily activities or expected social roles. In ''Enabling America,'' the IOM has urged the adoption of a new conceptual framework as a model for the enablement-disablement process (Brandt & Pope, 1997). This model has the advantage of identifying components of person-centered and environment-centered variables. The IOM framework identifies four categories of individual factors (person, biology, behavior, and resources) and nine categories of external environment factors (natural, culture, engineered environments, therapeutic modalities, health care delivery system, social institutions, macro-economy, policy and law, and resources and opportunities).

NIDRR research focuses on crucial areas of functional loss, disability, and socio-environmental aspects of the continuum. In keeping with the new paradigm, NIDRR emphasizes the importance of explicating the connection between the person and the environment, and interface that determines the disabling consequences of impairments and conditions. This study of the dynamic interaction among various individual and environmental variables requires NIDRR's continued and increased attention to shaping the structure, management, and capacity for research. methodologies are needed, often in an interdisciplinary context, that can illuminate multiple facets of disablement and enablement from numerous perspectives.

*Limitations in Federal Data Sources*

The various Federal data collection efforts that assess the extent and distribution of disability in society are less than ideal for measuring the population that meets the NIDRR definition of an individual with a disability. These efforts generally can be categorized as either program data, which focus on the recipients of Federal benefit or service programs, or national surveys that focus on perceived limitations in activities caused by health conditions. Both program and survey data focus on the ''physical or mental impairment'' as the cause of the limitation. This is a reductionist approach that discounts social and environmental factors or assumes that these factors are subsumed within individual attributes.

The National Health Interview Survey (NHIS), are the two most widely used sources of survey data to describe the population of individuals with disabilities. The data from the Disability Supplement to the NHIS currently is being analyzed by a number of researchers and will yield much-needed information on persons with disabilities. The Disability Supplement is the product of a 1994 to 1996 data collection effort that was the result of years of cooperative development by Federal agencies concerned with disability issues. While the Disability Supplement will have enormous value to its users, the Supplement, like other data sources, lacks any measures of the environmental factors (social or physical) that contribute to disablement, as well as any measures of interaction between person and environment.

Federal data collection efforts, including the Census, the NHIS, the

SIPP, the Current Population Survey (CPS), and many other program-specific or topical data collections, not only fail to address important new concepts of disability, but also are limited in other respects. Sampling procedures may result in the exclusion of low-incidence disabilities and insufficient information about minority populations; self-reporting leads to underreporting many conditions; and survey formats frequently are inaccessible to persons with cognitive, sensory, or language limitations. Many Federal data collection efforts, as well as most private ones, do not routinely include information about persons with disability in their collection and reporting. Improvements in data quality and availability will be a key goal of NIDRR in this five-year Plan.

Particular problems exist in defining and quantifying disability in children. Many service programs rely on diagnostic categories for eligibility, and even those that have attempted a functional approach have had difficulty assessing the effect of context, expectations, transactions with adults, chronicity and duration, in determining the extent of disability among children.

The Office of Special Education Programs (OSEP)—administers the Individuals with Disabilities Education Act (IDEA), which mandates that schools have a full range of services necessary to provide a free and appropriate public education for children with disabilities. According to OSEP's 1995–1996 IDEA annual report to Congress, 5.6 million disabled children (ages 3 to 21) received educational services. Approximately, one-half of these children were identified as having specific learning disabilities, Other high incidence disabilities included speech and language impairments, mental retardation, and serious emotional disturbances.

Because OSEP and other Department of Education offices focus their research on activities based in the educational system, including the development of curriculum and teaching methods and the training of teachers, NIDRR has directed its research on disabled children to aspects of life outside that arena. These issues include family-child relations; social relationships; community integration; medical technologies for replacing, or substituting for, function; accommodations; and supports to families. NIDRR research also has a role in addressing the critical problems of succeeding in the transitions from school to adult life in the community, and in the work and adult service systems. In a broader context, it is important to note that 5.5 percent of all American families contain one or more children with a disability (LaPlante, Carlson, Kaye, & Wenger, 1996). Children with disabilities are more likely to be found in low-income families and families headed by single mothers.

*Prevalence of Disability*

The importance of disability research is underscored by the frequency and widespread dispersion of disabilities in the U.S. population. The following data about disability were selected because of their relevance to NIDRR's specific priorities and to the overall objectives of this plan.

The 1994 NHIS estimated that 15 percent of the noninstitutionalized civilian population—some 38 million people—were limited in activity due to chronic conditions (Adams & Marano, 1995). The Institute of Medicine interpolated the NHIS data to indicate that 38 percent of disabilities were associated with mobility limitations, followed by chronic disease (32 percent); sensory limitations (8 percent); intellectual limitations (7 percent); and all other conditions (15 percent) (Pope & Tarlov, 1991). The SIPP identified 48.9 million persons who reported themselves as limited in performing functional activities or in fulfilling a socially defined role or task. Of these, 24.1 million persons were identified as having a ''severe disability'' (Kraus, Stoddard, & Gilmartin, 1996). Both surveys excluded persons in nursing homes or institutions, who would be expected to have a high rate of disability. Including that population through extrapolation has led to the commonly cited figures of 43 to 48 million Americans with disabilities.

Both the NHIS and SIPP focus on limitations in major life activities, due to a physical or mental condition, but also provide data on persons who are limited in or unable to perform activities of daily living (ADLs)—such as eating, bathing, dressing, toileting, or transferring—without assistance or devices, or to perform instrumental activities of daily living (IADLs)—such as basic home care, shopping, meal preparation, telephoning, and managing money. Approximately eight million people reported difficulty with ADLs, and approximately four million with one or more ADLs needed the assistance of another person (McNeil, 1993).

The range of these estimates—from approximately 4 million people who need help simply to sustain their lives to the 40 million who report any kind of activity limitation—illustrates the danger in discussing the disabled population or its needs as a homogeneous group. More refined data are needed to assess the needs for medical and health care, vocational rehabilitation and employment assistance, supports for living in the community, and assistive technology.

*Demographics of Disability: Age, Gender, Race, Education, Income, and Geography*

Disability is distributed differently in the population according to characteristics of age, gender, race, and ethnicity, and both region and size of locality in which a person resides. Educational level is inversely correlated with the prevalence of disability. Poverty is a key factor both as a contributing cause and a result of disability. Table 3 presents NHIS data on sociodemographic correlates of activity limitations. This table indicates that disability is very likely linked to other social factors and reinforces the need to address disability in a broad context.

*Emerging Universe of Disability*

NIDRR has begun to focus on an ''emerging universe'' of disability, in which either the conditions associated with disability, their distribution in the population, or their causes and consequences, are substantially different from those in the traditional disability population.

This emerging universe is identified with new disabling conditions; new causes for impairments; differential distributions within the population; increased frequency of some impairments, including those associated with the aging of the population; and different consequences of disability, particularly as related to social-environmental factors, lifespan issues, and projected demands for services and supports.

Researchers have identified a ''new morbidity'' (Baumeister, Kupstas, & Woodley-Zanthos, 1993) in which the cluster of factors associated with poverty—such as poor education, poor medical care, low birthweight babies, lack of prenatal care, substance abuse, interpersonal violence, isolation, occupational risks, and exposure to environmental hazards—have a high correlation with the existence of impairments, disabilities, and exacerbated consequences of disabilities. For example, the leading cause of mental retardation is no longer RH-factor incompatibility, but may be related to any factor associated with high-risk births, which are more common among low-income mothers.

Interpersonal violence accounts for the rising incidence of certain conditions, especially spinal cord injury and traumatic brain injury, among inner-city minority populations. These developments have enormous implications for research problems to be addressed and future demands for various types of services.

TABLE 3.—DEGREE OF ACTIVITY LIMITATION DUE TO CHRONIC CONDITIONS, BY DEMOGRAPHIC CHARACTERISTICS: 1994

| Characteristic | All persons (in thousands) | With activity limitation | Unable to carry on major activity (percent) | Limited in amount or kind of major activity (percent) | Limited, but not in major activity (percent) |
|---|---|---|---|---|---|
| All persons | 259,634 | 15 | 4.6 | 5.7 | 4.7 |
| Age: | | | | | |
| Under 18 years | 70,025 | 6.7 | 0.7 | 4.2 | 1.8 |
| 18–44 years | 108,178 | 10.3 | 3.2 | 3.9 | 3.1 |
| 45–64 years | 50,405 | 22.6 | 9.2 | 7.9 | 5.5 |
| 65–69 years | 9,685 | 36.7 | 16.7 | 11.9 | 7.3 |
| 70 years and older | 21,340 | 38.9 | 8.1 | 12.6 | 19.3 |
| Sex: | | | | | |
| Male | 126,494 | 14.4 | 4.8 | 5.3 | 4.3 |
| Female | 133,139 | 15.7 | 4.4 | 6.1 | 5.2 |
| Race: | | | | | |
| White | 214.496 | 15.1 | 4.4 | 5.8 | 4.9 |
| African American | 33,035 | 16.3 | 6.3 | 6.2 | 3.8 |
| Family Income: | | | | | |
| Under $10,000 | 23,363 | 28 | 11.2 | 9.9 | 6.9 |
| $10,000–$19,999 | 37,271 | 21.1 | 7.3 | 7.7 | 6.2 |
| $20,000–$34,999 | 54,171 | 14.8 | 4.1 | 6.0 | 4.7 |
| $35,000 or more | 100,302 | 9.4 | 1.9 | 3.9 | 3.6 |
| Geographic Region: | | | | | |
| Northwest | 50,610 | 14.3 | 4.3 | 5.6 | 4.3 |
| Midwest | 63,238 | 14.6 | 3.9 | 6.0 | 4.6 |
| South | 88,088 | 16.1 | 5.3 | 6.0 | 4.8 |
| West | 57,697 | 14.7 | 4.6 | 5.0 | 5.0 |
| Place of Residence: | | | | | |
| Metropolitan statistical area (MSA) | 203,079 | 14.3 | 4.4 | 5.5 | 4.5 |
| Central city | 79,510 | 15.8 | 5.4 | 5.9 | 4.5 |
| Not central city | 123,570 | 13.4 | 3.8 | 5.2 | 4.5 |
| Not MSA | 56,554 | 17.6 | 5.4 | 6.6 | 5.6 |

**Note:** From Tables 67–68 in Current Estimates from the National Health Interview Survey, 1994, Series 10, No. 193, by P.F. Adams and M.A. Marano, Hyattsville, MD: National Center for Health Statistics.

New illnesses or conditions have emerged in recent years; some, but by no means all, are poverty-related. AIDS, Attention Deficit Hyperactivity Disorder (ADHD), violence-induced neurological damage, repetitive motion syndrome, chronic fatigue syndromes, childhood asthma, drug addiction, and environmental illnesses are all either relatively new conditions or ones of increasing prevalence and severity in society. Additionally, the aging of the population, given the higher rates of many disabilities among older persons, is another demographic factor that will influence issues to be addressed by applied research. Many emergent disabilities, including those attributed to violence, abuse, and poverty, have a higher incidence among women and are particularly likely to reflect women with already existing disabilities.

As new causes of disabilities emerge, the new paradigm of disability clearly provides a progressive approach to successful addressing environmental and social barriers for people with disabilities. These new issues have implications not only for disability research and services, but also for public health and prevention activities.

*Disability, Employment, and Independent Living*

Because of NIDRR's statutory concern with improving employment outcomes for persons with disabilities, it is valuable to present a brief overview of the employment status of persons with disabilities.

LaPlante & Carlson (1996) report that 19 million Americans with an impairment or health problem (ages 18–69) were unable to work or limited in the amount or type of work they could perform. According to the CPS, about 10 percent of the population between 16 and 64 had work limitations (different age ranges reflect changing concepts of ''working age'') (LaPlante, Kennedy, Kay, & Wenzer, 1996). Back disorders, heart disease, and arthritis were frequently reported as major causes of work disability (LaPlante & Carlson, 1996). However, mental illnesses is one of the most work-disabling conditions; data showed that among adults with serious mental illness (an estimated 3.3 million persons), 29 percent were reported to be unable to work and 18 percent were limited in their ability to work because of their mental disorder (Barker, Manderscheid, Hendershot, Jack, Schoenborn, & Goldstrom, 1992).

While the presence of any disability reduces the likelihood of employment, the effect is closely tied to the severity of the disability. The SIPP estimates that among persons 21 to 64 years old, the employment rate was 81 percent for persons with no disability, 67 percent for persons with a disability that was not severe, and 23 percent for persons with a severe disability (McNeil, 1993). Only 21 percent of persons needing personal assistance with ADLs or IADLs were employed (U.S. Bureau of the Census, 1998). The unemployment rate for persons with disabilities, which counts only those persons in the labor force, was 12.6 percent, more than twice the unemployment rate of nondisabled Americans (Stoddard, Jans, Ripple, & Kraus, 1998).

Disabled persons who work full time typically earn less than nondisabled workers with the earnings gap widening with age and severity of disability. Persons with disabilities who do not work may qualify for income support payments under Social Security Disability Insurance (SSDI) (if they have a work history) or Supplementary Security Income (SSI). As of January 1996, 5 million persons received SSDI benefits, including 4.2 million disabled workers, 686,300 disabled adult children, and 173,800 disabled widows and widowers (Social Security Administration, 1996). A 1993 report cited mental disorders as the most frequent cause of disability (35 percent), followed by musculoskeletal, circulatory, and nervous system disorders (Social Security Administration, 1993).

At the end of 1993, about 3.8 million persons under age 65 received SSI benefits due to disability and poverty (Kochhar & Scott, 1995). More than one-half of these persons had either mental retardation or mental illness. The Social Security Administration (SSA) has noted a sharp increase in the number of disabled SSI recipients, an increasing proportion with mental illness, and a growing number who enter the rolls as children and remain for long periods (Kochhar & Scott, 1995).

Many of these increases in both SSDI and SSI programs can be attributed to program changes (such as different eligibility requirements and outreach), to a shifting from other income support categories, to changes in stability of employment and private health insurance, and to the bundling of health insurance coverage with income supports. Eligibility for public health insurance is generally tied to the receipt of income transfer payments from a public income support program.

Data elements about residential status, family composition, and need for personal assistance services illuminate some of the characteristics of the disabled population. Of the estimated 48.9 million persons with disabilities from the SIPP data, 32.5 million own their own homes and 16.4 million rent (McNeil, 1993). An estimated 9.8 million live alone and over 27 million persons with disabilities are married. An estimated 8.3 million individuals with disabilities live in a household with their spouse and children under 18 years of age, while an estimated 1.9 million are single parents with disabilities.

An estimated 20.3 million families, or 29.2 percent of all 69.6 million families in the United States have at least one member with a disability (as measured by having an activity limitation). This rate for families is much higher than the rate of individuals having a disability. Further, there appears to be a clustering of people with disabilities in families and households, with a much higher than expected likelihood of both adult partners having disabilities and a greater than average chance that children with disabilities will live with one or more parents with disabilities. Families headed by adults with disabilities are more likely to live in poverty or to be dependent on public income support programs.

*Conclusion*

This chapter of the Plan highlighted some important disability statistics that illustrate the scope of disability in the United States. Throughout the Plan, significant data also are interspersed about the use of assistive technology, access to health care, labor force participation, and community living. In addition, Chapter Seven addresses the need for future research in disability data collection.

Overall, current data on disabilities provide both a picture for concern and a cause for optimism. People with disabilities tend to have lower than average educational levels, low income levels, and high unemployment rates, especially for people with severe disabilities. Moreover, the relationship between disability and poverty tends to be bi-directional, with the conditions of poverty creating a high risk for disability and disability itself leading to poverty. At the same time, it is clear that more individuals with disabilities are completing high school and college, an education is closely correlated with employment and independence. Increasingly, individuals with disabilities are living in the community, marrying, and raising families. These individuals may receive increased attention from businesses as they constitute a market for accessible housing and adaptive devices, recreation, adult education, accommodated travel, health care, and other services.

Potential providers of goods and services in the marketplace—whether purveyors of travel and recreation, assistive devices, clothing, or any other commodities—want estimates of the size and characteristics of the potential market for their products. It is becoming increasingly important to provide these market estimates and to package data to meet the needs of manufacturers and distributors.

It is also true that, while the presence of a disability may present significant challenges to individuals and families, society demonstrates a growing capacity to assist persons with disabilities to meet their needs for equity and access through new discoveries in research, improved service methods, and informed policy decisions.

## Section Two: NIDRR Research Agenda

## Chapter 3: Employment Outcomes

''With the ADA, we began a transformation of the proverbial ladder of success for some Americans into a ramp of opportunity for all Americans. Yet, * * * (so many) Americans with severe disabilities are still unemployed, * * * (making it) clear we still have many steps to take before people with disabilities have full access to the American dream'' (Tony Coelho, Chairman, President's Committee on Employment of People with Disabilities) 1999.

*Overview*

Unemployment and under-employment among working-age Americans with disabilities are ongoing, and seemingly intractable, problems. Data from the Census Bureau on the labor force status of persons ages 16 to 64 in fiscal year 1996 highlight the magnitude of this problem. While four-fifths of working-age Americans are in the labor force and more than three-fourths are working full time, less than one-third of persons with disabilities are in the labor force, and fewer than one-quarter are working full time. Fully two-thirds of working-age persons with disabilities are not in the labor force; other research suggests that a substantial portion of this staggering figure can be attributed to disincentive inherent in social and health insurance policies, to discouragement, and to lack of physical access to jobs. Finally, among those in the labor force, the unemployment rate for disabled persons is more than double that of persons without disabilities (12.6 percent versus 5.7 percent).

While the comparative rates of labor force participation and full-time employment are two indicators of the workforce status of individuals with disabilities, a comparison of earnings is even more striking. In Figure 1, SIPP data illustrate the discrepancies in earnings for disabled and nondisabled workers.

Even when persons with disabilities are employed full-time, their earnings are substantially lower than those of persons without disability. Severity of disability is also correlated inversely with the level of earnings. Disparities in employment rates and earnings are even greater for disabled individuals from minority backgrounds and those with

the most significant disabilities (Stoddard, Jans, Ripple, & Kraus, 1998).

*Economy and Labor Force Issues*

Several emerging characteristics of the nation's labor market exacerbate the difficulties experienced by persons with disabilities in their attempts to gain employment and even in their motivation to seek employment. Downsizing, for example, has lead to a reduction in the percentage of the labor force with stable, long-term, benefits-carrying jobs; much of business and industry is moving to other configurations that fill their labor needs without requiring a long-term commitment on the part of the employer. The ''contingent'' workforce takes many forms, including on-call workers and those in temporary help agencies, workers provided by contract firms, and independent contractors paid wages or salaries directly from the company. Many of these jobs lack security and benefits, particularly health insurance, that most persons with disabilities require for participation in the labor force.

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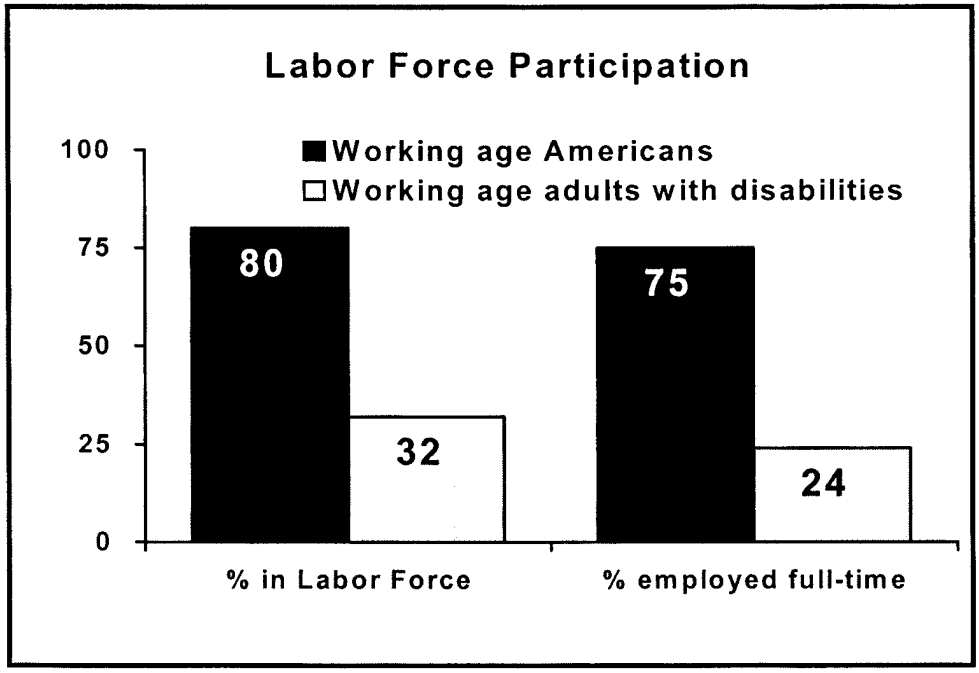
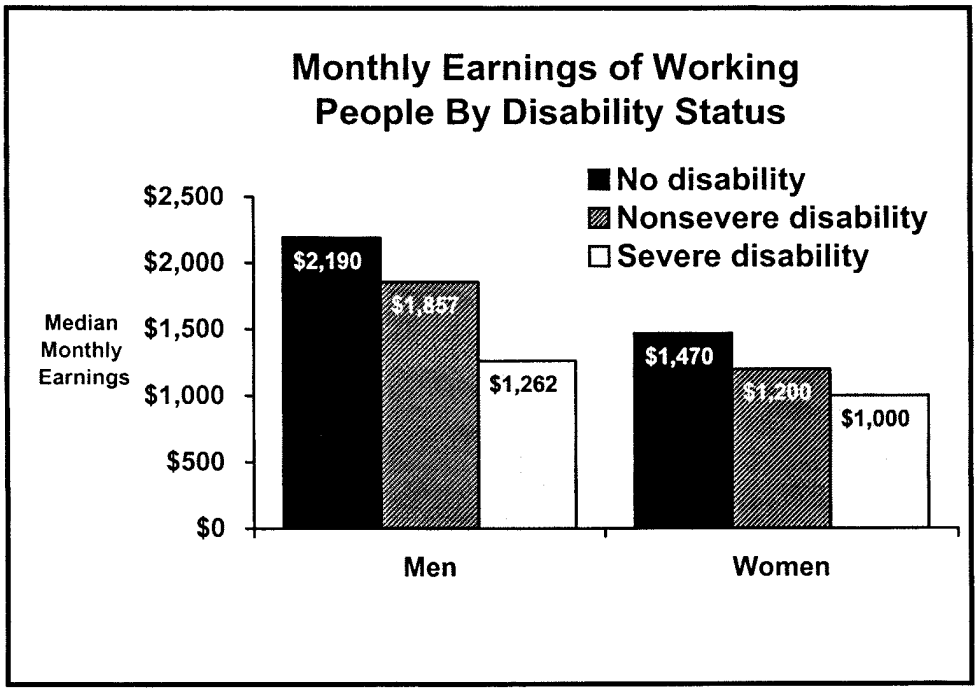
Figure 1: Labor Force Participation of persons ages 16 to 64 in fiscal year 1996




Data from the Census Bureau

Figure 2: Monthly Earnings of Working People By Disability Status




Source: McNeil (1997), Americans with Disabilities: 1994-1995;Survey; SIPP, 1994-1995.

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In addition, while many business spokespersons and educators point to the need for highly educated, highly skilled workers if the nation is to succeed in the increasingly competitive global economy, the reality is more complex. On the one hand, availability jobs requiring specialized skills combined with rapid advances in technology may improve the employment prospects of persons with disabilities as well as other workers, through such work arrangements as telecommuting, and an expanding market for self-employment or small businesses. On the other hand, the labor market appears to be moving toward increasing bifurcation, with top-tier technocracy jobs for persons with sophisticated work skills, and lower-tiered unskilled service and maintenance jobs for the less prepared.

Assisting individuals with significant disabilities in moving from dependency on public benefits or family support, or from episodic, poor-paying jobs, into stable jobs that will allow them to become self-supporting, is a complex challenge. This challenge involves a number of economic sectors, and service and support systems, and must include an examination of social policies. Providing appropriate assistance requires an extensive knowledge base encompassing economic trends, education and job training strategies, job development and placement techniques, workplace supports and accommodations, and empirical knowledge of the impact of social and health insurance policies on job-seeking behaviors.

*State-Federal Vocational Rehabilitation Program*

For the past 75 years, the primary source of publicly funded employment-related services to improve the employment status of disabled persons, especially those with significant disabilities, has been the State-Federal Vocational Rehabilitation (VR) service program, currently authorized under the Rehabilitation Act of 1973, as amended, most recently in 1998. Funded at $2.2 billion in Fiscal Year 1998 in Federal funds and a 22 percent State match for a total of about $2.7 billion annually, the program is implemented primarily as a case management system at the State and local levels. The rehabilitation counselors negotiate, on behalf of and in consultation with the consumer, the purchase of a package of services, such as medical interventions, and supports (e.g., assistive technology and licensure) that will facilitate achievement of employment outcomes.

As noted by OSERS Assistant Secretary Judith Heumann in recent testimony to Congress, ''As a group, persons who achieve an employment outcome as a result of vocational rehabilitation services each year show notable gains in their economic status,'' (Barriers Preventing Social Security Recipients from Returning to Work, 1997). The percentage of persons with disabilities reporting their income as their primary source of support increased from 18 percent, at the time of application to the VR program, to 82 percent at the time of exit from the program (Barriers Preventing Social Security Recipients from Returning to Work, 1997). The percentage with earned income of any kind increased from 22 percent at entry to 92 percent at exit. The percentage working at or above minimum wage rose from 15 to 80 percent.

Nevertheless, Federal policymakers, consumers, advocates, and rehabilitation professionals remain concerned that persons with disabilities often are excluded from full participation in the Nation's labor force. In the past several years, for example, SSA has experienced a very large increase in the number of persons qualifying for SSI and SSDI, and the public costs of these cash benefits are substantially increased by the addition of public support for associated Medicare/Medicaid programs, Further, neither SSA nor the VR system has experienced notable success in returning beneficiaries to the labor force. The VR system, while accepting SSI/SSDI beneficiaries for services at a proportionally higher rate than nonbeneficiaries, typically has less success with this group, that is, relatively fewer SSI/SSDI beneficiaries than nonbeneficiaries achieve an employment outcome as a result of VR services.

One of the major changes in the employment sector over the past three decades is the diversification of the laborforce. Workers with disabilities are among the previously underrepresented groups entering the labor market in increasing numbers with raised expectations and legal protections for equal opportunity in employment. Even within the disability community, there is great diversity in the subgroups who have obtained or desire employment. It is very important that future research and service programs demonstrate, in their design and implementation, appropriate sensitivity to and adequate representation of the range of cultural and disability subgroups. This issue should be examined not merely as a response to the current consciousness about multiculturalism but because the basic, implicit foundations of vocational rehabilitation counseling were developed for a clientele that, in terms of demographic characteristics, work-related experience, and service needs, was quite different from today's rehabilitation customers. Specifically, vocational rehabilitation techniques were originally imported from the earlier established disciplines of secondary vocational education and college counseling psychology. Recipients of services from these disciplines tended to have mainstream acculturation and tolerance for the competitive standards, verbal testing, and guidance common in academic environments. Given the cognitively compromised or socially disadvantaged status of many of today's clients, additional scrutiny of the appropriateness and adequacy of the strategies and tools for vocational rehabilitation assessment, counseling, and training is imperative. Rehabilitation counselors need new marketing strategies to reach out to prospective employers to develop job opportunities for this diverse population of persons with disabilities.

*Community-Based Employment Services*

NIDRR's research agenda concerning employment addresses, but is not limited to, the State-Federal VR program administered by NIDRR's sister agency, the Rehabilitation Services Administration (RSA). While the VR program plays an important role, there is wide range of other Federal, State, and local funding sources for, and providers of, employment programs. These include approximately 7,000 community-based rehabilitation programs (CRPs), which serve about 800,000 persons daily, and are funded by VR and/or such diverse sources as the Job Training Partnership Act (JTPA), Worker's Compensation, or private insurance. Legislation such as the Workforce Investment Act and the Workforce Consolidation Act further diversifies the sources of support.

The role of community rehabilitation programs in the overall service delivery system may be enhanced even further if Federal employment programs devolve to States and communities and if the intent to increase consumer choice in the selection of service providers becomes more widely implemented. To respond to these developments, community rehabilitation programs must be prepared to offer a full range of vocational services to an increasingly heterogenerous consumer population. Moreover, as return-to-work programs that base provider payments on

successful consumer outcomes are implemented, new relationships between service providers and funding sources may emerge over the next few years. These new relationships will require that community rehabilitation programs adapt their current structure and operations in significant ways.

A number of questions about how these changes may potentially influence and impact the service delivery of community rehabilitation programs are yet unanswered. For instance, the efficacy of different models designed to maximize competitive employment outcomes for persons with significant disabilities or with specific types of disabilities is unknown. In addition, the impact of consumer choice on service delivery models is unknown. Finally, whether new funding mechanisms will promote increased competition and innovation in service delivery by community rehabilitation programs is a major question. Gaining knowledge in these important areas will allow validation of the assumptions upon which pending reforms are predicated, and the shaping of the future direction of initiatives to increase the numbers of persons with significant disabilities who obtain and retain meaningful employment.

*Employer Roles and Workplace Supports*

Employers play a key role in deciding employment outcomes for disabled persons through establishment of policies for recruitment, screening, hiring, training, promoting, accommodating, and retaining disabled individuals in the workforce. The provisions of Title I of the ADA prohibit discrimination against qualified job applicants with disabilities. Applicants are considered qualified if they can perform the essential functions of a job with or without reasonable accommodations. This statute creates duties for employers by requiring them to make the employment process accessible, provide reasonable accommodations, and focus on essential functions of jobs. These employer responsibilities cover all aspects of the pre-employment and post-employment phases. Through the requirements of Workers' Compensation laws, bargaining unit agreements, and insurance provisions, employers have additional obligations to employees who become disabled.

Strategies to assist employers in meeting workplace obligations include disability management and workplace supports. Disability management is a term used to describe an array of support mechanisms and benefits that employers use to maintain employment for disabled workers. Workplace supports are programs or interventions provided in the workplace to enable persons with disabilities to be successful in securing and maintaining employment. Technology can play a major role in making workplaces accessible and in enabling individuals with disabilities to complete work tasks by adapting tools and processes. Ergonomics, universal design, and assistive technology devices are all strategies to enhance workplace performance. Typical supports include accommodations such as job restructuring, worksite adaptations, and improved accessibility. Supported employment is a specific approach to improve employment outcomes for some persons with disabilities, usually involving a job coach employed by a rehabilitation service provider to provide on-the-job assistance.

*Transition From School to Work*

NIDRR, along with RSA, OSEP, and the Department of Education as a whole, has a particular interest in the process by which disabled students transition into a world of productive work, as opposed to settling into a lifetime of dependency. This is a critical concern because the transition period presents a distinct opportunity to help students embark on a career, thus enhancing their community integration, independence, and quality of life. The transition into work occurs at many points: prevocational experiences, on-the-job training, secondary vocational education or other secondary education programs, and postsecondary education at technical institutions, community colleges, or universities. These various transition points present opportunities for research on strategies for success in transferring from a learning environment to a work environment.

Research is ongoing regarding issues of postsecondary education for persons with disabilities. This research shows that youth with disabilities face tremendous difficulties in accessing postsecondary education and making the transition from school to work. Most of the Nation's institutions of higher education offer support services to students with disabilities; however, this is less certain for other types of postsecondary schools. When offered, services vary widely and may include customized academic accommodation, adaptive equipment, case management and coordination, advocacy, and counseling. A number of issues have been raised in relation to delivery of these services. Among these are issues of disclosure, accessibility of a range of services, and extent and type of transition services needed to move from school to work.

*Directions of Future Employment-Related Research*

Given the magnitude of changes in the nature and structure of the world of work and possible changes in the characteristics of the disabled population, NIDRR's employment-related research agenda for the next five years must extend beyond prior research efforts to discover mechanisms that will make the labor market more amenable to full employment for persons with disabilities. That research agenda must incorporate economic research, service delivery research, and policy research, and most importantly, must relate to the context in which employment outcomes are determined. Among the key policy issues that will affect the evolution of this agenda are SSA reform; restructured funding and payment mechanisms, including the use of vouchers; the impact of workforce consolidation; radical restructuring of employment training services at State and local levels; employment-related needs of unserved and underserved groups; linkage of health insurance benefits to either jobs or benefit programs; and transition from school to work among youth with disabilities.

An important focus for research will be changes in the environment (e.g., in the workplace, information technology, and telecommunications and transportation systems) that will make work more accessible, along with strategies for assisting individuals to achieve both the skill levels and the flexibility required for full labor force participation in the 21st century. Finally, as a departure from NIDRR's historical emphasis on the service system and the quality of services, the agenda calls for examination of economic issues (including benefits and costs of various incentive plans) associated with employment of persons with disabilities, labor force projections and analyses, and an increased understanding of employer roles, perspectives, and motivational systems.

The purpose of NIDRR's research in the area of employment is to:

(1) Assess the impact of economic policy and labor market trends on the employment outcomes of persons with disabilities;

(2) Improve the effectiveness of community-based employment service programs;

(3) Improve the effectiveness of State employment service systems;

(4) Evaluate the contribution of employer practices and workplace

supports to the employment outcomes of persons with disabilities; and

(5) Improve school-to-work transition outcomes.

*Research Priorities for Employment Economic Policy and Labor Market Trends*

As noted earlier in this chapter, NIDRR recognizes that the impact of macroeconomics trends on employment of persons with disabilities, and public policy responses to these trends is a large and complex topic, one that will require increased policy research attention in the next 5 to 10 years. A coordinated research effort must examine such labor market demand issues as the changing structure of the workforce, skill requirements, and recruitment channels, in addition to issues on the supply side such as job preparation and skills, competencies, demographics, and incentives and disincentives to work. Specific research priorities include:

(1) Analysis of the implications for employment outcomes of cross-agency and multiagency developments and initiatives, including welfare reform, workforce consolidation, SSA reform, Medicare/Medicaid changes, The Department of Education-Department of Labor school-to-work program, and Executive Order No. 13078 (1998);

(2) Analysis of the dissonance between the ADA concept of ''essential elements'' of a job and the new employer emphasis on core competencies, flexibility, and work teams and the impact on job acquisition and retention; and

(3) Analysis of the impact of labor market changes on employment of persons with disabilities, including alternative employment arrangements such as small business entrepreneurship, self-employment, telecommuting, part-time work, and contractual work.

Community-Based Employment Service Programs

Proposed restructuring of the financing of employment-related services for individuals with disabilities posits a major role for new or different service delivery arrangements. The capacity of the existing provider system, represented in part by the 7,000 community-based rehabilitation programs (CRPs) in the nation, to assume this role requires thorough investigation. Specific research priorities include:

(1) Evaluation of provisions for accountability and control and protections for difficult-to-serve individuals; analysis of the cost and benefit of services, and measurement of the quality of employment outcomes for consumers with disabilities;

(2) Analysis of the extent to which services that CRPs deliver to VR consumers (about one-third of services received by VR consumers come from CRPs) differ in quality, quantity, costs, or outcomes from those provided to consumers of other financing systems (e.g., Workers' Compensation or private insurance); and

(3) Evaluation of the potential of this community-based employment system to assume greater responsibility for service delivery under block grants, in consolidation into umbrella agencies, and in ''one-stop shop'' service configurations.

State Service Systems

Amendments to the Rehabilitation Act in 1992 and 1998 called for a number of management and service delivery changes in the State-Federal VR program. These include expanded consumer choice regarding vocational goals, services, and service providers; implementation of performance standards and indicators to ensure accountability and improvement in the system; a greater role for consumer direction through the vehicle of State Rehabilitation Advisory Councils; and changes in the eligibility determination process that include presumptive eligibility and order of selection procedures, among others. Order of selection requires that individuals with the most significant disabilities receive priority for services, significantly altering the characteristics of VR clientele. Specific research priorities include:

(1) Analysis of the impact of management and service delivery changes in the State-Federal VR program on the quality and outcomes of VR services;

(2) Evaluation of the impact of professionalization of the rehabilitation counselor workforce;

(3) Assessment of the efficacy of various methods of case management;

(4) Development and evaluation of outcome measures for VR consumers under one-stop configurations;

(5) Identification and evaluation of marketing strategies to assist VR counselors in helping persons with disabilities obtain jobs in a variety of employer settings;

(6) Assessment of interagency coordination in delivery of services to multiagency consumers;

(7) Assessment of the outcomes of small business entrepreneurship and self-employment as strategies to improve outcomes for vocational rehabilitation clients; and

(8) Assessment of the applicability of traditional VR approaches for minority and new universe populations.

Employer and Workplace Issues

One area that has received insufficient attention in past research is the workplace, including both the physical environment (as represented by job site accommodations, technological aids, and the like) and the ''social environment'' comprising roles of co-workers, supervisors, and employers. Specific research priorities include:

(1) Investigation of employer hiring and promotion practices;

(2) Evaluation of models of collaboration between rehabilitation professionals and employers;

(3) Development and evaluation of cost-effective strategies for improving the receptivity of the workplace environment to workers with disabilities;

(4) Development and evaluation of strategies for encouraging employers to hire disabled workers (e.g., tax credits, arrangements regarding partial support for medical benefits);

(5) Evaluation of the impact of new structures of work, including telecommuting, flexible hours, and self-employment on employment outcomes;

(6) Identification and evaluation of disability management practices by which employers can assist workers who acquire, or aggravate disabilities to remain employed, transfer employment, or remain in the workforce and out of public benefit programs; and

(7) Analysis of the role and potential of the ADA in increasing job opportunities.

School-to-Work Transition

Moving into employment from educational institutionals is one of the most important transitions that people make during their lifetimes. The academic levels at which transitions to the labor market occur include secondary school, secondary school completion, and completion of some level of post-secondary education. In recent years, the U.S. Departments of Education and Labor have collaborated to support the development of state and local systems whose broad mission is to prepare youth for success in the global marketplace. Specific research priorities include:

(1) Determination of the impact of these state and local educational system initiatives on work opportunities for the Nation's youth with disabilities;

(2) Evaluation of the extent to which school reform initiatives, such as

academic-vocational integration, Tech Prep, career academies, work-based learning, and rigorous preparation in terms of critical thinking and communication skills, and accessible to and effective with youth who have disabilities;

(3) Identification of systemic and environmental barriers to full labor force participation;

(4) Assessment of whether innovations in school-to-work practices are accessible to youth with disabilities, and determination of the impact of these practices on employment outcomes; and

(5) Assessment of the efficacy of employment and transition services for youth from diverse backgrounds and new disability groups.

Future employment research will provide information to develop new VR approaches for helping disabled individuals become competitive in the changing, global labor market. These new methods will focus on provision of culturally relevant services for clients, and the application of accommodation in the workplace.

**Chapter 4: Health and Function**

''To be healthy does not mean to be free of disease; it means that you can function, do what you want to do, and become what you want to become'' (Rene Jules Dubos, 1901–1982).

*Overview*

Maximizing health and function is critical to maintaining independence for persons with disabilities. Health care for persons with disabilities encompasses access to care for routine health problems, participation in health promotion and wellness activities, and access to appropriate specialty care, including medical rehabilitation. Medical rehabilitation is the systematic application of modalities, therapies, and techniques to restore, improve, or replace impaired human functioning. It also encompasses biomedical engineering, that is, the use of engineering principles and techniques and biological knowledge to advance the functional ability of persons with disabilities.

Health care and medical rehabilitation services operate largely within the constraints imposed by market forces and government regulations. In recent years, significant changes have occurred in health care delivery and reimbursement. Various forms of managed care have become the predominant mode of organizing and delivering health care in much of the private sector. Medicaid and Medicare also have adopted managed care strategies for providing health care to many recipients. In theory, managed care uses case coordination to contain costs by limiting access to ''unnecessary'' health care, particularly specialty services and hospitalization. Individuals with disabilities have expressed concern that managed care approaches may limit their access to medical rehabilitation specialists, goods, and services. In addition to a market-driven shift to managed care, other related changes have occurred, including shortened periods of stay in inpatient rehabilitation facilities and the emergence of subacute rehabilitation providers. Considerable consolidation also has occurred within the medical rehabilitation industry and has further affected the availability and delivery of services. There also has been a new emphasis on developing performance measures that incorporate concepts of quality, functional outcomes, and consumer satisfaction. These measures are being used to guide purchasing and accrediting decisions within the health care system.

During the next five years, NIDRR plans to fund research in a number of broad areas that link health status and functional outcomes to health care and medical rehabilitation. In addition, NIDRR will support research to continue development of new treatments and delivery mechanisms to meet the rehabilitation, functional restoration, and health maintenance needs of individuals with disabilities. This research will occur at the individual and the delivery system levels. In this section, the discussion of general health care and medical rehabilitation will address issues at both levels.

*Health Care*

The goal of health care for individuals with disabilities is attaining and maintaining health and decreasing rates of occurrence of secondary conditions of disability. Individuals with disabilities use more health care services, accumulate more hospital days, and incur higher per capita medical expenditures than do nondisabled persons. Persons with no activity limitations reported approximately four physician contacts per year; this figure was doubled for those who had some activity limitation, was five times as high for those unable to perform major life activities, and was seven times as great for those needing help with instrumental activities of daily living (IADLs) (LaPlante, 1993). Understanding the relationship between disability and health has implications for the public health agenda and the application of primary disease prevention strategies to the health of persons with disabilities.

In the past, the health needs of persons with disabilities often have been conflated with medical rehabilitation needs. The recognition that persons with disabilities require routine health care or access to health maintenance and wellness services is relatively new. How best to meet these needs requires substantial new research. At the individual level, persons with disabilities need providers and interventions that focus on their overall health, taking disability and environmental factors into consideration. Concern about the health of the whole person is the focus at this level, in recognition that an individual is more than a disability and deserves access to the health services generally available to the nondisabled population. At the system level, study of the organization and financing of health services must include analysis of impacts on persons with disabilities. Ameliorating the primary condition, preventing secondary conditions and co-morbidities, maximizing independence and community integration, and examining the impact of physical barriers and societal attitudes on access to health and medical rehabilitation services are critical issues at each level of focus.

Health Care at the Individual Level

Although persons with disabilities have higher health care utilization rates than the general population, having a disability does not mean that a person is ill. People with disabilities increasingly are demanding information about and access to programs and services aimed at promoting their overall health, including access to routine health care, preventive care, and wellness activities. This includes primary care and, for women, access to gynecological care. For children, this means access to appropriate pediatric care. In clinical settings, these demands require development of disability-sensitive protocols for proper nutrition, exercise, health screening, and treatment of nondisability-related illnesses and conditions. NIDRR is committed to supporting research to improve the overall health of persons with disabilities.

Health Care at the Systems Level

Persons with disabilities must have access to, and satisfaction with, an integrated continuum of health care services, including primary care and health maintenance services, specialty care, medical rehabilitation, long-term care, and health promotion programs.

Models for organizing, delivering, and financing these services must accommodate an overall health care system that is undergoing tremendous change. Issues of gatekeeper roles, carve-outs, risk-adjusted rate-setting, and service mix are factors for assessment in a context of managed care approaches that balance care coordination with cost control strategies. At issue for all people is whether cost control strategies result in barriers to needed care; and, for persons with disabilities, whether access to specialty care, particularly medical rehabilitation services, is limited. In the current cost-cutting and restrictive climate, it is important to assure that new service configurations preserve equity for persons with disabilities by providing for their unique needs.

*Medical Rehabilitation*

Medical rehabilitation addresses both the primary disability and secondary conditions evolving from the initial impairment or disability. Medical rehabilitation also teaches the individual to overcome the barriers in the environment. Medical rehabilitation includes medical and bioengineering interventions, therapeutic modalities, and community and family interventions.

Medical rehabilitation frequently is associated with physical disabilities such a musculoskeletal or neuromuscular impairments or limitations in mobility or manipulation. However, medical rehabilitation provides interventions to improve or manage sensory, cognitive, or mental health functioning, pain, or fatigue, and includes rehabilitation dentistry and maxillofacial prosthodontics. Specialist and allied health personnel from a broad range of disciplines may be involved in the provision of medical rehabilitation services.

Medical Rehabilitation at the Individual Level

NIDRR-funded research has improved medical rehabilitation treatment in areas such as spinal cord injury, traumatic brain injury, stroke, and other leading causes of disability. This research must be expanded to include emerging disabilities. Of special concern are new causes of disability such as violence, which has emerged in recent years as a significant precipitator for new disability conditions. In addition, future medical rehabilitation research must be sensitive to cultural difference and must recognize the impact of an individual's environment on functional outcomes. Another important research focus will be examining how technological improvements enhance the ability of biomedical engineering to help people with disabilities regain, maintain, or replace functional ability.

Additionally, an urgent need exists for the development of more effective outcomes measurement tools to test the usefulness of new medical rehabilitation interventions and products. These measurement tools must assess the individual's response to medical rehabilitation interventions and account for technology that enhances mobility, independence, and quality of life. Outcomes must be measured not just for the duration of treatment but also over the long term.

A major medical rehabilitation issue is the prevention and treatment of secondary conditions. Secondary conditions result directly from the primary disabling conditions and may have significant effects on the health and function of persons with disabilities. Examples of secondary conditions may include depression, bladder and skin problems, respiratory problems, chronic pain, contractures or spasticity, fatigue, join deterioration, or memory loss. Other health conditions such as cardiac problems, autoimmune diseases, obesity, or cancer may not always derive directly from the original disability, but may require special preventive efforts or care interventions because of a preexisting disability.

Medical Rehabilitation at the Systems Level

Cost containment strategies inherent in managed care may constrain access to medical rehabilitation. Thus, it is more important than ever to demonstrate the cost effectiveness of treatments. Research on medical rehabilitation outcomes is critical to establishing the need for, and assuring access to, medical rehabilitation within the health care delivery system. Previously, NIDRR has initiated research activities to develop methods for measuring function and assessing rehabilitation outcomes, and for measuring the cost and effectiveness of various rehabilitation modalities and delivery mechanisms. These areas will continue to be important foci to NIDRR's future medical research program. Research must continue to assess the impact of changes at the system level on the rehabilitation outcomes of individuals. In addition, providing care in nonacute settings requires development of additional capacity that includes training practitioners for more independent work in community. NIDRR research must contribute to building this new capacity.

The purpose of NIDRR's research in the area of health care and medical rehabilitation is to:

(1) Identify and evaluate effective models of health care for persons with disabilities;

(2) Develop models to promote health and wellness for persons with disabilities;

(3) Examine the impact of changes in the health care delivery system on access to care;

(4) Evaluate medical rehabilitation interventions that maximize physical, cognitive, sensory, and emotional function for individuals with disabilities, taking into account aging, environment, emerging disabilities, and changes in the health services delivery system;

(5) Identify an evaluate medical rehabilitation interventions that will help disabled individuals maintain health, through prevention and amelioration of secondary conditions and co-morbidities, and through education;

(6) Improve delivery of medical rehabilitation services to persons with disabilities; and

(7) Evaluate the health and medical rehabilitation needs of persons whose impairments are attributed to newly recognized causes or whose conditions are becoming recognized as disabilities, for example, disability resulting from interpersonal violence or ''emergent'' chronic diseases such as childhood asthma or chronic fatigue immune deficiency syndrome.

*Future Research Priorities for Health Care and Medical Rehabilitation Research on Effective Methods of Providing a Continuum of Care, Including Primary Care and Long-Term Care, to Persons With Disabilities*

In recent years, a number of different models of providing routine health care for persons with disabilities have emerged. For example, there are medical rehabilitation programs that have developed primary care clinics; and there are other programs where primary care providers have added medical rehabilitation consultants to advise them on care of persons with disabilities. The efficacy of these models is not yet known, especially their impact on the overall well-being of their consumers. There has been some research on long-term care models, especially those that provide community-based services, including personal assistance; however, research questions remain regarding optimal models of long-term care. Specific priorities include:

(1) Identification of effective models of primary and long-term care across disability populations including emerging disability groups;

(2) Evaluation of the impact of primary and long-term care service delivery models on independence, community integration, and overall health outcomes, including occurrence of secondary conditions and co-morbidities; and

(3) Collection and analysis of longitudinal data on health care utilization by persons with disabilities, to identify trends, outcomes, and consumer satisfaction.

*Research on Application of Wellness and Health Promotion Strategies*

NIDRR will support research to develop wellness and health promotion strategies, incorporating all disability types and all age groups. Specific research priorities include:

(1) Identification and evaluation of models to promote health and wellness for persons with disabilities in mainstream settings where possible. These will include nutrition, exercise, disease prevention, and other health promotion strategies. A particular focus will be placed on prevention and treatment of secondary conditions and on the needs of emerging disability populations, including persons aging with a disability;

(2) Evaluation of the impact of health status on independence, community integration, quality of life, and health care expenditures; and

(3) Development of guidelines that establish protocols for reaching or maintaining appropriate levels of fitness for persons with varying functional abilities.

*Research on the Impact of the Evolving Health Service Delivery System on Access to Health and Medical Rehabilitation Services*

NIDRR anticipates that the health service delivery system will continue to evolve as the marketplace responds to rising costs and as policymakers respond to public concerns about access to care. Specific research priorities include:

(1) Evaluation of the impact of changes at the health system level, for example, financing and regulatory changes, on access to the continuum of health care services, including medical rehabilitation; and

(2) Evaluation of the impact of triage and case management strategies on health status and rehabilitation outcomes.

*Research on Trauma Rehabilitation*

Research to improve the restoration and successful community living of individuals with burns and neurotrauma such as spinal cord injury, brain injury, and stroke, has long been an important component of NIDRR's program. Specific research priorities include:

(1) Identification of methods to minimize neurological damage, improve behavioral outcomes, and enhance cognitive abilities; and

(2) Identification of effective collaborative research opportunities, including those using data generated by the model systems.

*Research on Progressive and Degenerative Disease Rehabilitation*

Research to maintain and restore function and independent lifestyles for individuals with multiple sclerosis, arthritis, and neuromuscular diseases is a key element of medical rehabilitation research. Specific research priorities include:

(1) Identification and evaluation of methods to maintain function for persons with these conditions;

(2) Identification of effective health promotion strategies;

(3) Evaluation of strategies to minimize the impact of secondary conditions; and

(4) Development and evaluation of health care and rehabilitation medicine supports to facilitate community integration and independent living outcomes.

*Research on Birth Anomalies and Sequelae of Diseases and Injuries*

Medical and technological interventions to maintain and restore function in persons with cerebral palsy, spina bifida, post-polio syndrome, and other long-standing conditions are an important part of rehabilitation. Specific research priorities include:

(1) Development and evaluation of physical therapy techniques, respiratory management techniques, exercise regimens, and other rehabilitative interventions aimed at maximizing functional independence

(2) Development and evaluation of supports to facilitate community integration and independent living outcomes, and;

(3) Investigation of factors that lead to disability and loss of full participation in society following disease or injury.

*Research on Secondary Conditions*

Prevention and treatment of secondary conditions are critical to preserving health and containing health care costs of persons with disabilities. Specific research priorities include:

(1) Development of clinical guidelines to identify at-risk individuals and to involve consumers in regimens to prevent secondary conditions;

(2) Identification and evaluation of methods of preventing and treating secondary conditions across impairment categories; and

(3) Investigation of the interaction among secondary conditions, impairments, and aging.

*Research on Emergent Disabilities*

Explorations of the impact of disabilities resulting from new causes or expanding disability definitions will be of increasing significance to rehabilitation medicine. Emergent conditions may include such things as environmental illnesses, repetitive motion syndromes, autoimmune deficiencies, and psychosocial and behavioral conditions related to poverty and violence. Specific research priorities include:

(1) Identification and evaluation of the need for health and medical rehabilitation services to address emerging disability conditions;

(2) Identification and evaluation of effective models by which health and medical rehabilitation providers can meet the needs of persons with emerging disabilities; and‘

(3) Development of models to predict future emerging disability populations.

*Research on aging with a Disability*

Advances in acute medical care for persons with disabilities means that, as the population ages, many disabled persons will live longer and may develop the serious, chronic conditions common to many aging populations. Examples of these chronic conditions include heart disease, diabetes, cancer, pulmonary diseases, arthritis, and sensory losses. Specific research priorities include:

(1) Determination of the implications of aging with a disability on access to routine health care, medical rehabilitation services, and services that support community integration;

(2) Investigation of the impact of aging on disabilities and the impact of various disabilities on the aging process;

(3) Investigation of the relationship between age related disability and employment; and

(4) Analysis of the effect of longer lifespan on the durability and effectiveness of previously demonstrated interventions and technologies.

*Research on Rehabilitation Outcomes*

NIDRR's prior research efforts have developed new rehabilitation techniques for a number of disability groupings and also have developed and tested comprehensive model systems, home and community-based services, and peer services to improve rehabilitation outcomes. With the renewed emphasis on performance and outcomes and with increasing economic constraints generated by changes in the health services delivery system, rehabilitation medicine needs to document the impact of its services. Specific research priorities include:

(1) Expansion of outcomes evaluation approaches, beyond short-term rehabilitation studies, to include outpatient and long-term follow-up information;

(2) Development of outcomes measures that include measures of environmental barriers;

(3) Evaluation of methods that translate outcomes findings into quality improvement strategies;

(4) Analysis of barriers and incentives to consistent use of health and medical rehabilitation outcomes measures in payer and consumer choice models; and

(5) Refinement of measures of rehabilitation effectiveness.

*Research on Changes in the Medical Rehabilitation Industry*

The medical rehabilitation industry is undergoing an unprecedented level of consolidation, with unknown consequences for access and flexibility. The industry has undergone significant changes in service sites with the move from inpatient to post-acute, outpatient, and community-based services. Outcomes measurement and quality assurance initiatives are increasingly used in evaluating medical rehabilitation services. Specific research priorities include:

(1) Investigation of the impact of financing and other market forces on the medical rehabilitation industry, including service delivery patterns and treatment modalities; and

(2) Identification and evaluation of the impact of changes at the medical rehabilitation industry level on access and outcomes for persons with disabilities.

A major research challenge will be to integrate research on the efficacy of interventions to improve outcomes with research on the impact of changes in the health care delivery system. A second overarching objective will be to relate medical rehabilitation and health care research to other changes, including the new paradigm of disability, the emerging universe of disability, and participatory research by persons with disabilities.

**Chapter 5: Technology for Access and Function**

''For Americans without disabilities, technology makes things easier. For Americans with disabilities, technology makes things possible'' (Mary Pat Radabaugh, 1988).

*Overview*

Technology has been defined as the system by which a society provides its members with developments from science that have practical use in everyday life. Today, technology plays a vital role in the lives of millions of disabled and older Americans. Each day, people with significant disabilities use the products of two generations of research in rehabilitation and biomedical engineering to achieve and maintain maximum physical function, to live in their own homes, to study and learn, to attain gainful employment, and to participate in and contribute to society in meaningful and resourceful ways. It is more than coincidence that these remarkable advances have occurred during the period in which Federal funds have supported research, development, and training in rehabilitation engineering.

In planning the future of rehabilitation engineering research, NIDRR and its constituents in the consumer, service, research, and business communities will continue to identify flexible strategies to address emerging issues and technologies, to promote widespread use of research findings, and to maximize the impact of NIDRR programs on the lives of persons with disabilities. NIDRR is particularly well positioned to continue its leadership in rehabilitation engineering research, since NIDRR locates rehabilitation engineering research on a continuum that includes related medical, clinical, and public policy research; vocational rehabilitation and independent living research; research training programs; service delivery infrastructure projects; and extensive consumer participation.

The Institute supports engineering research on technology for individuals and on systems technology. For example, NIDRR has supported hearing aid and wheelchair research on the individual level, and telecommunications, transportation, and built environment research at the systems or public technology level. NIDRR also supports research on ergonomics and other interface problems related to the compatibility of various technologies, such as hearing aids and cellular telephones.

Technological innovations benefit the individual at the individual level and at the systems level. At the individual level, assistive technology enhances functions and at the systems, or public technology level, technology provides access that enhances community integration and equal opportunity. Much of the assistive technology for disabled individuals falls into the category of ''orphan'' technology because of limited markets; frequently this technology is developed, produced, and distributed by small businesses. Often, technology on the systems level involves large markets and large businesses. Access to technology can be increased by incorporating principles of universal design into the built environment, information technology and telecommunications, consumer products, and transportation.

*Assistive Technology for Individuals*

In 1990, more than 13.1 million Americans, about 5 percent of the population, were using assistive technology devices to accommodate physical impairments, and 7.1 million persons, nearly 3 percent of the population, were living in homes specially adapted to accommodate impairments. While the majority of persons who use assistive technology are elderly, children and young adults use a significant proportion of the devices, such as foot braces, artificial arms or hands, adapted typewriters or computers, and leg braces (LaPlante, Hendershot, & Moss, 1992)

Assistive technology includes devices that are technologically complex, involving sophisticated materials and requiring precise operations—often referred to as ''high tech''—and those that are simple, inexpensive, and made from easily available materials—commonly referred to as ''low tech.'' Scientific research in both high tech and low tech areas will serve the consumer need for practical items that are readily available and easily used. Low-tech devices, for example, are widely used by older persons with disabilities to compensate for age-related functional losses. The importance of the development of both types of assistive technologies is found in the words of one engineer who stated, ''it is not high tech or low tech that is the issue; it is the right tech.'' NIDRR research must be able to identify the most appropriate technological approach for a given application, and continue to develop low tech as well as high tech solutions.

Given the current trend toward more restrictive utilization of health care

funds in both public and private sectors, rehabilitation engineering research must justify consumer or third party costs in relation to the benefits generated for consumers. These benefits may be in the form of long-term cost savings and consumer satisfaction. Equally important, rehabilitation engineers must develop products that are, in addition to being safe and durable, marketable and affordable. End-product affordability is important not only in meeting consumer needs but also in creating the market demand that will encourage manufacturers to enter production.

*Systems Technology: Universal Design and Accessibility*

As disabled persons enter the mainstream of society, the range of engineering research has broadened to encompass medical technology, technology for increased function, technology that interfaces between the individual and mainstream technology, and finally, public and systems technology. Key concepts of universal design are interchangeability, compatibility of components, modularity, simplification, and accommodations of a broad range of human performance capabilities. Universal design principles can be applied to the built environment, information technology and telecommunications, transportation, and consumer products. These technological systems are basic to community integration, education, employment, health, and economic development. The application of universal design principles during the research and development stage would incorporate the widest range of human performance into technological systems. Universal design applications may result in the avoidance of costly retrofitting of systems in use and possible reduction in need for orphan products.

*Technology Transfer*

The Institute's emphasis on applied research challenges NIDRR and its researchers to find effective ways of ensuring technology transfer—transfer of ideas, designs, prototypes, or products, from the basic to the applied research environment, to the market, and to other research endeavors. Market size, the potential for manufacturability, intellectual property rights, patents, and regulatory approval are considerations in the conceptualization and design phase of research efforts. NIDRR-funded Rehabilitation Engineering Research Centers (RERCs) consider potential industry partners in selecting research projects that will result in marketable products.

Issues of orphan technology are key to the process of technology transfer, with small markets that have limited capital occasioning the need for subsidies, guaranteed financing for purchases, or other incentives for producers. Future technology transfer efforts at NIDRR will explore better linkages to the Small Business Innovative Research (SBIR) program, a government-wide program intended to support small business innovative research that results in commercial products or services that benefit the public. Innovativeness and probability of commercial success are both important factors in SBIR funding decisions.

*Building a Research Agenda*

Future rehabilitation engineering research agendas must incorporate several cross-cutting issues, including small markets, and outcomes measures. In addition, research must continue to result in improvements in the functional capacities of individuals with sensory, mobility, and manipulation impairments. Telecommunications and computer access offer significant potential to improve participation of persons with disabilities in all facets of life. Continuous innovations in these areas require that the needs of persons with various disabilities be recognized and accommodated. Finally, access to the built-environment remains a critical need for persons with disabilities, and thus requires ongoing research.

The purpose of NIDRR's research in the area of technology is to:

(1) Develop assistive technology that supports persons with disabilities to function and live independently and obtain better employment outcomes;

(2) Develop biomedical engineering innovations to improve function of persons with disabilities;

(3) Promote the concept and application of universal design;

(4) Remove barriers and improve access in the built environment;

(5) Ensure access of disabled persons to telecommunications and information technology, including through the application of universal design principles;

(6) Ensure the transfer of technological developments to other research sectors, to production, and to the marketplace;

(7) Identify business incentives for manufacturers and distributors;

(8) Identify the best methods of making technology available to persons with disabilities;

(9) Ensure that research and development at both the personal and systems levels takes into account cultural relevance for diverse ethnic and geographic populations;

(10) Develop rehabilitation engineering science, including a theoretical framework to advance empirical research; and

(11) Raise the visibility of engineering and technological research for persons with disabilities as a consideration in national science and technology policy.

*Future Research Priorities for Technology*

NIDRR's research priorities in engineering and technology will help improve functional outcomes and access to systems technology in the areas of sensory function, mobility, manipulation, information communication, and the built environment, and promote business involvement and collaboration.

Research to Improve or Substitute for Sensory Functioning

Sensory research is directed toward the problems faced by individuals who have significant visual, hearing, or communication impairments. These major conditions have been the focus of a long tradition of engineering research emphasizing both expressive communication and the receipt of information. Research priorities in the area of sensory functioning will focus on enhancing hearing, addressing visual impairments, and accommodating communication disorders. In the area of hearing impairments, specific research priorities include:

(1) Development and evaluation of hearing aids that exploit the potential of digital technology, use advanced signal processing techniques to enhance speech intelligibility, attain a better fit, and ensure compatibility with telecommunications systems and information technology;

(2) Evaluation of the application of digital processing techniques to assistive listening systems;

(3) Evaluation of modern methods of sound recognition in alerting devices; and

(4) Development of interfaces for assessment of automatic speech recognition systems.

In the area of vision impairments, specific research priorities include:

(1) Identification and evaluation of methods to enhance accessibility of visual displays;

(2) Development and evaluation of graphical user interface technologies for various document and graphic processing systems; and

(3) Improvement of signage in public facilities.

In the area of communication impairments, specific research priorities include:

(1) Identification and evaluation of technologies to enhance the communication abilities of persons who are deaf-blind; and

(2) Assessment of the capacity of research in cognitive science, artificial intelligence, biomechanics, and human/computer interaction to improve the rate, fluency, and use of communication aids.

Research To Enhance Mobility

Mobility research is directed toward the problems associated with moving from place to place. Mobility can be enhanced by accessible public transportation; modified privately owned vehicles; wheeled mobility devices such as wheelchairs; orthoses, and prostheses; and barrier removal. In the area of enhancing mobility, specific research priorities include:

(1) Development, evaluation, and commercialization of wheelchair designs that reduce user stress, repetitive motion injury, and other secondary disabilities, while improving safety, ease of maintenance, and affordability;

(2) Revision and dissemination of wheelchair standards;

(3) Development and evaluation of techniques to assist consumers and providers in selecting and fitting wheelchairs and wheelchair seating systems;

(4) Identification of a theoretical framework of gait and other aspects of ambulation;

(5) Development and evaluation of advanced prosthetic and orthotic devices, as well as footwear and other ambulation devices;

(6) Development and evaluation of methods to improve person-device interfaces, post-surgical management and fitting, and materials used in bio-engineering applications; and

(7) Development of devices to assist with ADLs for persons with disabilities and their caregivers.

Research To Improve Manipulation Ability

The manipulation area includes research directed toward restoring functional independence for persons with limited or no use of their hands. This encompasses upper extremity prosthetic and orthotic devices, and novel methods of upper extremity rehabilitation. Issues of weight, durability, and reliability remain challenges in this field.

Repetitive motion injury is emerging as one of the most serious problems among workers. While there have been a number of ergonomic devices introduced to address this problem, the incidence of this condition continues to increase. In the area of improvement of manipulation, specific research priorities include:

(1) Identification of methods to improve the design of and achieve multi-functional control for hand/arm prosthetic technology;

(2) Development and evaluation of surgical approaches that increase functionality;

(3) Development of assistive devices to address manipulation issues for individuals who experience serious weakness, fatigue, or pain, including that attributable to progressive deterioration of function; and

(4) Development and evaluation of devices and techniques to minimize the onset of repetitive motion injuries and to rehabilitate those with the condition.

Technology To Enhance Cognitive Function

Limitations in perception, processing information, organizing thoughts, concentration, memory, and decision-making may result from a range of etiologies—including mental retardation, traumatic brain injury, stroke, mental illness, dementia, and others—and may constitute substantial barriers to function and social integration. These barriers can be exacerbated by sophisticated technology interfaces that require memorizing sequences, reading or interpreting information, or responding to complex auditory or visual cues. Conversely, technology has the theoretical potential to simplify many daily activities and contribute to self-management and independence.

There are three distinct levels of objectives in developing technology to meet needs of persons with limitations in cognitive functioning. The first of these is to assure that new technologies for communication, environmental control, and health maintenance, for example, are accessible to those with cognitive limitations and do not exacerbate their exclusion from mainstream activities.

A second objective is to develop technologies that will assist persons with cognitive limitations in the performance of daily activities. Reminders and cueing devices, trackers and wandering devices, and portable instructional technologies are among the approaches to enabling people with cognitive limitations to remember appointments and medications, locate themselves positionally, follow common instructions, or obtain assistance.

A third objective that challenges researchers is the potential to develop technologies that can enhance or restore some cognitive functions. Automated systems to improve memory have been developed and tested, for example. As the fields of cognitive science and neurosciences, create a better understanding of the biology of cognitive functioning, and as there are concomitant advances in artificial intelligence and expert systems and in the flexibility of microprocessors, a new research frontier may emerge.

Specific priorities in the area of technology to address cognitive limitations include:

(1) Assessment of the state-of-the art in technology and its applications to address cognitive functioning;

(2) Assessment of consumer needs and competencies to use various device features;

(3) Development of technologies to improve job skills and improve employment opportunities;

(4) Development of technologies to maximize independence and ability to perform ADLs and IADLs; and

(5) Development of strategies to ensure that new technologies for the general population are accessible to persons with cognitive limitations.

Research To Improve Accessibility of Telecommunications and Information Technology

Computerized information kiosks, public web sites, electronic building directories, transportation fare machines, ATMs, and electronic stores are just some current examples of rapidly proliferating systems that face people living in the modern world. Research priorities will include development and evaluation of techniques to make such computerized information systems accessible to persons with a range of disabilities.

The information technology and telecommunications industry trend away from standardized operating systems and monolithic applications and toward net-based systems, applets, and object-oriented structures has significant implications for accessibility for some persons with disabilities. Maintaining accessibility to the Internet and World Wide Web is also a formidable challenge facing individuals with disability.

Another concern in telecommunications is electromagnetic interference from the rapidly proliferating wireless communications systems, (e.g., beepers, cellular telephones) and other electronic devices using digital circuitry (e.g., computers, fluorescent light controllers). This

interference is complicating the use of assistive listening devices. Moreover, interference caused by over-use of spectrum is presenting problems in the use of FM Assistive Listening systems.

During the past decade, virtual reality techniques, originally developed by NASA and the military for simulation activities, have been applied in a number of other fields, including architecture and health. Applications can be found in telerobotic systems, sign language recognition devices, intelligent home systems, and aids for persons with visual impairments. There has been some beginning research on the use of virtual reality as an evaluation and therapy tool.

Telecommunications also emerges in other important areas of the lives of persons with disabilities. In a managed care approach to health care, individuals are discharged from acute rehabilitation hospitals earlier than in the past. Because of the decreased length of stay, there is less time for consumers to learn how to manage their conditions. One promising option for ameliorating these effects is telemedicine or ''telerehabilitation.'' Telerehabilitation may allow for distance monitoring of chronic conditions and for monitoring consumer compliance and progress.

In the area of telecommunications and information technology, specific research priorities include:

(1) Development and evaluation of fine motor skill manipulation interfaces, telecommunication interfaces, and analog to digital communication technologies;

(2) Identification of methods to address issues of accessibility through Internet communications;

(3) Development and evaluation of methods for reducing merging forms of interference that affect hearing aids, telephones, and other communication devices;

(4) Determination of the efficacy of virtual reality techniques in both rehabilitation medicine and in applications that affect the daily lives of persons with disabilities; and

(5) Identification of appropriate telecommunications strategies for use in distance follow-up to rehabilitation treatment.

Research To Improve Access to the Built Environment

The built environment includes public and private buildings, tools and objects of daily use, and roads and vehicles, any of which can be accessible or disabling. Architects, industrial designers, planners, builders, and engineers are among the professionals that create this environment. In the area of access to the built environment, specific research priorities include:

(1) Analysis of human factors;

(2) Development and evaluation of modular design;

(3) Determination of best methods of disseminating information on universal design;

(4) Development and evaluation of compatible interfaces; and

(5) Development and promulgation of design standards.

Future engineering research also must recognize the changing roles of consumers, whose participation in research is vital, and the role of assistive technology industries, whose technical capabilities and needs for product development and research are changing. Small businesses, the engine of the orphan technology industry, often cannot support sophisticated research and development efforts necessary to bring quality products to market. NIDRR's research can identify public policy issues, such as orphan technology and tax credits, to foster small business investment in assistive technology innovation. Similarly, NIDRR research can identify public policy and business issues related to mainstream systems and public technology. NIDRR will maintain a research capacity that provides a continuing stream of new ideas, and evidence to validate those ideas, to stimulate the industry.

**Chapter 6: Independent Living and Community Integration**

''Whether we have disabilities or not, we will never fully achieve our goals until we establish a culture that focuses the full force of science and democracy on the systematic empowerment of every person to live to his or her full potential'' (Justin Dart, February 1998 (edited) ON A ROLL RADIO, http://www.onarollradio.com).

*Overview*

Independent living and community integration concepts and outcomes are key foci of NIDRR research. Central to independent living is the recognition that each individual has a right to independence that comes from exercising maximal control over his or her life, on an ability and opportunity to make choices in performing everyday activities. These activities include managing one's own life; participating in community life; fulfilling social roles, such as marriage, parenthood, employment, and citizenship; sustaining self-determination; and minimizing physical or psychological dependence on others. While independent living emphasizes maximal independence, whatever the setting, it is, by its vary nature, a concept that also emphasizes participation, especially participation in community settings. For this reason, NIDRR is proposing to integrate its research agenda in independent living and community integration to encourage interdisciplinary thinking about the interrelationship, to achieve more successful outcomes for persons with disabilities, and to foster the development of innovative methods to achieve these outcomes and to measure the achievements.

*Independent Living and Community Integration Concepts*

One framework for formulating this research agenda recognizes that independent living has been used to describe a philosophy, a movement, and a service program. At a philosophical level, independent living addresses the question of equity in the right to participate in society and share in the opportunities, risks, and rewards available to all citizens. It provides a belief system to a generation of people with disabilities. The new paradigm of disability is an outgrowth of this philosophical concept of equity, bringing social and environmental elements to the meaning of disability.

At a movement level, independent living has been integral to the development of the disability rights movement. This movement primarily has used a civil rights approach to demand equal access for persons with disabilities, leading most notably to the passage of the Americans with Disabilities Act (ADA) in 1990. These movement activities have had a significant impact on disability policy and will continue to be examined as part of NIDRR's Disability Studies funding.

At the service system level, more than 300 centers for independent living receive funding under the Rehabilitation Act and these centers foster and enhance independent living for persons with disabilities. In addition, both Federal and State funds support community-based residences for members of the developmentally disabled community as well as members of other disability groups. In the past NIDRR has supported research to develop management strategies for these centers.

Community integration also has conceptual, movement, and service delivery components. As a concept, it incorporates ideas of both place and participation, in that community integration means not only that a person

is physically located in a community as opposed to an institutional setting, but that the individual participates in community activities. Issues of consumer direction and control also are integral to concepts of community integration.

As a movement, community integration had a primary goal of deinstitutionalization of persons with mental retardation or mental illness and has succeeded in moving many individuals from large institutional settings back into the community. The deinstitutionalization movement arose from a confluence of consumer advocacy, judicial decisions, research efforts, and public policy reforms. During the last 30 years, deinstitutionalization decreased the number of individuals with mental retardation and mental illness residing in state institutions by more than 75 percent. In addition, advocacy organizations for people with physical disabilities have implemented the movement aspects of community integration in their demand for community-based supports and services.

At the service system level, community integration has resulted in development or expansion of a range of services and programs designed to support individuals with disabilities to live in their communities. For instance, individuals who need assistance with ADLs, such as bathing, dressing, or ambulation, often need personal assistance services (PAS) to live independently in the community. In the traditional service delivery model, long-term care agencies supply PAS by providing home health care aides to individuals. These aides tend to work under the direction of professional health care providers and perform a restricted set of tasks in time frames determined by the agency. A support model, however, shifts the locus of control to the consumer, who is responsible for recruiting, hiring, training, supervising, and firing assistants.

*Expanding the Theoretical Framework*

NIDDR proposes the continued development of a knowledge base about the meaning and application of independent living and community integration concepts. This theoretical approach will address issues of inclusion, bases for participation, and ways in which persons identify their communities. This effort will be interdisciplinary in nature and will draw from disciplines such as anthropology, sociology, social psychology, history, Disability Studies, engineering, and medicine. Each of these disciplines have offered various interpretations of the issues at the core of the concept of community. Anthropologists have defined community to emphasize a shared culture or a way of organizing and giving meaning to life events. Sociologists have discussed community as an organized group dealing with common issues in relation to other organized groups within an environment. Historians have defined community as a web of relationships creating a social order within a political and spatial context that often focuses on issues of who is legitimately a community member. In the world of disability and rehabilitation, community also has had multiple meanings. In medical rehabilitation, return to community usually refers to life outside a medical facility, typically the community in which an individual resided before an injury or illness. In the disability world, community sometimes means the community of those living with a disability, those who share experiences or identity.

To go from theory to practice involves identifying the necessary factors for achieving independence within a community setting. In recent years, there has been a shift from a traditional service delivery model to a model that emphasizes consumer direction and support. As a consequence, individuals with disabilities of all types have shifted from a dependence on agency service providers to an active use of community-based supports. In the support model, consumer choice, customization of needed services, and consumer empowerment are of increased importance compared to the traditional model in which service agencies emphasized professional competence, accountability, and quality control by service providers, and the safety of clients. Also, in the support model, persons with disabilities are perceived as self-directed, able, and mainstreamed as opposed to being helpless and objects of care in the traditional model. Implications for research focus on investigation of major physical and societal environmental factors, including physical accessibility; societal attitudes and policies; and availability of services, supports, and assistive technology that facilitate full participation.

The emphasis on social and policy barriers inherent in the new disability paradigm provides an incentive to examine the extent to which the ADA has contributed to independent living and community integration. The ADA applies a civil rights model in addressing societal policies and practices that create barriers to full participation in society. If, however, the ADA is to have a truly transformative impact on American society, there must be a vision of a non-discriminatory society against which progress can be measured. At present, there are no real benchmarks by which to assess the ADA's impact. Evaluations tend to be in terms of ''cases'' handled, complaints resolved, lawsuits won, physical barriers removed, or volumes of information assembled rather than the extent to which the ADA has resulted in greater participation in society by persons with disabilities.

The growing realization of the importance of environmental barriers in disability focuses concern on environmental changes that have the potential to impede or facilitate independent living and community integration. Perhaps most striking are the continuous developments in telecommunications and information technology. Accessible computers and Internet infrastructure as well as universal or specialized communication devices afford access to information and interactions among persons with disabilities, their families, advocates, service providers, employers, and others. Careful planning, based on research, will be a requirement for ensuring that new technologies increase participation rather than isolation for persons with disabilities.

*Directions of Future Research on Independent Living and Community Integration*

The purpose of NIDRR's research in the area of independent living and community integration is to facilitate participation of persons with disabilities in society by:

(1) Identifying and evaluating factors or domains of community integration and independent living, especially those aspects that lead to full participation in society;

(2) Identifying and evaluating community support models that promote community integration and independent living outcomes for individuals with all types of disabilities and from a full range of cultural backgrounds;

(3) Providing empirical evidence of the impact of consumer control on outcomes associated with community integration and independent living;

(4) Assessing the impact of environmental factors on individual achievement of community integration and independent living;

(5) Developing and disseminating training on independent living and

community integration concepts and methods for consumers, families, service providers, and advocates; and

(6) Developing and evaluating management tools to enable centers for independent living and other community programs to support independent living and community integration.

Future Research Priorities in Independent Living and Community Integration

Research will analyze the implications of shifting from services to supports for the individual and must develop an in-depth understanding of the role of supports in facilitating community integration and independent living.

Research on Community Integration/ Independent Living Concepts

Both personal experience and certain academic disciplines provide guidance for understanding community integration and independent living. Development of an integrated conceptual framework will facilitate rigorous research on how to use community integration and independent living concepts to improve the lives of persons with disabilities. Additionally, research must find ways to measure these outcomes in order to evaluate services provided to persons with disabilities. Specific research priorities include:

(1) Review of relevant scholarship and creation of a theoretical framework for the study of community integration and independent living that incorporates the real world experiences of persons with disabilities, and includes knowledge gained from Disability Studies;

(2) Development of measures that build upon the conceptual framework, and that can be applied to evaluation or rehabilitation intervention intended to increase independence and integration; and

(3) Analysis of cultural perspectives as facilitators-obstacles to independent living and community integration.

Research on Implementation of Community Integration/Independent Living Concepts

The independent living and community integration movements have contributed conceptual standards for evaluating disability and medical rehabilitation services and programs. Further research is needed on how to apply these concepts in different real-world settings. currently, many programs and services do not reflect these concepts and, consequently, often provide services that do not incorporate consumer direction or allow consumer choice. Specific research priorities include:

(1) Identification and assessment of models of service delivery that incorporate concepts of independent living and community integration and reflect understanding of the importance of environmental barriers; and

(2) Development and dissemination of training materials on independent living and community integration concepts for consumers, families, service providers, and advocates.

Research on Measures of Independence and Community Integration

To evaluate how programs and services contribute to the outcomes of independence and community integration, researchers, policymakers, and consumers must have adequate measures of these outcomes. As discussed elsewhere in this plan, NIDRR is placing special emphasis on development of measures of the interrelationship between the individual and the environment. Concepts of independent living and community integration are integral to that process. Specific research priorities include:

(1) Development of measures of independence and community integration that are consumer sensitive and that measure the impact of the environment and accommodation on these outcomes; and

(2) Evaluation of strategies to promote independence, inclusion, and participation.

Research on Physical Inclusion

Housing, transportation, communication, and architectural barriers limit the physical inclusion of persons with disabilities. Lack of funding also affects access to these necessary community supports and funding constantly changes because of policy decisions at the Federal and State levels. Specific research priorities include:

(1) Identification and evaluation of models that facilitate physical inclusion, including the development and evaluation of supported housing and transportation models that are consistent with consumer choice; and

(2) Investigation of the impact of managed care on access to services and equipment that provide support for physical inclusion.

Research on the Impact of the ADA

The impact that the ADA has had or will have on participation in society currently is unknown. It is important to identify the obstacles to optimal achievement of the goals of the ADA. Specific research priorities include:

(1) Evaluation of the impact of the ADA on community participation of persons with disabilities and on the achievement of independent living and community integration outcomes;

(2) Examination of questions of accessible infrastructure, employment patterns, civic participation, recreational activities, societal attitudes, and policies to determine what post-ADA policy initiatives may be required to attain full participation by persons with disabilities; and

(3) Analysis of the extent to which the ADA has affected other public policy initiatives.

Research on the Impact of Technological Innovation

While the potential benefits of technological innovations are often assumed, there also are potential issues about accessibility, equity, and application of communications technology and how these issues affect independent living and community integration. Specific research priorities include:

(1) Assessment of the impact of applications of telecommunications innovations on independent living and community integration outcomes;

(2) Identification of barriers to participation in the community, including those resulting from inequitable distribution of technology or reduction of interpersonal contact; and

(3) Exploration of potential innovative applications of telecommunications and information technologies to expand opportunities for informed choice, independence, communication, and participation.

Research on Increasing Personal Development and Adaptation

NIDRR previously has funded personal skills development training to assist people with disabilities to live in the community. This training includes skills related to behavior management, communication, and productive work. In the area of behavior management for people with mental retardation and mental illness, strategies have focused on minimizing ''challenging behaviors.'' Specific research priorities include:

(1) Identification of strategies that promote development of self advocacy skills, including social and communication tools to assist people with disabilities to live in community settings;

(2) Analysis of the influences of environmental factors in developing positive behavioral support models;

(3) Development of cost-effective techniques to foster the capacity of providers; educators, and families to prevent or respond to challenging behavior;

(4) Assessment of the potential role of technology in promoting personal development and adapation in community settings; and

(5) Development of strategies and tools to improve consumer choice and decisionmaking about assistive technology and to assess its performance.

Research on Personal Assistance Services

It is important to test hypotheses about the role of personal assistance services (PAS) in promoting community integration, return to work, and health maintenance, and the impact on the use of health care and institutionalization dollars. The relative value of different PAS systems for disabled individuals of varying ages, disability types, ethnic groups, and personal independence goals is unknown. Although research has demonstrated the impact of consumer-directed PAS models on consumer satisfaction, the relationship of satisfaction to quality of life and other outcomes measures needs further explication. Specific research priorities include:

(1) Evaluation of the quality-of-life and cost-effectiveness outcomes of consumer-directed services;

(2) Analysis of the impact of PAS on participation in employment; and

(3) Evaluation of the impact of assistive technology on need for and use of personal assistance services.

Research of Social Roles

Public policy research is needed to examine how rules and regulations of public programs affect achievement of desired roles by people with disabilities. Marriage, parenthood, and employment are among the social roles that are often discouraged by legislation, regulations, policies, and practices. Specific research priorities include:

(1) Investigation and documentation of the ways in which Federal, State, and local legislation, regulations, policies, and practices impact on social role performance of persons with disabilities; and

(2) Identification and evaluation of tools to assist persons with disabilities in fulfilling their social roles. Research on Social Integration and Self-Determination.

The abilities to form mutually rewarding and non-exploitative friendships, to recognize and express personal preferences, to evaluate options and make decisions, to advocate for oneself, and to adapt to changes in circumstances are attributes that contribute significantly to independent living and community integration. Specific research priorities include:

(1) Identification and evaluation of service delivery models that incorporate individual choice and consumer control into strategies for achieving social integration and self-determination;

(2) Development of measures to evaluate independent living and community integration in terms of inclusion, social integration, and self-determination; and

(3) Assessment of the prevalence of abuse and violence in community settings and development of strategies to minimize their occurrence.

Research on Management Tools for Centers for Independent Living and Community-Based Residential Programs

NIDRR has previously funded research on effective management strategies for centers for independent living, as well as research on community residential living for individuals with mental retardation and long-term mental illness. Continued research in these areas will evaluate the effectiveness of current systems and address the challenges to these programs in their expanding roles. Specific research priorities include:

(1) Development of strategies for centers for independent living to succeed in their roles with State rehabilitation agencies, and other agencies and groups concerned with independent living;

(2) Development and evaluation of strategies for centers for independent living and community based residential programs to design and adapt programs that address the changing nature of the disability population; and

(3) Development and evaluation of strategies for centers for independent living to respond to increased emphasis on ADA issues, such as accommodation, accessibility, and universal design; and

(4) Investigation of applications of new information technologies in management of centers for independent living and community based residential programs. Research to facilitate community integration and independent living will focus on strategies to make communities, social systems, public policies, and the built environment more accessible to persons with disabilities and more supportive of their independence and participation. In the new paradigm scenario, the emphasis will be on supports rather than services, the managers of support systems will increasingly be persons with disabilities themselves, and services originally designed for application in institutions will be adapted for use in the general community.

## Chapter 7: Associated Disability Research Areas

''I make no claim, as other people with a disability might, that the essence of what I experience is inherently uncommunicable to the able-bodied world. I do not believe that there is anything in the nature of having a disease or disability that makes it unsharable or even untellable'' (Irving Zola, 1935–1994).

Several important issue areas cut across the four research areas—Employment, Health and Function, Technology for Access and Function, and Independent Living and Community Integration—described in the earlier part of this section. Disability statistics, disability outcomes measures, Disability Studies, rehabilitation science, and disability policy research are all integral to successful completion of a comprehensive agenda in disability and rehabilitation research. NIDRR will fund research efforts in each of these areas during the next five years to enhance NIDRR's overall research program and contribute to NIDRR's achieving its goals of helping people with disabilities attain maximal independence. Priorities for each research area are discussed below.

*Disability Statistics*

NIDRR has several purposes in advancing work in disability statistics. First, it is important to maximize the usefulness of data currently collected in reliable national data sets. Second, it is important to encourage the creation and analysis of research databases, including meta-analyses focused on problems such as employment rates or utilization of health care or social services. Third, NIDRR seeks to understand the composition of a possible emerging universe of disability created by new disabilities or socioeconomic variations in the distribution of existing disabilities. These changing areas have implications for both public health and rehabilitation. Fourth, NIDRR wants to assist in providing input to the formulation of national disability statistics policy, including the incorporation of measures relevant to the new paradigm of disability. Finally, NIDRR recognizes the need for surveys to be conducted in accessible formats, and for disability demographic and statistical data to be readily available to a wide range of audiences.

Data about the incidence, prevalence, and distribution of disability and the characteristics and experiences of disabled persons, are critical to

planning research and services, evaluating programs, and formulating public policy. These data may be generated by diverse sources such as national population surveys, program data collection on participants, and researcher-compiled data sets relevant to specific research areas. Other, less prominent sources include State and local surveys, advocacy organization data, and market research data.

Existing data resources are of varying degrees of completeness and quality, and are not sufficiently comprehensive in scope or perspective. None takes into account the new paradigm of disability that examines the interaction between the individual and the environment, and requires measures of environmental as well as individual factors that continue to disability. NIDRR has taken a lead role in elucidating the connection between impairment and the supports or limitations imposed by the built and social environments, and will initiate the process of developing new survey measures to define disability accurately and reliably in the context of both individual and environmental factors.

*Research Priorities for Disability Statistics*

NIDRR will continue to support the secondary analysis of major national data sets, especially the Disability Supplement to the National Health Interview Survey, identifying information and connections not considered by the survey sponsors. NIDRR's other focus will be the refinement of the disability data effort to reflect new paradigm concepts. Specific research priorities include:

(1) The elucidation of salient issues or the stimulation of further research questions through meta-analyses;

(2) Development and evaluation of state-of-the-art measurement tools that will assess the complex interactions between impairment and environment;

(3) Development and evaluation of strategies to ensure that disability statistics accurately capture information on underrepresented minorities and emergent disabilities;

(4) Development and evaluation of methods for ensuring the dissemination of disability statistical data to diverse audiences; and

(5) Development and testing of accessible survey instruments and protocols.

*Rehabilitation Outcomes Measures*

The important of demonstrating outcomes across service settings, programs, and research efforts cannot be overemphasized, given resource allocation issues and concerns about value that operate at every level of our society. Demonstrating outcomes is an integral part of NIDRR's research agenda now and in the future. For purposes of discussion, several categories of outcome measures are presented. In practice, however, these measures may not be mutually exclusive.

One area in which significant prior work on outcomes measures has occurred is medical rehabilitation. A number of measures have been developed and integrated into service delivery and research settings. Examples of these measures include impairment specific measures such as the NIH Stroke Scale, disability measures like the Functional Independence Measure (FIM), and measures of handicap such as the Craig Hospital Assessment and Reporting Technique (CHART). Many of these measures, however, have been validated narrowly and are not applicable across disability groups. Some were developed for hospital settings and require revision for use in post-acute programs or in community settings. The new focus on long-term outcomes requires measures that can document changes over time. Use of an outcomes-based approach also has ramifications for sample design, in terms of identifying homogeneous groups of consumers for comparison and using effective risk-adjustment methodologies. New managed care approaches have resulted in demands by people with disabilities for outcomes monitoring to ensure that quality care standards are met. This concern for measurable outcomes, based on quality standards, also is evident in the payer community, which has raised questions about evidence of the efficacy of treatments.

Consumers have expressed particular concern about quality assurance in the area of assistive technology. NIDRR will support investigations to identify and develop evaluation methodologies and outcome measurement models for consumer assessments of assistive devices.

Expanding the focus of outcomes research to incorporate measures of environment and accommodation is critical to continued implementation of a new paradigm of disability. At the present time, our ability to describe the interaction of individual and environment is limited by a lack of validated measures. A number of conceptual and methodological concerns must be addressed in developing such measures. Of particular relevance is how best to account for the impact of numerous variables, including environmental factors, that impinge on long-term outcomes.

Independence and community integration have been identified as overarching NIDRR goals, and NIDRR's research initiatives relate directly to supporting achievement of these goals. As indicated earlier, some measures of community integration are already in use, including CHART and the Community Integration Questionnaire (CIQ). These measures, developed for specific populations, are examples of tools that might be refined to monitor and compare progress toward goals of independence and community integration.

Distinctly related to functionally oriented medical outcomes measures are measures of quality of life. These measures are conceptually linked to individual values about living with disability and include the impact of rehabilitation and environmental barriers. A particular challenge in developing these measures is the qualitative nature of individual valuation of life quality and the difficulty of constructing ways of comparing individual perceptions.

*Research Priorities for Rehabilitation Outcomes Measures*

NIDRR will support research and development activities that increase the availability of measures across the areas discussed in this section. Specific research priorities include:

(1) Refinement of exiting measures of medical rehabilitation effectiveness to improve assessment of functional ability by incorporating environmental factors, and to increase applicability to all disability populations and rehabilitation settings;

(2) Development and evaluation of measures of independence, community integration, and quality of life, especially measures that incorporate the perspectives of persons with disability; and

(3) Development of measures for use in outpatient and community-based settings.

*Disability Studies*

The field of disability and rehabilitation research has not reached a general consensus on the meaning of the term ''Disability Studies.'' NIDRR uses the term generally to refer to the holistic study of the phenomenon of disability through a multidisciplinary approach that emphasizes the perspectives of persons with disabilities and regards personal experience as valuable data. The IOM, in Enabling America, describes Disability Studies as ''the examination of people with disabling conditions and cultural response to them through a variety of

lenses, including . . . economics, political science, religion, law, history, architecture, urban planning, literature. . .'' (1997, p. 289). NIDRR believes that Disability Studies is a natural complement to the new paradigm, emphasizing study of the complex relationship between various aspects of disability and society, and will enhance the methodologies and knowledge base of each involved scientific discipline.

In this respect, the content of Disability Studies is not unlike that of other area studies, such as Women's Studies, African-American Studies, or geographic, regional or ethnic studies (e.g., Middle Eastern Studies or Islamic Studies). All of these areas of study require the convergence of theory, technique, and methodology from a range of disciplines to develop an enhanced understanding of a complex phenomenon.

Another purpose for the development of any area of studies is to assure that the perspective of the group under study is reflected in the methodology and body of core knowledge, and that individuals from the group have the opportunity to participate in the development and promulgation of the methodologies and the curricula. This also can be expected to lead to an impact on core disciplines, specifically an impact that requires development of theories and hypotheses that do not ignore the subject population. For example, Women's Studies have influenced the development and legitimation of studies of the sociology of gender within a discipline that 30 years ago relegated the study of women, when they were studied at all, to home economics or family relations. Economists analyzing poverty now must consider the particular causes and effects of poverty among women and in ethnic groups, largely due to the attention and legitimation of these subjects by the ''area studies'' efforts.

NIDRR has three basic purposes for supporting a program of Disability Studies. First, disability and rehabilitation research needs a body of knowledge that is comprehensive and holistic, reflecting a range of disability perspectives, and it needs a larger cadre of researchers and policymakers familiar with that knowledge base. Second, the field of disability and rehabilitation research needs to develop methodologies and influence the theories and practices of a range of disciplines in order to ensure their constructive attention to the issues related to disability, thereby enhancing the scientific endeavor. Third, consistent with the goals of the Rehabilitation Act, as amended in 1992, especially its principles of inclusion, integration, and independence, NIDRR believes it is important to reflect the perspectives of individuals with disabilities in studies of disability and to afford increased opportunity for individuals with disabilities to participate in the development of curricula and methodologies to study the phenomenon of disability.

Research Priorities for Disability Studies

Specific research priorities for Disability Studies include:

(1) Development of a theoretical framework for conducting Disability Studies and strategies for teaching Disability Studies at various academic and non-academic levels;

(2) Compilation of information about the many forms of extant Disability Studies, including academic levels, disciplines involved, course content, resources, and students; and

(3) Exploration of the feasibility of developing non-academic courses in Disability Studies that will facilitate the study of the experience, history, and culture of disability in community-based settings.

*Rehabilitation Science*

Permeating NIDRR's research agenda will be an awareness of opportunities to construct and test a theoretical framework for rehabilitation science. As defined in the 1997 IOM report, Enabling America, rehabilitation science is a study of function, focusing on the processes by which disability develops, and the factors influencing these processes. Its goals are to contribute to better treatment and technology for persons with disabilities. Rehabilitation science focuses on factors that lead to transitions along a continuum from underlying pathology to functional independence, including impairment, functional limitation, and disability. In addition, it analyzes physical, behavioral, environmental, and societal factors that affect movement along the continuum (Brandt & Pope, 1997). The field of rehabilitation has produced a body of empirical evidence regarding function and interventions to improve function. The next challenge is to use this evidence to produce a body of scientific and engineering theory that can be applied to the development of breakthroughs in functional restoration techniques.

Research Priorities for Rehabilitation Science

Specific research priorities for rehabilitation science include:

(1) Further elucidation of the enabling-disabling process; and

(2) Exploration of the development and application of a theoretical framework for rehabilitation science.

*Disability Policy*

Public disability policy broadly defines the participation of disabled persons in the general benefits society provides to all citizens, as well as the parameters of disability-specific benefits. Public policy has more significance for people with disabilities and their families than for many segments of the population. This differential impact stems, in part, from the fact that people with disabilities must interface with so many different components of public policy systems, many of which are conflicting or inconsistent, such as employment goals and requirements for income assistance programs. The larger public policy content for disability and rehabilitation research reflects interlinking service delivery systems in which changes in one system often have substantial impact on others. The dilemma for disability and rehabilitation policy is that the various systems are not mutually reinforcing.

The lack of mutual reinforcement stems from four factors. First, policy goals may be, to some degree, mutually exclusive; that is, policies designed to emphasize one goal may be implemented only at the expense of other goals. Second, different policies are governed by different and conflicting assumptions about disability and the role of people with disabilities in American society. Third, some service systems lack integration with other systems and programs needed to promote continuity between different parts of people's lives. Fourth, disability has been largely ignored in national science and technology policy. Thus, underlying conflicts may exist and result in unintended disincentives to work and independence.

At the systems and societal levels, the potential impact of policy initiatives on persons with disabilities may be even more significant, although more likely to go unrecognized. The impact of telecommunications, the built environment, health care, and labor market policies have been discussed in this Plan.

Research Priorities for Disability Policy

Disability policy research should examine issues that are national in scope and that represent intersections of public interest. Such research should use national data sets, where possible, to determine the impacts of policy

decisions on persons with disabilities. Specific research priorities include but are not limited to:

(1) Analysis of how the bundling of income supports with other benefits, including health insurance and other in-kind assistance such as housing subsidies or food stamps, affects individual decisions to seek or continue employment;

(2) Evaluation of the impact of changing social policies toward parenting, personal assistance services, tax deductions, or education, among other factors;

(3) Analysis of the impact of welfare-to-work initiatives on the well-being of persons with disabilities or their families;

(4) Evaluation of the impact of macroeconomic issues, such as changing labor force requirements, on employment opportunities of persons with disabilities;

(5) Evaluation of the impact of legislation and policy on employers, professional service providers, social service agencies, and direct support workers in terms of their participation in employing, serving, or working for disabled persons;

(6) Investigation and evaluation of the relevance of frameworks for disability research, including but not limited to research on the role of market forces (balancing supply and demand) on disability policy;

(7) Investigation of the impact of national telecommunications and information technology policy on the access of persons with disabilities to related education, work, and other opportunities; and

(8) Examination of the impact of national housing policy and building codes on the living environments and housing choices of persons with disabilities and their families.

Related disability research emphasizes knowledge areas that are cross-cutting and essential to the support and refinement of disability research generally. The common theme linking disability statistics, outcomes measures, Disability Studies, rehabilitation science, and disability policy is that they all provide essential frameworks building blocks that enable the disability research and enterprise to thrive and to address important issues in meaningful ways.

**Chapter 8: Knowledge Dissemination and Utilization**

''Our mission at the Office of Special Education and Rehabilitative Services is to ensure that people with disabilities become fully integrated and participating members of society. Dissemination and utilization are the tools through which we do this'' (Judith E. Heumann, OSERS Assistant Secretary).

*Overview*

Effective dissemination and use of disability and rehabilitation research are critical to NIDRR's mission. Research findings can only improve the quality of life of people with disabilities and further their full inclusion into society if they are available to, known by, and accessible to all potential users. NIDRR supports a strong dissemination and utilization program that reaches its many constituencies: Research scientists, people with disabilities, their families, service providers, policymakers, educators, human resource developers, advocates, entities covered by the ADA, and others. In carrying out this mission, NIDRR's challenge is to reach diverse and changing populations; to present research results in many different and accessible formats; and to use technology appropriately.

The Rehabilitation Act's 1992 amendments included language requiring NIDRR to ensure the widespread distribution, in usable formats, of practical scientific and technological information generated by research, demonstration projects, training, and related activities. In addition, NIDRR's responsibilities were amended to emphasize wide dissemination of educational materials and research results to individuals with disabilities, especially those who are members of minority groups or of unserved or underserved groups. In addition, the statute requires Rehabilitation Research and Training Centers (RRTCs) to serve as information and technical assistance resources to providers, individuals with disabilities, and others through workshops, conferences, and public education programs. Rehabilitation Engineering Research Centers (RERCs) are required to disseminate innovative ways of applying advanced technology and to cooperate with Tech Act projects to provide information to individuals with disabilities to increase their awareness of options and benefits from assistive technology.

Effective dissemination employs multiple channels and techniques of communication to reach intended users. This chapter addresses strategies and techniques to disseminate information to a wide range of target audiences and to promote the utilization of this information. These strategies take into account a range of uses—conceptual or practical, total or partial, converted or reinvented. The strategies also incorporate innovative technologies to enhance direct access by diverse groups. Additionally, this chapter outlines NIDRR's proposed research agenda for dissemination and utilization activities.

*The Knowledge Cycle—The Role of Dissemination and Utilization*

The components of the knowledge cycle are knowledge creation, knowledge dissemination, and knowledge utilization. The concept of the cycle implies continuous interaction among its parts. At NIDRR, knowledge creation results from funded research and training programs, and staff activities. The challenge of NIDRR's dissemination and utilization activities involves transferring this knowledge, targeted to specific user populations, to improve the lives of persons with disabilities.

Effective dissemination requires understanding that communication channels are continually expanding and range from personal communications to mass media (e.g., print, radio, television, the emerging information superhighway, and the merging of these and other communications technologies). To choose the most effective communication strategy, it is helpful to identify clearly the intended audience (e.g., scientists, service providers, persons with disabilities), the context for use (e.g., home, work, community), and the characteristics of the information to be disseminated (e.g., type, use, relative advantage, compatibility, complexity).

Knowledge utilization activities focus on ways to facilitate use of research results, new technologies, and effective practices or programs. To be used, knowledge must relate to a perceived need, must be understandable, and must be timely. Thus, awareness of potential uses for the information should influence research design and materials development, keeping in mind that flexibility is important because there may be unanticipated audiences for the material. Selecting dissemination strategies that relay information quickly is equally important.

*The Changing Environment for Dissemination*

The environment in which dissemination and utilization strategies operate is being affected by a number of changes, including technological innovation, changing etiology of disability, and an increased emphasis on the individual's interaction with the physical and social universe. These changes must be factored into future

dissemination and utilization approaches.

As Paisley notes, ''Many of the problems that challenge knowledge utilization have changed little since the 1960s and 1970s; however, the communications environment of knowledge utilization has changed dramatically (as cited in Southwest Educational Development Laboratory, 1996).'' Consumer demand for direct and rapid access to information, and the technological capacity to disseminate information simultaneously and inexpensively to mass audiences through electronic media, such as the World Wide Web, are changing dissemination and utilization strategies. The Internet, a beginning step in the creation of the global information superhighway, is open to anyone with a computer, modem, and telephone. The number, sophistication, and accessibility of Internet sites serving the information needs of people with disabilities are increasing rapidly. These innovations permit NIDRR projects and centers to communicate more easily with larger numbers of targeted users at all phases of the research process; however, this proliferation raises difficult questions about equity, access, and effectiveness (Southwest Educational Development Laboratory, 1996, p. 8).

Changes in the prevalence and distribution of disabilities are influencing NIDRR's research. An emerging universe of disability, incorporating disability related to underlying social and environmental conditions such as poverty, isolation, and aging, has created new disabilities and new targets for dissemination of research findings.

Finally, the importance of an ecological science model that focuses on relationships and interactions that influence, and are influenced by, the environment of an individual, organization, or community is receiving increased recognition. Research affects society; society, in turn, affects what is studied and how it is studied. NIDRR supports research that is issued-based and flexible to facilitate timely responses to environmental changes and timely contributions to society.

*Dissemination/Utilization Strategies for the Future*

In response to the needs of constituencies and to the changing physical and social environment, future dissemination and utilization strategies must build upon successful past strategies, while capitalizing on the potential of electronic media and other telecommunications innovations. These strategies must provide accessible formats for new population groups and for individuals with cognitive or sensory disabilities. To be successful, NIDRR grantees need assistance with early integration of dissemination and utilization features into research projects. Efforts will continue to increase the capacity of consumers to access and use research-based information. Finally, NIDRR will support research that will determine effective dissemination methods and evaluation techniques.

In the section that follows, a number of dissemination and utilization activities are proposed. These proposed activities reflect NIDRR's concerns about the importance of dissemination in making research usable to its constituencies.

Dissemination of Research Findings

NIDRR, in order to enhance dissemination of research, will undertake a number of activities, including a national information center, creating databases, developing consumer partners, providing specialized assistance to grantees, using electronic media, targeting new audiences, and evaluating dissemination methods.

Establishing a National Information Center

NIDRR will establish a national dissemination center to address long-term dissemination and utilization objectives for individuals, groups, and communities representing diverse geographic, multicultural, and socio-economic populations. This center will provide technical assistance to grantees in improving their dissemination activities; conduct selected national dissemination projects; and serve as a resource on dissemination theory, new techniques, and evaluations of dissemination strategies. The center will maintain a web site and will work with groups of NIDRR grantees—for example, the Model Projects for Spinal Cord Injury—to develop accessible, special-focus web sites. In addition, the center will:

(1) Publish research findings in refereed journals for the academic community;

(2) Translate complex research findings into accessible language and format, in consumer-oriented publications;

(3) Maintain a library and information center, such as the National Rehabilitation Information Center (NARIC), with archival and bibliographic retrieval capacity; and

(4) Determine markets for NIDRR-funded research products and appropriate strategies for reaching these markets.

Using Databases and Key Publications. To support knowledge dissemination and extend the availability of research products, NIDRR will:

(1) Maintain a database of assistive technology products, such as ABLEDATA, that is accessible to consumers and service providers, and is available on the Internet;

(2) Make key publications, such as NIDRR's Program Directory and Compendia of Research products, available on the Internet; and

(3) Establish a management database to track dissemination activities and to identify research results suitable for further dissemination.

Developing Consumer Partnerships

To enlist the target populations in ensuring that disseminated research findings are relevant, accessible, and useful, NIDRR will:

(1) Explore the potential for developing partnerships with independent living centers and State Vocational Rehabilitation agencies to identify, repackage, and market information specific to their needs;

(2) Provide technical assistance to community organizations or public agencies to facilitate the adaptation of research findings into practical use; and

(3) Provide technical assistance and training to consumers and consumer organizations on accessing, interpreting, and using new information, including training on use of electronic information sites and on providing feedback to the research process.

Providing Specialized Assistance to Grantees in Their Dissemination Roles

NIDRR Centers and other grantees are important information resources; and, to enhance their productivity in dissemination the results of their research, NIDRR will:

(1) Promote the publication of research findings in scientific journals and in consumer-oriented publications;

(2) Provide technical assistance for ''translation'' and marketing;

(3) Develop inter-center and inter-project linkages for routine communication and sharing of information;

(4) Assure timely availability of research findings and products in usable form for targeted user groups; and

(5) Provide technical assistance on dissemination and utilization processes to constituency groups.

Using Electronic Media and Telecommunications

Exciting developments in information technology greatly enhance the possibility of reaching more research information users in efficient and effective ways, and to capitalize on this potential, NIDRR will:

(1) Explore the feasibility of an Online Disability New Service, focusing on government-funded research data; funding opportunities; updates from the legislative, judicial, and executive branches of government; awards; achievements; current issues; and problem solving attempts;

(2) Initiate activities to improve the portrayal of individuals with disabilities in the media, including specialized media efforts directed toward the Nation's youth or diverse cultural groups;

(3) Examine the role of distance learning approaches in dissemination;

(4) Explore communications strategies for effective Internet searches for disability-related information, including directories of sites and a thesaurus of key words; and

(5) Provide technical assistance and training to consumers and consumer organizations on accessing, interpreting, and using new information, including training on use of electronic information sites. Emphasize ways to increase the skills and access of elderly and minority consumers to the Internet and other electronic media.

Reaching Out to New Audiences

The changing nature of disability and of the disabled population require thoughtful efforts to reach new audiences. To facilitate these efforts, NIDRR will:

(1) Ensure the accessibility—both in format and content—of all products disseminated by NIDRR and its grantees. This may include the use of alternate formats (e.g., Braille, large print, audiotape, captioned videos) or the use of language appropriate for persons with cognitive impairments or who are non-English speaking;

(2) Improve dissemination of information from NIDRR-funded projects to consumer audiences of culturally diverse backgrounds as well as elderly people, newly disabled individuals, and other people with disabilities who may not be reached by traditional dissemination methods;

(3) Target general audiences that influence the opportunities available to persons with disabilities. These general audiences include employers, manufacturers, educators at all levels, economic development and planning personnel, service establishments, the media, and policymakers at local, State, and national levels; and

(4) Explore ways to involve people with disabilities in all aspects of the research cycle.

Evaluation of Dissemination Methods

Finally, while commercial media efforts are regularly evaluated, little has been done to assess the effectiveness of research dissemination strategies in the disability field. Given the central importance of dissemination to its broad constituency, NIDRR will:

(1) Conduct projects to advance theories in dissemination and utilization and to evaluate the application of the various dissemination and utilization approaches;

(2) Test methods for measuring the utilization and impact of research results for different target audiences; and

(3) Evaluate the appropriateness and effectiveness of web-based dissemination and distance education models for conveying information to the range of target audiences.

**Chapter 9: Capacity Building for Rehabilitation Research and Training**

*Overview*

To ensure that research improves the lives of individuals with disabilities, NIDRR will support efforts to enhance the capacity of the field to conduct research that is scientifically excellent and relevant to the concerns of disabled individuals, service providers and the science community. This research will be based in the contextual paradigm of disability, emphasizing cross-disciplinary efforts and participatory research that take into account trends in science and society, and that are reflective of disability culture. Capacity building involves training those who participate in all aspects of the disability research field, including scientists, service providers, and consumers. While NIDRR's programs have made significant contributions to creating the disability and rehabilitation research capability that exists in our Nation today, it will be necessary to refocus the content, and, to some extent, the structure of those programs to meet the emerging needs of science and consumers. NIDRR will make creative use of funding mechanisms to meet these challenges.

*Priorities in Capacity Building*

NIDRR interprets its capacity-building responsibilities as multifaceted. NIDRR's principal statutory mandate for training is to support advanced instruction for researchers and service providers. NIDRR also has an implied mandate, strengthened in the 1992 Amendments, to train consumers in the applications of new research knowledge and in the uses of assistive technology. To advance the disability and rehabilitation field, NIDRR will expand the scope of its capacity-building activities to:

(1) Raise the level of rigorous qualitative and quantitative research and increase the use of state-of-the-art methodologies by providing advanced training in disability-related research for scientists, including those with disabilities and those from minority backgrounds;

(2) Train rehabilitation practitioners in the application of research-generated knowledge and new techniques;

(3) Develop the capacity of researchers to conduct research that explicates disability as a contextual phenomenon;

(4) Prepare researchers to conduct Disability Studies that are holistic, interdisciplinary, and cognizant of the cultural context of disability;

(5) Develop the capacity of researchers to conduct studies in new settings, (e.g., homes, work places, schools, recreational facilities, community-based organizations); and

(6) Train consumers, family members, and advocates in the use of research findings, in part to facilitate participatory research efforts.

Additional information on each of these priority areas is provided in the following sections.

*Training for Advanced Research Studies*

It is crucial to NIDRR's mission that research in disability and rehabilitation reflect sound science practices, using rigorous qualitative and quantitative methods. Adherence to sound methodology and research design strengthens the credibility of NIDRR's research and, consequently, the ability of NIDRR's constituencies to use the research findings in advocacy, service deliver, and policymaking. To this end, NIDRR will increase its emphasis on scientific rigor in generating research agendas and in reviewing research applications. Scientific rigor may encompass methodological approaches such as controlled studies, longitudinal studies, or increased sample size. Constructing carefully defined hypotheses tied to theory is an important element in improving research methods. For qualitative research efforts, rigor includes strict adherence to analytical frameworks, improved data collection methods, and careful selection of subjects.

The capability to conduct first-rate research depends on several factors: a commitment to learning the multiple skills required for designing scientific studies, selecting appropriate research methods, analyzing data, and interpreting findings. NIDRR will continue its support of research training initiatives, including those that target research training opportunities for minorities and persons with disabilities. This training focus reflects NIDRR's commitment to participatory research methods that enhance the relevance of research findings.

*Training in Application of Research Findings*

NIDRR Rehabilitation Research and Training Centers (RRTCs) will advance further the statutory requirement to train service providers in application of research findings to real-world needs of persons with disabilities. Training can occur at many levels, including pre-service, graduate, and in-service. NIDRR will support training aimed at transferring research findings into practical use. Such training must be sensitive to the rapidly changing service delivery environment, which is de-emphasizing inpatient care and experiencing growth in post-acute and community settings.

*Training in New Paradigm Research*

As discussed throughout this Plan, the new paradigm conceives of disability as a function of the interaction between impairments and other personal characteristics and the larger physical, social, and policy environments. Unidimensional and static measures of function, improvement, outcomes, and other aspects of disability and the rehabilitation process will not be sufficient.

Any paradigm of science that limits research to modification of the disabled person's functions without including an equal emphasis on changing the person's environment is not an approach that can capture the important phenomena associated with living as a disabled individual. Nor will it accommodate scientific and social advances in the multiple, interactive sectors of society that will characterize life in the next century. Although developments in both the biological and biomechanical sciences will bring new treatments and devices that will improve personal functions, these advances must be adjusted to meet the demands of the person living in his or her environment of choice doing activities that are of significance to that individual.

A framework for asking new questions for NIDRR-funded research has been provided by the major provisions of the ADA. Researchers must develop measures that capture the contributions of the social and physical environments to the disability. The need for researchers capable of investigating and explicating disability in context, and explaining the adapting process, has several implications for the research training endeavor. The training must:

(1) Emphasize interdisciplinary research and design of methodologies that can test complex hypotheses;

(2) Attract researchers from disciplines not usually involved with disability and rehabilitation research. These include law, economics, architecture, business, marketing, demographics, public policy, and administrative sciences, among others;

(3) Incorporate an understanding of disability policy and Disability Studies among researchers in all disciplines;

(4) Apply the principles of the ADA—universal access and accommodations—in all research areas;

(5) Include consumers in the research endeavor; and

(6) Focus on the ''adapting process,'' which comprises changes in individual performance in response to a physical limitation, and changes in the environment to better accommodate individual needs.

The interaction of these changes provides the basis for understanding how best to proceed in improving participation for people with disabilities.

*Supporting Disability Studies*

The cultural context of disability is a key element in the emerging field of Disability Studies. Major societal changes have influenced how disability is perceived by those with disabilities and by those who study persons with disabilities. Persons with disabilities are now viewed as individuals who are adapting to challenges (e.g., personal assistance services, assistive technology use, access, accommodation, civil rights) in their response to society (e.g., sociopolitical analysis of activism, disability culture, independent living), and in society's response to them (e.g., stigma, policy, economics, transportation, housing). The merging of these issues into an encompassing academic area is the genesis of Disability Studies.

In Disability Studies, there is a convergence of theory, technique, and methodology from a range of disciplines to develop an enhanced understanding of a complex phenomenon. The perspective of the subject group in Disability Studies is reflected in the methodology and body of core knowledge. Individuals from the subject group must have the opportunity to participate in the development and promulgation of the methodologies and the curricula. NIDRR has four long-term objectives for providing priority support to this area:

(1) Creation of a body of knowledge that is comprehensive and holistic;

(2) Training of a cadre of researchers and policymakers familiar with that knowledge base;

(3) Inclusion of the perspectives of individuals with disabilities in designing curriculum and research to reflect the experiences of persons with disabilities; and

(4) Creation of opportunities for individuals with disabilities to study, in a variety of settings, the history, politics, economics, sociology, literature, culture, psychology, and other aspects of disability.

*Increasing Capacity for Research Under New Conditions*

The research questions and the types of training needed for rehabilitation professionals will change as the paradigms of science change and economic realities force reductions in the duration of rehabilitation service programs. Many rehabilitation researchers today are accustomed to conducting research in hospital-based or other clinical sites, applying methodologies and protocols developed in these traditional settings. In the future, sites for conducting research and for training new rehabilitation scientists will be homes, work places, schools, recreational facilities, and community-based support programs. This change involves adapting to reduced access to subject and control groups, working with paraprofessionals and disabled peers in the data collection effort, and working with shared or preexisting databases. Future research on the effectiveness of interventions will be conceptualized, developed, tested, implemented, validated, and evaluated at venues other than hospitals, rehabilitation facilities, clinics, and other traditional service delivery sites.

*Increasing Consumer Capacity and Participatory Research*

Consumers and consumer organizations have important roles in the research endeavor, including planning research priorities, assessing real-world relevance, and educating researchers in the realities of their aspirations, needs, obstacles, and daily living conditions. Consumers must also review and evaluate research findings

and reinterpret them for application to their lives. Finally, consumers can disseminate and advocate for research. The disabled individual as a whole person operating in a given environment is the focus of NIDRR's research, and it is important that individuals with disabilities willingly provide data about themselves in the role of research subjects.

Consumers are more likely to trust the research endeavor if they believe it is relevant to their needs or if they believe it is conducted with appropriate sensitivity to their concerns. NIDRR will continue to take an active role in forging cooperative partnerships between researchers and the disability community. These endeavors must feature an honest and respectful exchange of knowledge and seek cooperative endeavors around common ground. Study of the social, contextual, and environmental aspects of disability provides a promising impetus for the new, strengthened partnership. NIDRR will support participatory research and Disability Studies as strategies to achieve the goals of an informed and active consumer community. Education, training, awareness, and partnerships are among the techniques that will be used to address this goal.

NIDRR has supported the principle of appropriate and effective participatory research, that is, research that incorporates the perspectives and efforts of persons with disabilities. Participatory research is evaluated by standards of scientific excellence and real-world relevance. NIDRR grantees have developed a number of innovative approaches to implement this principle of participatory research. Additional study of participatory research concepts, fundamental principles, operating guidelines, and most appropriate applications, will enhance its future use. NIDRR will sponsor research on the conditions under which participatory research enhances the process and improves the products of research. NIDRR will sponsor research, development, demonstration, and dissemination efforts to enhance the understanding of participatory research applications and techniques.

*Funding Mechanisms To Enhance Capacity Building*

Clearly, there has been a shift in the social and scientific paradigms used to define, study, and explain disability. Consequently, the training models, research methods, and issues studied also must change. Funding excellent research projects depends, to a large extent, on the quality of grant applications. In turn, the subject matter and quality of research reflect the competencies the investigators acquired in their training. The context for training is nested in the types of programs funded by NIDRR. NIDRR will expand these existing mechanisms—Rehabilitation Research and Training Centers (RRTCs) and Rehabilitation Engineering Centers (RERCs), Advanced Rehabilitation Research Training Grants (ARRTs), Switzer Enhancement Programs—to help meet future challenges.

*Rehabilitation Research Training Centers and Rehabilitation Engineering Research Centers*

NIDRR has a long tradition of funding RRTCs at universities, medical rehabilitation facilities, and vocational and social service agencies. Recently, training has been given increased importance in the mission of the RERCs as well. Enhancing the capacity to conduct disability and rehabilitation research requires planning and coordination of three key components of research training: mentors and trainers, relevant topics, and appropriate sites. NIDRR Centers have the critical mass of expertise and knowledge to provide:

(1) Advanced, experiential training for researchers;

(2) Classroom training for researchers and clinicians, at undergraduate and graduate levels;

(3) Short-term training to teach scientists new methodologies;

(4) In-service training for rehabilitation practitioners;

(5) Training for consumers, their families, and representatives in implications and applications of new research-based knowledge;

(6) Community-based training in Disability Studies and related areas, particularly in those centers with a strong focus on independent living, community integration, and policy issues;

(7) Education and training in disability professions and in disability research for individuals with disabilities and for minority individuals; and

(8) Training of rehabilitation educators and educators in a range of related disciplines.

Advanced Rehabilitation Research Training Grants

ARRTs will provide advanced research training that integrates disciplines; teaches research methodology in the environmental, or new paradigm, context; and promotes capacity for Disability Studies. These training programs must operate in interdisciplinary environments and provide training in rigorous scientific methods.

Mary Switzer Fellowships

These fellowships will augment scholarly knowledge in the field and function in an integrative capacity to define new frontiers of disability and rehabilitation research. NIDRR plans to provide more opportunities for interaction among the fellow and for exposure to established researchers and policymakers.

New Scholars Program

This program will recruit undergraduates with disabilities to work in NIDRR-funded centers and projects to expose them to disability and rehabilitation research issues, while at the same time providing work experience and income. This program, operated in affiliation with the Dole Foundation, is an innovative private/public partnership aimed at generating interest in research careers for persons with disabilities.

Minority Development Program

This program has focused on Historically Black Colleges and Universities and institutions serving primarily Hispanic, Asian, and American Indian students. NIDRR will evaluate this program to determine the extent to which it is achieving the objectives of Section 21 of the Rehabilitation Act, and to implement necessary strategies to enhance outcomes. Meanwhile, NIDRR is implementing new strategies on capacity-building among minority researchers focusing on collaboration, exchange of expertise, and advanced training.

New Technologies for Training

Educators, students, clinicians, scholars, and consumers are turning more frequently to the use of new media and telecommunications technology for conveying information and imparting skills. NIDRR respects the efficiencies and impacts that can be achieved through distance learning and web-based education. As a research institute, NIDRR also will undertake evaluations of the effectiveness of these techniques for various types of trainee populations, subject matter, and objectives.

**Chapter 10. Enhancing NIDRR's Management of Research**

*Overview*

The research endeavor benefits from thoughtful management practices, specifically tailored to enhance relevance, importance, scientific quality, coordination, participation,

flexibility, productivity, and communication. This Plan already has addressed such elements of management improvement as using appropriate modes of participatory research, expanding dissemination and utilization of research, and enhancing capacity-building, all of which are part of NIDRR's programmatic efforts. This section of the Plan focuses on several additional management strategies that NIDRR will use to enhance its programs.

*Management Strategies*

NIDRR will employ a number of management strategies in support of its five-year agenda. Among these are emphasis on Centers of Excellence; enhanced coordination of Federal disability research; improved program evaluation and performance review; enhanced peer review process; increased collaboration, including interdisciplinary and cross-disciplinary research; creative funding mechanisms; international research; innovative strategies to manage intellectual property; expanded use of information technology; the reallocation of resources; and continuous participatory planning.

*Centers of Excellence*

NIDRR is committed to regenerating a network of Centers of Excellence in disability and rehabilitation research. The term ''Center of Excellence'' is used widely in research and medical fields, and may indicate either a judgment or an aspiration. NIDRR believes the disability constituency deserves Centers of Excellence and is applying standards and procedures to ensure that all research, dissemination, technical assistance, and model service centers will develop and adhere to standards for Centers of Excellence. In 1988, an independent evaluation of the RRTCs developed a set of standards for an RRTC Center of Excellence. These standards included items of research administration, balance of activities, synergy, accountability, coordinated programs, and capacity to improve rehabilitation.

Recognizing that Centers of Excellence result from a partnership between NIDRR and its grantees, NIDRR has revisited the concept of Center of Excellence in its new Program Review Process, described later in this section. The Program Review Process has been invaluable as it led to the further identification and development of the criteria needed to set up and operate Centers of Excellence. Essential criteria for excellence are described below.

Excellence in Administration

- Support from an appropriate host institution.
- Appropriate process for research management and quality control.
- Ability to leverage resources and attract funding from other sources.
- Involvement of multiple disciplines.
- Outcomes-oriented evaluation.
- Protection of human subjects practices.

Excellence in Scientific Research

- Expertise in and contribution to state-of-the-art research.
- Application of appropriate and rigorous scientific methods, whether quantitative or qualitative.
- Advancement of theory and knowledge base in the field.
- Expansion of research tools and methods.
- Professional recognition and publication.
- Outstanding investigators.

Excellence in Relevance and Productivity

- Responsiveness to priority.
- Utility to consumers.
- Development of knowledge to improve rehabilitation.
- Systematic dissemination of knowledge in relevant and accessible formats.
- Involvement of individuals with disabilities in all phases of research process.

Excellence in Capacity-Building

- Provisions of advanced research training for staff, including persons with disabilities and minorities.
- Provision of training to service providers on using results of research efforts.
- Provision of training to consumers in the uses of research.
- Infusion of disability knowledge into other research areas.

NIDRR will continue to refine the concept of Centers of Excellence through ongoing dialogue with its Centers and other science organizations, and will adapt the concept for RERCs, model systems, and other major NIDRR programs.

*Enhancing Coordination of Federal Disability Research*

Congress recognized the importance of coordination among the range of agencies in the area of disability research by establishing, in Sec. 203 of the Rehabilitation Act of 1973, an Interagency Committee on Disability Research (ICDR), to be chaired by the Director of NIDRR. The statute lists the required membership in the ICDR—the 11 Federal agency senior officers—and charges the Committee to identify and seek to coordinate all Federal plans and projects in disability research, after receiving input from disabled individuals. The ICDR, which has 35 agencies as invited participants, has adopted by consensus a set of objectives and some specific operating procedures. The ICDR objectives are:

- To avoid duplication of efforts in disability research.
- To identify gaps in research.
- To identify opportunities for research collaboration.
- To develop mechanisms for and facilitation of disability research collaboration.
- To promote synergy through combined resources.
- To share information and research findings in order to build a more systematic and cohesive Federal effort;
- To comprise an identifiable entity that can disperse information to consumers, the private sector, policymakers, and the public about government-wide activities; and
- To assist in developing a responsive and relevant Federal infrastructure for disability research, by reporting to the Congress and the President, other agencies, and the public.

Coordination of related activities in disparate public programs is an ongoing challenge. The scope of disability suggests that many diverse agencies will be involved in providing services and conducting research on issues of relevance. This is both inevitable and desirable. Disability is at least a peripheral concern for many agencies whose central missions lie elsewhere—for example, the Departments of the Interior, Justice, and Transportation; the Federal Communications Commission (FCC); and the Federal Aviation Administration (FAA). Disability is closer to the core, but still not the primary mission of agencies such as SSA, Health Care Financing Administration (HCFA), and Administration on Aging (AoA). This dispersion of resources and authorities may benefit disabled persons by ensuring that their concerns are recognized and dealt with by a wide array of ''mainstream'' agencies. It is also beneficial to diverse constituencies to have multiple avenues of access to research funding, policymaking, and services.

Potential benefits of effective coordination of these diverse agencies include the opportunities to address a common problem with a critical mass of resources; avoid unintended and wasteful duplication; exchange

information in a system that increases all parties' awareness of issues; support complementary and synergistic research; leverage resources or provide joint funding of research; and develop a level of informed policymaking and leadership for the field.

The ICDR can play several roles in its work of coordinating activities in disability research. The ICDR can educate Federal agencies and others about disability issues; take the lead in modeling accessibility; advance important concepts such as universal design or the new paradigm of disability; and promote achievement of the goals of the ADA. The ICDR focuses efforts on gathering information about disability research and making it available to a wide range of interested agencies.

Issues that concern the missions of many agencies are the prime targets for the ICDR to address in building collaborations and cooperation. Disability statistics and building capacity in disability research are examples of two issues to be addressed by the ICDR in the next five years. All ICDR agencies and other constituents need disability statistics in their planning, policymaking, resource allocation, and progress evaluations. Most of these agencies also are charged with the collection of statistics about disability or, at least, the collection of program data about disabled participants. The ICDR will focus on improving the relevance of data collection efforts to the new paradigm of disability, the emerging universe of disability, the goals of the ADA, and NIDRR's goals of increased independence, productivity, and inclusion.

Similarly, each agency that supports disability research has a stake in ensuring the existence of a cadre of highly qualified researchers to investigate issues related to medical and vocational rehabilitation interventions, health care, societal supports, employment, accessible environments and technology, and civil rights. The investment of Federal dollars in training at all levels can be leveraged through cooperative strategic planning and coordinated program implementation, such as shared funding support of various project components.

The ICDR has adopted strategies that will support individual agencies in achieving their goals. The first major strategy is to maintain effective subcommittees in critical areas. The second strategy is to increase the flow of information to all participating agencies. The third strategy is to develop collaborative research and training agendas.

The ICDR has three subcommittees—Medical Rehabilitation [co-chaired with the Centers for Disease Control and Prevention (CDC) and NCMRR], Assistive Technology [co-chaired with the National Science Foundation (NSF)], and the long-standing Interagency Committee on Disability Statistics [co-chaired with the National Center on Health Statistics (NCHS)]. Each ICDR subcommittee plans and directs the development of an informational database of Federal (and other) research in the pertinent area. This may take the form of a compendium of projects or products or an electronic database that can be updated and accessed. For example, the Subcommittee on Rehabilitation Engineering and Assistive Technology sponsored the preparation of the Compendium of Federal Technology that Benefits Persons with Disabilities (1998). This compendium contains abstracts of research projects, other technology activities, and technology transfer activities of member agencies, and is available on the World Wide Web.

Participation by ICDR Committee and subcommittee members in critical activities of other agencies is a major step in increasing awareness and cross-fertilizing work in the field. NIDRR has invited many representatives of the other agencies to participate in peer review panels, long-range planning, priority development, and its new process of program reviews that assess the work of NIDRR Centers. Jointly developed priorities and shared funding of projects have resulted from these processes. For the future, the ICDR will continue to meet quarterly, hold annual public hearings, provide administrative support for the three subcommittees, and provide an annual report to the President and the Congress.

*Program Evaluation and Performance Review*

In the past year, NIDRR has begun a process of intensive review for all RRTCs and RERCs during their funding cycles, and has developed a set of measures in accordance with the Government Performance and Review Act (GPRA) that it will implement to link program outcomes to agency performance standards. The program reviews take the form of reverse site visits in which Center personnel present research and training outcomes in sessions attended by NIDRR senior staff, staff of related Federal agencies, other researchers, consumers with disabilities, service providers, private sector representatives such as employers or manufacturers, and information brokers. These sessions allow for intensive examination, discussion, feedback, and assessment of each center using the Center of Excellence framework. In the future, program reviews will be expanded to other NIDRR programs (Model Systems, Disability Business and Technical Assistance Centers (DBTACs), and other dissemination centers) and will occur at least twice in a Center's performance period. There will be a Formative Review, early in the funding cycle, to examine methodology, create linkages to other entities, and develop specific performance measures and outcomes data requirements. A Summative Review session will be completed near the end of the grant cycle to assess outcomes and implications for future research. Program Review reports will provide input into assessing how well NIDRR is meeting the objectives and indicators set forth in its GPRA plan. NIDRR, like other Federal research agencies, will measure research performance and outcomes in the GPRA context. NIDRR has participated in the Research Roundtable, a cooperative effort of many federal research agencies to develop a coherent strategy for GPRA in research. NIDRR has developed a two-part performance measurement strategy, based on approaches discussed at the Roundtable, that includes both metric measures of productivity (e.g., number of refereed publications, citations in the literature, persons trained) and qualitative narratives that evaluate the scientific excellence, relevance, and dissemination of project or center activities. Research is a lengthy and sometimes serendipitous process; it is impossible to predict what even the most productive research will achieve by any given time.

Furthermore, a failed hypothesis can be a project success. At the same time, NIDRR and other Federal research agencies share the concerns of Congress and the Administration that high standards of program performance and accountability for outcomes must be applied to agency-sponsored activities.

*Enhancing Peer Review*

NIDRR is implementing a project to redesign and improve important features of its peer review to provide more continuity of evaluation and improved feedback to applicants. These improvements will include standing panels for some competitions, more useful feedback to applicants, more training for members of peer review panels, a process to identify and handle repeat applications, clarifications of funding criteria and processes, and

regularized annual competition schedules.

*Creative Funding Mechanisms*

Four goals of NIDRR's management reform are to stimulate more collaborative research, to support some significant longitudinal research without diminishing competition in the program, to increase the frequency of multidisciplinary research, and to provide grantees with the flexibility to make rapid responses to new scientific and technological developments while maintaining program accountability. Periodic competition ensures the vitality of the program and its openness to new ideas. NIDRR will develop marketing strategies and capacity-building that will expand participation in disability research by leading scientists and innovators, individuals with disabilities, and those from diverse backgrounds. At present, collaborative research is implemented in the form of shared protocols and common databases, or in the more diffuse form of subcontracting for discrete parts of a whole. While subcontracting for outside expertise is often convenient, closer working partnerships are to be encouraged. Grantees find current mechanisms for participating in the collection of common data to be administratively and fiscally cumbersome. NIDRR will explore other strategies to promote collaboration, including earmarking funds specifically for collaborative research projects, authorizing grantees to reserve a portion of their centers' funds to support collaborative efforts, and creating coordinating centers in some subject areas.

Disability is a complex, dynamic, and long-term phenomenon. Understanding the course of disablement, rehabilitation, and adaptation frequently requires collection of data over extended time periods. Within the general 60-month limit on grant periods, NIDRR will look for ways to support longitudinal studies in those instances of critical importance, either by creating administrative exceptions or by creating managerial consortia that can transfer the research effort; this latter effort might be achieved through the contract mechanism in which the Government has clear ownership of all products.

While single discipline research is important, implementing the new paradigm of disability in research will demand the simultaneous and synergistic attention of many disciplines. In most fields, there is little academic or practical incentive for interdisciplinary research. Indeed, interdisciplinary research tends to become ''non-disciplinary'' (i.e., non-scientific) research if the underlying theories, assumptions, techniques, and analytical methods are not clearly specified and if the relation to the theoretical and methodological base of each involved discipline is not clearly stated. NIDRR will promote interdisciplinary research, if appropriate, through program requirements, selection criteria, and new training approaches.

Knowledge develops rapidly in some fields and certain breakthroughs in medicine or technology, or major shifts in public policy, present opportunities for improvements for persons with disabilities if they are addressed immediately. Conversely, some emerging technologies may present barriers to persons with disabilities if they are not addressed rapidly. Thus, NIDRR is developing a systematic process for grantees to direct resources to capitalize on these unforeseen opportunities while maintaining accountability and productivity.

*International Research*

The Rehabilitation Act of 1973, as amended, (Sec 204 (b)(5)), states that the Director of NIDRR is authorized to: ''Conduct * * * a program for international rehabilitation research, demonstration, and training for the purpose of developing new knowledge and methods in the rehabilitation of individuals with disabilities in the United States, cooperating with and assisting in developing and sharing information found useful in other nations in the rehabilitation of the individuals with disabilities and initiating a program to exchange experts and technical assistance in the field of rehabilitation of individuals with disbilities with other nations as a means of increasing the level of skill of rehabilitation personnel.'' NIDRR's international activities are linked to: (1) improving the skills of rehabilitation personnel in America through international data, (2) Generating international research, which provides needed data, (3) Seeking international collaborations for the development of assistive technology, and (4) strengthening disability leadership globally. NIDRR has carried out its international authority through a variety of activities including research projects; exchanges and training of scientists, engineers, and other appropriate personnel; exchanges of scientific and technological information; conferences; support of databases; and other avenues. Examples of these activities include the following: (a) Collaborative research centers in India through the United States-India Fund, (b) information exchange through support for the World Wide Web Initiative with the National Science Foundation, (c) exchange of disability and rehabilitation experts in issues affecting women with disabilities, and (d) Policy studies and forums in areas such as international standards, technology, and special education for the United Nations, European Union, and Organization for Economic and Cooperative Development.

The emergence of a true global economy dictates a new role in international activities to promote the well-being of persons with disabilities through access to jobs, better technology, and social supports. In addition, the U.S. disability research community desires to share the new disability paradigm internationally. To meet these concerns, NIDRR adopts the following priorities:

*International Standards.* NIDRR will participate in the development of international standards in assistive technology that will be recognized and debated by regulatory agencies or consortia in all parts of the world. The adoption of those standards will greatly facilitate research exchange and assist consumers in finding appropriate, high quality products.

*Joint Research.* There are many instances in which great benefits of synergy and complementarity between United States researchers and researchers in other nations could be generated by collaborative research and development efforts particularly in assistive technology, universal design, employment, independent living, wellness, and Participatory

*Action Research (PAR).* NIDRR will seek international research partners to share expenses and expertise in research projects of mutual benefit.

*Conferencing/Exchange.* Effective exchange of information and expertise is one of the greatest benefits of an international effort. NIDRR will undertake an integrated spectrum of activities to promote the new paradigm in concept and in methodology. International conferences, exchange scholars, and capacity building will emphasize personal contact, hands-on participation in data and research methodology, and practical applications of research results.

*Database Expansion.* Contemporary technology permits more effective use of the many databases in the international arena that can provide help and resources to both researchers and consumers in the United States. NIDRR desires to be a catalyst in the linking of relevant databases globally so that the universe of information is available to

any researcher or consumer anywhere on the planet. NIDRR-sponsored information systems will be the ''gateway'' to international information gathering. Access to Information Technology and Telecommunications. The growing significance of telecommunications and information technology on a global basis has the potential to assist individuals with disabilities in interacting with their environments through employment, communications, and participation in the community. NIDRR will continue efforts to ensure the availability and accessibility of worldwide information technology to persons with disabilities.

*Mangaement of Intellectual Property*

New technologies, especially electronic information media, are giving rise to even more disputes about the ownership of knowledge complicated by Government financing of the development of instruments, databases, or devices. The general principle of grantee right to patent or copyright products, with Government right of free use, can be complex to administer. NIDRR will work cooperatively with other Federal agencies and grantees to discuss intellectual property guidelines that protect taxpayers' interests in having broad access to knowledge developed with public funds, and yet protect the intellectual property rights of scientists and inventors.

*Enhanced Use of Information Technology*

NIDRR plans to continue aggressive use of information technology to facilitate many aspects of its future activities, including increased sharing of research results and data, and encouraging more collaborative projects, greater use of common protocols and databases, and more efficient use of research resources. To increase communication with and among grantees, NIDRR will use a variety of communication strategies, including website information on NIDRR and its grantees. NIDRR's accessible website, with hypertext links to grantee websites, already provides considerable information about NIDRR grantees. In addition, NIDRR is developing a Program Database that will provide NIDRR and others with up-to-date information about NIDRR grantees and research findings. This program database will allow analyses of program characteristics and more efficient management and evaluation of individual projects and the total NIDRR program. NIDRR also will create linkages for sharing information among centers and projects. These will include bulletin boards, list-servs, and written newsletters. Additionally, NIDRR will continue to sponsor effective use of teleconferencing, video-conferencing, and emerging telecommunications methods.

*Allocation of Resources*

Effective allocation of resources is required to realize NIDRR goals in all areas. In particular, NIDRR intends to allocate increased resources in four areas related to the objectives of the five-year Plan, including:

1. Support of Centers of Excellence concentrating on large-scale problems;
2. Support of investigator-initiated research projects that use the best ideas emerging from the field;
3. Expansion of capacity-building activities, including training researchers with disabilities; and
4. Development of funding opportunities for collaborative projects.

Realigning NIDRR's RRTC program away from many small centers with limited scope of work and toward more substantial centers that are increasingly cross-disability, cross-disciplinary, interdisciplinary, and have the capacity and flexibility to address emerging problems is a complex process that will be accomplished over time. The changes inherent in this process will be made by redirecting some existing resources while protecting valuable research capacity. To continue the success of NIDRR's field initiated research project program; NIDRR is increasing the number and size of the awards to ensure that excellent researchers continue to pursue this funding opportunity.

NIDRR also plans to review and expand its training activities to foster the continued development of excellent researchers, especially individuals with disabilities, for the disability research endeavor. In addition, NIDRR plans to develop a Training Database to identify and track persons trained in NIDRR's programs and to track their participation in the disability and rehabilitation fields. The Training Database will help facilitate development of a Trainee Network that will include a website; a list-serv for persons who participate in NIDRR training programs; and a directory of current and past Trainees, Scholars, and Fellows. This network will contribute to more opportunities for in-person presentations and interactions among NIDRR training recipients.

*Continuous Participatory Planning*

NIDRR will formalize an ongoing process for reviewing and revising the Long-Range Plan on a periodic basis, and for ensuring that meaningful annual priorities are crafted based on the Plan. This process will involve:

- Establishing agenda-setting work groups in each of the outcome areas designated in the Plan. These work groups will meet periodically and will be responsible for substantive recommendations, in their respective areas, for both annual priorities and new five-year goals.
- Holding at least one public hearing each year. This hearing will focus on one substantive area and will evaluate current work and identify future needs in that area. These hearings will be held in different parts of the country, and will take advantage, where possible, of video conferencing or satellite broadcasting techniques to allow the hearings to be more geographically inclusive. NIDRR will seek cosponsors for these hearings from organizations active in the particular substantive areas;
- Convening ad hoc focus groups in subject areas that need further exploration prior to implementation in annual priorities or other activities;
- Using a combination of internal and external participants to develop a combined Strategic/Program Plan, and beginning that process two years in advance of the expected products; and
- Evaluating NIDRR performance under GPRA, in part on the extent to which annual priorities are derived from and coherent with the Plan.

The progress of NIDRR's continuous planning effort and the results of implementation of the Plan will be assessed and reported in an annual report to the Congress.

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federal register

Friday
August 20, 1999

# Part VI

# Department of Health and Human Services

## Health Care Financing Administration

**45 CFR Parts 144, 146, 148, and 150**

**Federal Enforcement in Group and Individual Health Insurance Markets; Interim Rule**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Care Financing Administration**

**45 CFR Parts 144, 146, 148, and 150**

**[HCFA–2019–IFC]**

**RIN 0938–AJ48**

## Federal Enforcement in Group and Individual Health Insurance Markets

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Interim final rule with comment period.

**SUMMARY:** This interim final rule with comment period details procedures for enforcing title XXVII of the Public Health Service Act as added by the Health Insurance Portability and Accountability Act of 1996, and as amended by the Mental Health Parity Act of 1996, the Newborns' and Mothers' Health Protection Act of 1996, and the Women's Health and Cancer Rights Act of 1998, in States that do not enact the legislation necessary to enforce or otherwise do not substantially enforce the requirements of these acts. This regulation also delineates the process for taking enforcement actions against non-Federal governmental plans and, in those States in which HCFA is directly enforcing the requirements of these acts, health insurance issuers that are not complying with those requirements.

**DATES:** Effective date: September 20, 1999. Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on October 19, 1999.

**ADDRESSES:** Mail written comments (1 original and 3 copies) to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–2019–IFC, P.O. Box 9016, Baltimore, MD 21244–9016.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC,

or

Room C5–16–03, 7500 Security Boulevard, Baltimore, MD

**FOR FURTHER INFORMATION CONTACT:** Rochelle Shevitz, (410) 786–1565.

**SUPPLEMENTARY INFORMATION:**

### Comments, Procedures, and Availability of Copies

Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–2019–IFC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's office at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 to 5 p.m. (phone: (202) 690–7890).

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### I. Background

Title I of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) created a new title XXVII of the Public Health Service (PHS) Act (42 U.S.C. 300gg, *et seq.*) that requires group health plans and health insurance issuers to provide certain guarantees for availability and renewability of health coverage in the group and individual health insurance markets. [1]

The Newborns' and Mothers' Health Protection Act of 1996 amended the PHS Act to provide protections for mothers and their newborn children with regard to the length of hospital stay following childbirth. The Mental Health Parity Act of 1996 further amended title XXVII of the PHS Act to provide for parity in the application of certain annual and lifetime dollar limits on mental health benefits with annual and lifetime dollar limits on medical/surgical benefits. The Women's Health and Cancer Rights Act of 1998 amended the PHS Act to provide certain protections for patients who elect breast reconstruction in connection with a mastectomy (As used hereafter in this preamble, HIPAA refers to title XXVII of the PHS Act, as added by the Health Insurance Portability and Accountability Act of 1996, and later amended by the Mental Health Parity Act of 1996, the Newborns' and Mothers' Health Protection Act, and the Women's Health and Cancer Rights Act of 1998.)

HIPAA added two preemption provisions to the PHS Act. With respect to HIPAA's preexisting condition exclusions rules and special enrollment rights contained in section 2701 of the PHS Act, State law cannot differ in any way from the Federal requirements, except to expand the protections in one of several ways specifically permitted by the statute (See section 2723(b). With respect to HIPAA's other requirements, for example, HIPAA's non-discrimination provisions, State laws are preempted only to the extent they prevent the application of any requirement of HIPAA. (See section 2723(a)).

[1] HIPAA created a series of parallel provisions that were placed in the Employee Retirement Security Act (ERISA), which is within the jurisdiction of the Department of Labor; the Public Health Service Act (PHS), which is within the jurisdiction of the Department of Health and Human Services; and the Internal Revenue Code, which is within the jurisdiction of the Department of the Treasury. These ''shared provisions'' set forth Federal requirements relating to portability, access, and renewability of group health plans and group health insurance coverage provided by issuers. Specifically, the shared provisions contain rules limiting the use of preexisting condition exclusion periods, and prohibiting discrimination against participants and beneficiaries based on health status.

Section 104 of Title I of HIPAA requires that the three departments ensure through an interagency memorandum of understanding (MOU) that regulations, rulings and interpretations issued by each of the departments relating to the same matter over which two or more departments have jurisdiction, are administered so as to have the same effect at all times. Section 104 also requires the departments, through the MOU, to provide for coordination of policies relating to enforcement of the same requirements in order to have a coordinated enforcement strategy that avoids duplication of enforcement efforts and assigns priorities in enforcement. The three departments recently signed the MOU.

HIPAA also added certain provisions governing insurance in the group and individual markets, and with respect to non-Federal government plans which are contained only in the Public Health Service Act and thus are not within the regulatory jurisdiction of the Department of Labor or the Department of the Treasury. Section 101(b) of HIPAA provides that the Department of Labor is not authorized to enforce any of the portability requirements of part 7 of ERISA (the ''shared'' provisions) against a health insurance issuer offering health insurance coverage in connection with a group health plan, although individuals covered under ERISA can bring suit. Also, governmental plans, as defined in section 3(32) are exempt from ERISA, under section 4(1) of ERISA. Thus the scope of the MOU is limited, with respect to coordination of enforcement activities, to enforcement of shared provisions. Enforcement of these provisions constitutes only a relatively small portion of HCFA's responsibilities.

HIPAA affirms that the States are the primary regulators of health insurance coverage in each State. However, in the event that a State either does not enact legislation that meets or exceeds the Federal health insurance requirements, if it or otherwise fails to substantially enforce the HIPAA standards, the Health Care Financing Administration (HCFA) enforces the HIPAA requirements that apply to health insurance issuers offering coverage within that State.

HCFA is also responsible for enforcing the HIPAA requirements with respect to non-Federal governmental plans. Non-Federal governmental plans that are not provided through health insurance coverage may elect exemption from one or more requirements of HIPAA, but must comply with requirements regarding certification and disclosure of creditable coverage.

## II. Provisions of the Proposed Regulations

*Subpart A—General Provisions*

*Section 150.101 Basis and Scope*

On April 8, 1997, we published regulations to implement HIPAA by adding 45 CFR parts 144, 146, and 148. The enforcement provisions of that rule are contained in §§ 146.184, 148.200, and 148.202. Now that HCFA has had experience with direct Federal enforcement in some States, we have determined that it is necessary to provide more detail on the procedures that will be used to enforce HIPAA when a State does not do so. We are adding a new part that will revise and expand the provisions contained in §§ 146.184, 148.200, and 148.202. Those sections are deleted.

This new part, 45 CFR part 150, consists of four subparts. Subpart A explains the scope and basis of this regulation and presents definitions that supplement definitions located in 45 CFR 144.103 and 148.103. Subpart B describes how HCFA determines whether to assume enforcement authority in a State and explains the process for transferring such authority back to the State. Subpart C describes procedures for assessing civil money penalties. Examples of specific situations that may trigger the assessment are listed in Appendix A to Subpart C. Subpart D describes the administrative appeals process.

*Section 150.103 Definitions*

In order to convey the requirements of 45 CFR part 150, we are defining a number of terms that will be found at 45 CFR 150.103. Terms found at 45 CFR part 150 have the same meaning given to them in 45 CFR 144.103 and 148.103, unless otherwise indicated. Section 150.103 will include definitions of the following terms: amendment, endorsement or rider; application; certificate of insurance; complaint; group health insurance policy or group policy; individual health insurance policy or individual policy; plan document; and State law.

*Subpart B—HCFA Enforcement Processes for Determining Whether States Are Failing To Substantially Enforce HIPAA Requirements*

This subpart describes the steps we will take to determine whether a State is failing to substantially enforce HIPAA requirements and the notification procedures we will follow prior to beginning direct enforcement.

*Section 150.201 State Enforcement*

HIPAA affirmed the States' role as the primary regulator of health insurance in each State. Consistent with HIPAA, § 150.201 will state that, except as provided in subpart B, each State enforces HIPAA requirements with respect to health insurance issuers that issue, sell, renew, or offer health insurance coverage in the State.

*Section 150.203 Circumstances Requiring HCFA Enforcement*

Federal enforcement is triggered in two instances: (1) A State notifies us that it has not enacted the necessary legislation to bring its laws into compliance with HIPAA requirements or that it is otherwise not substantially enforcing those requirements; or (2) a State does not notify us of its failure to substantially enforce HIPAA requirements, but we receive or obtain information that forms the basis for HCFA's determination that such a failure is occurring. When we receive such notification or make such a determination, we will discuss with State officials the requirements that are not substantially enforced and begin Federal enforcement of those requirements.

With regard to the group health insurance market, section 2722(a)(2) of the PHS Act requires Federal enforcement of any ''provision (or provisions)'' that a State fails to substantially enforce. Therefore, it is possible that a State could enforce some group market provisions while HCFA enforces others.

With regard to the individual market, section 2761(a)(2) of the PHS Act calls for Federal enforcement of the ''requirements of this part'' whenever a State fails to substantially enforce them. However, HCFA does not enforce those State laws that constitute an ''acceptable alternative mechanism'' (as defined in § 148.128) for enforcing guaranteed availability regulations. In addition, HIPAA does not preempt State laws that afford greater protections to HIPAA-eligible individuals than HIPAA without preventing the application of a HIPAA requirement. Thus, in the individual market, it is also possible that HCFA will enforce some requirements while the State enforces others. The complexity of the situation varies from one State to another and requires careful consideration on a case-by-case basis.

*Section 150.205 Sources of Information Triggering an Investigation of State Enforcement*

The interim final regulations provide more specific guidance on situations in which there is no formal complaint, but other information indicates that a State's failure to substantially enforce may exist. Information regarding an alleged failure to enforce may come from a variety of sources, including, but not limited to—

- A complaint;
- Informal contacts with State officials;
- Communication with other individuals, such as brokers and agents, or consumers themselves; and
- Reports in the news media.

When we receive information indicating that a failure to substantially enforce might exist in a particular State, we will write to the governor and the commissioner of insurance or chief insurance regulatory official of that State (and/or the official responsible for regulating HMOs if the alleged failure involves HMOs) to inquire about the status of HIPAA enforcement in the State. Further action on our part will be dictated by the nature of the State's answer. If a State informs us that it is enforcing all of the requirements of HIPAA and provides a satisfactory explanation of why there is no failure, we will take no further action unless there are further indications to contradict the State's assertion.

*Sections 150.207–150.219 Procedure for Determining That a State Fails to Substantially Enforce HIPAA Requirements*

If we receive a complaint indicating that a State is failing to substantially enforce the law, we will first make a preliminary assessment of whether the complainant who is adversely affected has made a reasonable effort to resolve the issue through any remedies available under State law (§ 150.209). We will contact the complainant to

determine actions already taken, including whether State officials have been notified and what action, if any, those officials have taken. We may also contact State officials informally to discuss the situation. If we receive information other than an individual complaint, we will initiate similar contact with State officials.

In accordance with § 150.211, we will send a written notice to the State if we find that there is a reasonable question as to whether the State is failing to substantially enforce HIPAA requirements. The notice will be addressed to—

(1) The governor or chief executive officer of the State;

(2) The insurance commissioner or chief insurance regulatory official; and

(3) If the alleged failure involves HMOs, the official responsible for regulating HMOs if different from the individual identified in (2).

Under § 150.213, the notice to the State will identify the requirement or requirements of HIPAA for which there is evidence of a potential failure to enforce and will describe the facts of any alleged violation by an issuer or the ways in which the State law fails to acceptably implement HIPAA. The letter will further explain that the consequence of a State's failure to substantially enforce those requirements is that HCFA will do so. The notice will give the State 30 days to respond unless an extension is granted.

In the interim final regulations published on April 8, 1997, a response time of 45 days was allowed. This regulation shortens the response time to 30 days to lessen any adverse impact on consumers. This shorter response time appears to balance the States' prerogative to enact and enforce their own insurance laws with the consumer rights and protections that the Congress intended to guarantee when it enacted HIPAA. We invite comment on this change.

We may extend the 30-day response period for good cause at a State's request (see § 150.215). The length of the extension period granted may vary depending upon the specific circumstances of the situation; thus, the regulation does not set forth a prescribed extension period. Extensions will be granted based upon the circumstances, and at our discretion.

*Example:* The State replies to our notice by stating that some State regulators had been unclear on the scope of their new responsibilities. Having recognized the problem, the State plans to train all affected regulatory staff as quickly as possible. However, it is unlikely that the State will be able to assure us within 30 days that full HIPAA enforcement is taking place. Therefore, the State requests an extension until staff training is completed.

If, at the end of 30 days (and any extension), the State does not establish to our satisfaction that it is substantially enforcing the requirements described in the notice, we may, after further consultation with the appropriate State officials or their designees, send the State a notice of preliminary determination (see § 150.217). The notice of preliminary determination will specify the HIPAA requirements that the State has failed to substantially enforce. The notice will afford the State a reasonable opportunity to present evidence of substantial enforcement.

We will allow the State a reasonable opportunity—normally, 30 days—to correct its failure to substantially enforce the requirements identified in the preliminary determination. However, in accordance with § 150.219, if we find that the State has not taken the necessary corrective action, we will issue a final written determination. The final determination will identify the HIPAA requirements that HCFA is enforcing. The notice will also specify the effective date of HCFA's enforcement. This date may be retroactive to apply so that civil monetary penalties, that HCFA later assesses, may take into account violations that occurred after the effective dates specified in HIPAA or a date that HCFA identifies as the point at which the State's failure to substantially enforce the specified requirements commenced. HCFA does not enforce a State law that was enacted as an alternative mechanism. However, in the case of a State that is found not to be implementing its acceptable alternative mechanism, and also is found not to be substantially enforcing the Federal fallback regulations on guaranteed availability, HCFA will enforce the HIPAA requirements as of the date that HCFA determines that the State has failed to enforce. HCFA does not enforce a State law that was enacted as an alternative mechanism.

In cases where HCFA assumes enforcement responsibility in a State, the transition to Federal enforcement should be as smooth as possible in order to protect consumers and create as little disruption as possible for health insurance issuers.

*Section 150.221 Transition to State Enforcement*

When the State demonstrates that it is prepared to undertake substantial enforcement and if and when we determine that responsibility for enforcement should be returned to the State, we will enter into discussions with State officials to ensure that a smooth transition back to State enforcement is effected, especially with respect to the handling of consumer inquiries and complaints. To the extent practicable and legally permissible, we will make available to the State our records documenting issuer compliance, as well as other relevant areas of our enforcement operations, for incorporation into the records of the regulatory authority assuming jurisdiction. We invite comments on the transition procedures described in this subsection.

*Subpart C—HCFA Enforcement With Respect to Issuers and Non-Federal Governmental Plans—Civil Money Penalties*

This subpart describes the bases for imposing civil money penalties against non-Federal governmental plans, and, in those States in which we are enforcing the HIPAA requirements, against health insurance issuers that are not complying with the requirements of HIPAA.

The basis for our enforcement actions are the requirements of 45 CFR parts 146 and 148 as set forth in the interim final rules published on April 8, 1997 in the **Federal Register**, as well as the rules published on December 22, 1997 (implementing the Mental Health Parity Act of 1996) and October 27, 1998 (implementing the Newborns' and Mothers' Health Protection Act of 1996), and the requirements in sections 2706 and 2752 of the PHS Act (relating to the Women's Health and Cancer Rights Act of 1998). Those rules explain practices to which issuers and non-Federal governmental plans are required to adhere. However, since publication of the April 8, 1997 rules, we have become aware of actions taken by issuers and other responsible entities that are inconsistent with several requirements of HIPAA but are not specifically addressed in the rules. We addressed some of these actions in Bulletin 98–01, discussed below. In an appendix to Subpart C we provide a list of business practices or situations, including those listed in the bulletin, that violate HIPAA and may trigger enforcement action. This list is not all-inclusive. Rather, it highlights the compliance problems that we have encountered most frequently.

This subpart establishes an enforcement process that ensures the rights of individuals protected by HIPAA and provides for due consideration toward health insurance issuers and non-Federal governmental plans. This subpart explains the process

for investigating complaints to determine whether a violation has occurred, and, when necessary, the process for assessing a civil money penalty. In addition, this subpart provides suggestions to issuers and other responsible entities of possible ways to avoid civil money penalties through early identification of compliance problems.

*Section 150.301 General Rule Regarding the Imposition of Civil Money Penalties*

Section 150.301 states that any health insurance issuer or non-Federal governmental plan, or employer that sponsors a non-federal government plan, subject to our enforcement authority that fails to comply with HIPAA may be subject to a civil money penalty as described in this subpart.

*Section 150.303 Information Initiating Administrative Action or Investigation*

In accordance with § 150.303, any individual or any entity acting on his or her behalf may request that we investigate the possible denial or abridgement of a HIPAA right. Complaints may be directed to any of our regional offices where the complaint will be either investigated or forwarded to the appropriate office for investigation. Information about all complaints received will be accessible to all HCFA staff involved in HIPAA enforcement in both the central and regional offices.

Since many individuals protected by HIPAA will not initiate complaints because they are unaware of their rights under the law and therefore do not realize when their rights are being denied or abridged, HCFA will consider other information when determining whether a State is substantially enforcing HIPAA or when determining the compliance of an issuer or other responsible entity as defined in § 150.305 (Determination of entity liable for civil money penalty). Essentially, ''other information'' means any information HCFA receives from any source that indicates that a potential violation of HIPAA has been committed by a health insurance issuer or other responsible entity. Other information includes any other indication that an issuer or non-Federal governmental plan fails to meet any requirement of HIPAA. Sources of information that we may rely upon include, but are not limited to:

- Reports and information collected from State insurance departments, the National Association of Insurance Commissioners, and other State, local, and Federal entities;
- Information received through HCFA's enforcement activities and from other sources that may include policy form review and market conduct examinations.

*Section 150.305 Determination of Entity Liable for Civil Money Penalty*

Health insurance issuers that issue, sell, renew, or offer coverage to either private employers that sponsor group health plans or to non-Federal governmental plan sponsors are responsible for compliance with HIPAA and applicable implementing regulations at 45 CFR part 146.

Under § 150.305, we consider a health insurance issuer to be subject to a civil money penalty if a group health insurance policy it sells is written, serviced, or administered in a manner that fails to comply with, or conflicts with, an applicable requirement of HIPAA. To the extent that a group health plan is subject to HIPAA, a health insurance issuer may be liable for the penalty even if a group health plan sponsor had expressly requested that the issuer provide a policy that does not comply with one or more requirements of HIPAA. In that situation, the issuer should inform the plan sponsor that it would be illegal to sell such a policy and refuse to structure the policy as requested. With regard to health insurance sold in the individual market, the issuer is the responsible entity and therefore liable for any assessed civil money penalty. To the extent that policies sold in the individual market are subject to the requirements of HIPAA, issuers are responsible for ensuring that their policies comply and are marketed and administered in accordance with those requirements and applicable implementing regulations at 45 CFR Part 148. In addition, when a policy does not comply with applicable HIPAA requirements, the issuer may be subject to a civil money penalty irrespective of whether the issuer sold the policy directly, or a broker or agent sold the policy on the issuer's behalf.

Under section 2722(b)(1)(B) of the PHS Act, we have direct enforcement authority with respect to group health plans that are non-Federal governmental plans. A non-Federal governmental plan sponsored by one or multiple non-Federal governmental entities is subject to HIPAA to the same extent as any other group health plan, unless, in the case of a non-Federal governmental plan that is not provided through health insurance coverage, the plan sponsor(s) has (have) elected to exempt the plan from one or more HIPAA provisions (as permitted under 45 CFR 146.180, and section 2721(b)(2) of the PHS Act).

When the sponsor of a non-Federal governmental plan does not elect to have its plan exempted from one or more HIPAA requirements and the plan fails to comply with one or more applicable provisions of HIPAA, we enforce the law, and either the plan or the non-Federal governmental employer sponsoring the plan is subject to a civil money penalty. In accordance with section 2722(b)(2)(B) of the PHS Act, if the plan is sponsored by a single non-Federal governmental employer, the non-Federal governmental employer is subject to the penalty; if the plan is sponsored by two or more non-Federal governmental employers, the plan is subject to the penalty.

Separate civil money penalties may be assessed against an issuer *and* a non-Federal governmental plan or employer, depending upon the circumstances of the compliance failure(s). A civil money penalty, or penalties, will be determined in accordance with sections 150.317 through 150.325.

*Section 150.307 Notice to Responsible Entities*

Under § 150.307, when we receive a complaint or other information indicating a possible violation of HIPAA, we will provide written notice to the responsible entity(ies) that describes the substance of the complaint or other information and any identifiable actions that need to be taken to come into compliance. The notice will also provide the responsible entities 30 days from the date of the notice in which to respond. Furthermore, the notice will state that a civil money penalty may be imposed if the entity fails to comply.

*Section 150.309 Request for Extension*

Section 150.309 will allow issuers and other responsible entities to request an extension of time to respond to the notice. We will consider granting the request provided:

(1) The request for the extension is made in writing;

(2) The issuer or other responsible entity can show good cause; and

(3) A complete response can be provided within the additional time granted by HCFA.

This section, which allows for additional time, will benefit both issuers and other responsible entities that are unable to respond to an inquiry from us within 30 days regarding a potential HIPAA violation. Failure to respond to a notice from HCFA within 30 days, or any extended time frame, may result in the assessment of a civil money penalty based upon the complaint or other information. This section reflects HCFA's interest in ensuring complete responses. However, in deciding

whether to grant the extension, HCFA will also consider the facts and circumstances of the situation to assure thet individuals are not adversely affected.

*Section 150.311 Responses to Allegations of Noncompliance*

Section 150.311 will state that in determining whether to assess a civil money penalty and the amount of any such penalty, HCFA will consider documentation provided by an issuer or other responsible entity. If documentation substantiates that the violation was corrected within 30 days of the first day that the responsible entity knew, or exercising reasonable diligence, could have known of the violation, then no civil money penalty may be imposed (see § 150.341). However, if the correction is made beyond the 30 days, we will review all documentation supporting a responsible entity's efforts to comply with HIPAA and, under appropriate circumstances, take such efforts into account in our calculation of the amount of the penalty. In general, we view more favorably responses where the rights and protections afforded consumers are quickly and completely restored, and where the issuer or other responsible entity can demonstrate that adequate changes have been made to ensure future compliance.

Examples of documentation that may be included in a response include:

- Relevant policy forms, advertising material, and other documents
- Other evidence refuting the alleged noncompliance
- Evidence showing the approximate cost to the affected individual(s)
- Evidence showing the number of individuals affected
- Evidence that the entity did not know, or exercising due diligence would not have known, of the violation
- Documentation proving that issued policies and/or certificates of coverage and plan documents were amended to comply with HIPAA and showing the date of such amendment
- Documentation of the issuance of forms that comply with HIPAA (with respect to any forms that were submitted and reviewed by us, such documentation may also include any final letter from us that closed the review)
- Evidence documenting the development and implementation of internal policies and procedures to ensure HIPAA compliance (including corporate compliance programs)
- Other evidence showing the entity's prior record of HIPAA compliance

*Section 150.313 Market Conduct Examinations*

In 1974 the National Association of Insurance Commissioners recommended the establishment of a ''separate and distinct'' program of surveillance to ensure fair treatment of insurance policyholders. Since then, these surveillance programs, known as ''market conduct examinations,'' have been an essential tool used by State insurance departments to confirm the compliance of issuers with various State insurance laws and regulations.

Market conduct examinations differ from traditional financial audits performed on issuers by either regulators or the companies themselves. While financial audits are primarily concerned with the financial solvency of a company, market conduct examinations are primarily concerned with the issuer's compliance with legal requirements because the issuer's business practices impact consumers directly. For example, while an issuer may be judged financially strong through a financial audit, if this financial strength is obtained through non-compliant claim denials, the issuer could ''pass'' a financial audit, while ''failing'' a market conduct examination.

Pursuant to guidelines of the National Association of Insurance Commissioners and State insurance laws, State insurance departments charge the expenses of a market conduct examination directly to the issuer. In contrast, HCFA will not require an issuer or other responsible entity to bear the expense of a market conduct examination. During a HCFA market conduct examination, HCFA will sample and, in some cases, review in their entirety specific records, information, and other documentation maintained by the issuer or other responsible entity to determine compliance with the specific requirements of HIPAA. HCFA market conduct examinations will differ from traditional State insurance department examinations in that the scope of HCFA's reviews will be much narrower, focusing on the provisions and requirements of HIPAA.

For example, areas of HCFA examinations may include, but are not limited to:

- The issuer's, or non-Federal governmental plan's certificate of creditable coverage issuance procedures and practices;
- Claim denials based on pre-existing condition exclusion provisions of the issuer's, or the non-Federal governmental plans;
- The issuance of guaranteed available individual and small employer group products; or
- The guaranteed renewability of health insurance policies.

A market conduct examination may be performed at HCFA's initiation, or upon request of a potential responsible entity. During the course of a complaint investigation, HCFA may determine that a pattern of noncompliance exists to warrant a market conduct examination. An issuer, or a non-Federal governmental plan, may request a market conduct examination to confirm compliance or to identify potential violations and initiate corrective action that may enable it to completely avoid imposition of a civil money penalty under § 150.315 of this subpart. If we identify potential violations, we will provide notice to the issuer or other responsible entity of such defects and may present a proposed plan of correction.

A market conduct examination may be performed through either on-site examinations, when appropriate; or ''in-house'' examinations or ''desk audits'' at a HCFA location. In general, on-site examinations are appropriate when we have reason to believe that, in order to obtain and have ready access to all of the information necessary to identify existing failures to comply with HIPAA or confirm the compliance of an issuer, or a non-Federal governmental plan, it is necessary for our examiners to be at a responsible entity's site. On-site examinations may also be appropriate when the market share of an issuer represents a significant portion of the marketplace in a State or when an issuer's entire program for HIPAA compliance is the subject of the examination. In general, a ''desk audit'' is sufficient to confirm a responsible entity's compliance with regard to a specific area(s) of compliance or when circumstances make an on-site examination impracticable.

When HCFA identifies an issue that warrants investigation, HCFA will appoint one or more examiners to perform the examination and instruct them as to the scope of the examination. HCFA will observe the guidelines adopted by the NAIC and may employ additional guidelines as deemed appropriate. Upon completion of the market conduct examination, HCFA will develop a report that will address the results of the examination. Responsible entities will be advised of HCFA's position on each issue contained in the report. The purpose of the report is to identify areas of the business or operational affairs of the responsible entity that may need to be corrected.

*Sections 150.315 Through 150.323 Provisions Relating to the Amount of Penalty*

These sections of the regulation establish the process for determining the amount of any penalty that is imposed on a responsible entity for a violation of a provision or requirement of HIPAA. The statute allows for a penalty that does not exceed $100 for each day for each individual with respect to each violation. The statute further requires at section 2722 that, in determining the amount of the penalty, the responsible entity's previous record of compliance as well as the gravity of the violation be taken into consideration. Therefore, in determining the amount of the penalty, we intend to use a process that takes into account both mitigating and aggravating circumstances. We will take into account evidence of the entity's efforts to comply with HIPAA in assessing the entity's previous record of compliance. This will be determined largely through documentation submitted by the responsible entity during the course of the investigation of the complaint or other information. We will consider the gravity of the violation by reviewing the frequency of the violation as well as the level of the financial impact on any affected individuals.

Responsible entities that discover violations are encouraged to take all necessary steps to correct the violations and identify the individuals adversely affected and restore their rights. Under § 150.319, those actions taken by responsible entities to correct the violations and restore individuals' rights will be considered mitigating circumstances and will be taken into account to reduce the penalty or assessment.

Conversely, under § 150.321, we will consider as aggravating circumstances instances in which violations that appear to be frequent have resulted in an obvious or significant financial and other impacts on affected individuals or cannot be adequately corrected. These parameters will be considered in determining the gravity of the violation. In determining the appropriate amount of the penalty and assessment to be imposed, we will take into account all mitigating and aggravating circumstances outlined by these sections.

*Section 150.325 Settlement Authority*

This section will state that nothing in §§ 150.315 through 150.323 limits our authority to settle any issue or case or to reduce any penalty or assessment.

*Section 150.341 Limitations on Penalties*

This section explains that HCFA will not impose any civil money penalty on any failure if the failure was due to reasonable cause and not due to willful neglect and the failure was corrected within 30 days of the first day that any of the entities against whom the penalty would be imposed knew, or exercising reasonable diligence would have known, that the failure existed. The burden of establishing that the responsible entity did not know, and exercising reasonable diligence, could not have known that a failure existed, is on the responsible entity.

*Section 150.343 Notice of Proposed Penalty*

This section of the regulation further describes the information to be disclosed in the written notice of the proposed penalty to the responsible entity, including instructions to the responsible entity for responding and an explanation of the entity's right to a hearing if the responsible entity is appealing the proposed penalty.

*Section 150.345 Appeal of Proposed Penalty*

We include this section to direct the reader to our appeal procedures.

*Section 150.347 Failure to Request a Hearing*

This section of the regulation describes our responsibility to notify the entity in writing of the assessed penalty and the means by which to satisfy the judgment following the entity's failure to request a hearing within the specified period of time.

*Appendix A to Subpart C of Part 150—Examples of Violations*

This Appendix A includes examples of practices which, if undertaken by issuers, or non-federal governmental plans, may warrant the imposition of a civil money penalty. For convenience, the Appendix is divided into the group and individual markets and the types of violations are listed in numerical order by regulatory citation number in each of the two markets.

*Subpart D—Administrative Hearings*

This subpart describes the processes for administrative hearings and appeals of civil money penalties.

*Sections 150.401 Through 150.463*

Sections 150.401 through 150.463 set forth the procedures for appeal of HCFA's assessment of a civil money penalty. The PHS Act provides that if a responsible entity appeals HCFA's assessment of a civil money penalty, the administrative law judge hearing the appeal makes the initial agency decision.

Although the administrative law judge makes the initial agency decision, the considerations and factors set forth in this part are binding on the administrative law judge's decision. The administrative law judge may not add or disregard such considerations and factors in deciding whether assessment of a civil money penalty is appropriate, and the amount of such penalty.

Section 150.457 sets forth the process through which the HCFA Administrator may vacate or modify the administrative law judge's decision. Section 150.459 provides that any responsible entity against whom a final assessment of a civil money penalty is made may appeal that assessment to the appropriate United States District Court.

*Section 150.465 Collection and Use of Penalty Funds*

This section describes to whom (HCFA) penalty funds are paid and how they may be used.

*Sections 144.101, 144.102, and 144.103*

We are adding provisions to include the new part 150. We are also revising the definition of ''non-Federal governmental plan'' under § 144.103 because the existing definition reiterates the definition in section 2791(d)(8)(C) of the PHS Act. This definition simply states that the term ''non-Federal governmental plan'' means ''a governmental plan that is not a Federal governmental plan.'' Section 2791(d)(8)(A) defines the term ''governmental plan'' as that term is defined under section 3(32) of ERISA. (Determining whether an entity is a ''governmental plan'' for purposes of section 3(32) of ERISA is within the jurisdiction of the Department of Labor.) Subparagraphs (B) and (C) of section 2791(d)(8), respectively, define ''Federal governmental plan'' and ''non-Federal governmental plan''. ERISA does not separately define these terms. Section 3(32) of ERISA, in pertinent part, defines the term ''governmental plan'' as ''a plan established or maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing.'' We have revised the definition of the term ''non-Federal governmental plan'' by adopting that portion of the ERISA definition of ''governmental plan'' that defines a non-Federal governmental plan.

*Parts 146 and 148*

We are deleting §§ 146.184, 148.200, and 148.202, as these provisions are now in part 150.

## III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide a 60-day notice in the **Federal Register** and solicit public comment before a collection of information is submitted to the Office of Management and Budget (OMB) for review and approval. This document does not impose any information collection and record keeping requirements subject to the Paperwork Reduction Act (PRA). Consequently, it does not need to be reviewed by the Office of Management and Budget (OMB) under the authority of the PRA.

## IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the major comments in the preamble to that document.

## V. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued. We believe that dispensing with proposed rulemaking is in the public interest. Proposed rulemaking is also unnecessary. Accordingly, we are proceeding here directly with an interim final rule.

The basic requirements of this interim final rule already exist in 45 CFR parts 146 and 148. Therefore, we are not adding anything that will impose new requirements. We do include provisions that will assist health insurance issuers, and non-Federal governmental plans/employers, by letting them know what they can do if we impose a civil money penalty; for example, refute our findings or request a hearing. This rule will also help individuals whose health insurance coverage is subject to part 146 or 148 in that we will be better able to enforce our rules and provide protections to individuals.

Therefore, we find good cause to waive the notice of proposed rulemaking and to issue this rule as an interim final rule with comment period. We are, however, providing a 60-day comment period and will respond to comments we receive in any subsequent **Federal Register** document.

## VI. Regulatory Impact Statement

*A. Overall Impact*

We have examined the impacts of this rule as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). A discussion regarding the expected economic effects of this interim final rule is presented below.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses and nonprofit organizations. Entities are considered small either because of nonprofit status or because of having revenues of $5 million or less annually. For purposes of the RFA, we consider it unlikely that many health insurance issuers will meet this definition of small entity. This interim final rule will also affect non-Federal governmental plans, but these plans do not meet the definition of a small entity.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an annual expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million. Although this interim final rule will affect State and local governments and health insurance issuers in the private sector, such impact is expected to be minimal and less than $100 million in the aggregate. Set forth below is a discussion regarding the expected impact of this interim final rule.

*B. Anticipated Effects*

The Congress intended that the protections provided in HIPAA be afforded to all Americans, regardless of whether such protections are guaranteed by States or the Federal government. These regulations are intended to expand upon the basic process for Federal enforcement of HIPAA. Federal enforcement presently exists in California, Missouri and Rhode Island. We estimate that approximately 325 health insurance issuers offer health insurance coverage in these States and would therefore be affected by these regulations. While we recognize that direct Federal enforcement may become necessary in additional States, we are unable to predict the number of States or issuers affected in the future. We expect these regulations to impose a minimal burden on States, health insurance issuers, and non-Federal governmental plans/employers but we invite comments from affected parties regarding the potential or real impact of these regulations.

1. Effects on State and Local Governments

The primary impact of these regulations on States is to clarify the process by which we determine that Federal enforcement is necessary. As described in the regulations, which closely follow the statutory language, we determine that Federal enforcement is necessary when either a State notifies us of its failure to enact and/or enforce the necessary legislation; or we receive information or otherwise discover that a State is not substantially enforcing HIPAA. We are exercising our regulatory discretion where necessary to ensure that consumers are protected to the full extent of the law. The impact of our regulatory discretion with respect to States is discussed below.

These regulations will also affect State and local governments to the extent that these governments provide health plans to their employees. These plans, designated as non-Federal governmental plans under HIPAA, are subject to our direct enforcement, but those that are self-funded are permitted to elect to be exempt from one or more HIPAA provisions, with the exception of the requirement that the plan issue certificates of creditable coverage. The impact of these regulations on non-Federal governmental plans is discussed below under subsection 2. These regulations, however, will not affect health plans provided by tribal governments because such entities are not covered by the PHS Act and are

therefore not subject to our direct enforcement.

The interim final regulations published on April 8, 1997 (42 CFR Parts 144, 146, and 148) address the situation in which we learn of a State's failure to substantially enforce the HIPAA provisions by a ''complaint or other means.'' These interim final regulations clarify the scope of the term ''other means'' to include informal contact between us and State officials, a report in the news media, periodic communication by us with the States, periodic review of State health care legislation, or any other information that indicates a substantial failure to enforce. Since many individuals protected by HIPAA will not initiate complaints because they are unaware of their rights under the law and therefore do not realize when their rights are being denied or abridged, we cannot limit the basis of our investigation solely to complaints received from individuals. Therefore, we have clarified the definition of ''other information'' to include other forms of information so that we will learn about potential HIPAA violations and if necessary, initiate enforcement action as soon as possible.

If we initiate an inquiry in a particular State, we may begin our inquiry by informally contacting appropriate State officials. If a State informs us that it is enforcing all of the HIPAA provisions and requirements, we will take no further action unless there are further indications to contradict the State's assertion. If we find that a State has failed to substantially enforce HIPAA, we will allow the State a reasonable opportunity to correct such a failure. It is only when other efforts have failed that we will initiate the formal determination process in a particular State. Thus, as permitted by current regulations, while we may initiate an inquiry in a State on information other than a complaint, these regulations that we are publishing today will provide flexibility for the State to respond to the inquiry and will allow the State a reasonable opportunity to enforce HIPAA.

In the event that we determine that there is a reasonable basis for finding a State's failure to substantially enforce HIPAA, we will provide written notice to the chief executive officer of the State and other appropriate State officials. In the interim final regulations published on April 8, 1997 a response time of 45 days was allowed. This regulation shortens the response time to 30 days in order to lessen any adverse effect on individuals in that particular State. Individuals may not incur a break in coverage of more than 63 days without losing their right to HIPAA protections. Our primary concern is that individuals receive rights to which they are entitled under HIPAA. This shorter response time appears to strike a balance between the States' prerogative to regulate health insurance issuers and the rights of individuals that Congress intended to protect by enacting HIPAA. We have invited comments on this change.

However, if a State is unable to respond to our inquiry within the 30-day response period, these regulations will allow us to extend the 30-day response period for good cause. We estimate that those States responding to an inquiry will incur some costs in providing information, whether orally or in writing, to demonstrate their enforcement of HIPAA.

These regulations also provide a transition process from Federal enforcement back to State enforcement if and when HCFA determines that Federal enforcement is no longer necessary. The impact of these transitional processes is difficult to estimate at this time. We invite comments on this process and the possible impacts associated with it.

2. Effects of These Regulations on Non-Federal Governmental Plans

State and local governmental plans may offer health insurance coverage to their members through an issuer or may self-insure their members. For those non-Federal governmental plans that offer health insurance coverage through an issuer, violations by the non-Federal governmental plan are subject to our enforcement. Violations by the issuer are subject to enforcement by the State unless HCFA is directly enforcing HIPAA requirements in that State. Those plans that self-insure their members (*i.e.*, do not purchase insurance from an insurance issuer) are subject to our enforcement but are also permitted to elect exemptions from one or more HIPAA requirements. To date, approximately 615 self-insured non-Federal governmental plans have notified us of their intent to opt out of one or more HIPAA provisions. Since self-insured non-Federal governmental plans are permitted to elect exemption from one or more HIPAA provisions, we expect to find relatively few of these plans out of compliance with HIPAA. While the exact number of non-Federal governmental plans is not known at this time, we do not expect many more plans to exercise their right to opt out. In general, the effects of the regulations on health insurance issues as discussed below under subsection 3, also apply to non-Federal governmental plans/employers that are subject to HIPAA requirements.

3. Effects of the Regulations on Health Insurance Issuers Offering Individual or Group Health Insurance Coverage

In those instances in which HCFA enforces HIPAA, we are responsible for enforcing HIPAA with respect to health insurance issuers. As stated above, we estimate that 325 health insurance issuers issue policies in those three States currently subject to Federal enforcement in the individual market, group market, or both (California, Missouri, and Rhode Island). These issuers will be primarily affected to the extent that they fail to comply with the HIPAA provisions and requirements. Issuers will be required to establish new relationships and communicate directly with Federal officials. Thus, issuers may incur some costs as they develop and maintain new processes for dealing with Federal regulators. However, in those States in which we have begun directly enforcing HIPAA, we have already held meetings with health insurance issuers and provided information about appropriate Federal officials and general enforcement processes. Thus, to some extent, new relationships between health insurance issuers and Federal officials have already been established in those States. Issuers in those States will therefore incur only minimal costs in maintaining these relationships.

As part of our direct enforcement responsibilities, we may request additional information from issuers pursuant to a complaint or other information. This may impose a burden on issuers to the extent that they must submit additional information to us in response to a complaint. These interim final regulations will provide a process for doing so that is similar to the complaint resolution process currently in practice in many States. If a complaint or other information we receive indicates a potential violation, we will provide written notice to the issuer and provide 30 days from the date of the notice for the issuer to respond with additional information. This time frame may be more lenient than similar State requirements, which provide as few as 15 working days or 20 calendar days for the issuer's response. If the 30-day period is not sufficient, the issuer may request an extension for good cause. We will consider the potential impact of granting an extension on those individuals who may incur a significant break in coverage as a result of the extension.

During an investigation of any potential violation, we will review and consider documentation provided that

demonstrates the issuers compliance with HIPAA. These interim final regulations will not require, but will suggest, documentation that an issuer may submit in response to the complaint allegation. If, in the course of an investigation of a potential violation, we discover a pattern of noncompliance or any other issue that warrants further investigation, we may initiate a market conduct examination of the issuer. If, during the course of our examination, we identify a potential violation(s), we will provide notice to the issuer of the violation and a proposed plan of correction. While the issuer that undergoes a market conduct examination may incur some costs in providing the documentation requested pursuant to that examination, the issuer may avoid the imposition of a civil money penalty or may be subject to a civil money penalty of a lesser amount.

Although those health insurance issuers given notice of a potential violation may incur additional costs in responding to our inquiry, these costs are expected to be minimal and incurred only by a small number of issuers. Generally, consumers will first seek redress by the health insurance issuer and second by the State insurance department. Complaints are then forwarded to one of our regional offices and possibly our central office after the first two steps have been taken. Therefore, the number of complaints that will be brought to our attention will be relatively small given the universe of health insurance issuers.

In those instances in which documents (e.g, new policy forms or marketing materials) must be modified to meet the HIPAA standards, issuers may have to resubmit these documents to the appropriate State officials to be reviewed for compliance with other applicable State laws. Thus, issuers may spend more time bringing new materials and products to the market. However, in the absence of Federal enforcement, these documents would have had to have been reviewed by State officials for compliance with applicable HIPAA standards, as well as those of other State laws. Under Federal enforcement, issuers are therefore required to submit to a separate regulatory body—the Federal government—only information they are already required to submit to the State, and are expected to incur minimal costs in doing so.

In the event that an issuer is found to be in violation of HIPAA, the Secretary of the Department of Health and Human Services is authorized to impose civil money penalties of no more than $100 for each day for each violation for each affected individual. These regulations will provide further details regarding possible alternatives to the imposition of a civil money penalty, including returning adversely affected individuals to the same position in which they would have been had the violation not occurred.

However, in the event that an issuer refuses to respond to or resolve a complaint or other inquiry in a satisfactory manner, we will assess the penalty and provide notice of this penalty to the health insurance issuer. In assessing the penalty, we will consider several mitigating factors, also enumerated in the current interim final regulations, which include the issuer's record of prior compliance and the gravity of the violation. We will also consider aggravating circumstances, including the frequency of the violation, the financial and other impacts of the violation on the average affected individual, or the issuer's inability to show that substantially all of the violations were corrected. Issuers will be permitted to request a hearing and may also request a settlement or alternative dispute resolution.

4. Effects on the Medicare and Medicaid Programs

We do not expect that this rule will have any impact on Medicare expenditures or the solvency of the trust fund or on Medicaid program expenditures.

5. Federalism

Under Executive Order 12612, this regulation will not significantly affect the States beyond what is required by HIPAA. It follows the intent and letter of the law and does not usurp State authority beyond what the HIPAA requires. This regulation describes only processes that must be undertaken to fulfill our obligation to conduct enforcement as required by the April 8, 1997 regulation. In addition, HIPAA follows a narrow preemption of State laws and does not preempt State laws that afford greater protections to HIPAA-eligible individuals.

We have included various provisions throughout this regulation that demonstrate cooperation with the States. For example, States are afforded the opportunity to enforce HIPAA requirements, which is the preferred avenue of HIPPA implementation. If we receive information that a State is not substantially enforcing, we first ask whether State officials have been notified. We may also contact State officials informally to discuss the requirements that are allegedly not being enforced. If the State provides a satisfactory explanation that indicates it is enforcing the HIPAA requirements, we will take no further action unless we receive further information to validate the assertion that the State is failing to enforce the requirements.

If there is a reasonable question regarding whether a State is failing to substantially enforce HIPAA requirements, we will send our preliminary determination to the chief executive officer of the State, as well as to other appropriate regulatory officials of the State. This preliminary determination will provide the State with a reasonable opportunity to present evidence of substantial enforcement, to take corrective action, and under certain specific circumstances, with an opportunity to request an extension.

If we subsequently find that a State is not enforcing the HIPAA requirements, we will issue a final written determination that will identify the requirements that we will enforce and the effective date of our enforcement. Under certain circumstances it is even possible that States may enforce certain requirements while we enforce others.

After we have assumed enforcement responsibility in a State, should the State demonstrate that it is prepared to begin its own enforcement we may, at our discretion, enter into discussions with State officials regarding the possibility of a transition back to State enforcement. In this case, to the extent permissible, we will make our records documenting compliance and enforcement available for incorporation into State records.

*C. Alternatives Considered*

Throughout the process of developing these regulations, we attempted to balance States' interest in regulating health insurance issuers and the rights of those individuals that the Congress intended to protect in enacting HIPAA. In those cases where we are exercising regulatory discretion (described above), we are allowing States the maximum amount of flexibility without jeopardizing the individual's rights to the HIPAA protections. Likewise, we are attempting to establish a process for investigating complaints and other information regarding potential HIPAA violations that serves as an effective deterrent to HIPAA violations. This process will provide ample notice to the issuer and other responsible entities under investigation and will provide guidance to issuers and other responsible entities that wish to comply with the HIPAA provisions. We expect these regulations to impose a minimal burden on States, health insurance issuers, and non-Federal governmental plans/employers but we invite

comments from affected parties regarding the potential or real impact of these regulations.

*D. Conclusion*

In accordance with the requirements of the RFA, we have performed the above analysis, and we believe that there will be minimal impact on small entities. We request comments on our findings. In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

**List of Subjects Affected**

*45 CFR Parts 144 and 146*

Health care, Health insurance, Reporting and recordkeeping requirements.

*45 CFR Part 148*

Administrative practice and procedure, Health care, Health insurance, Penalties, Reporting and recordkeeping requirements.

*45 CFR Part 150*

Administrative practice and procedure, Health care, Health insurance, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 45 CFR subtitle A, subchapter B, is amended as set forth below:

A. Part 144 is amended as follows:

## PART 144—REQUIREMENTS RELATING TO HEALTH INSURANCE COVERAGE

1. The authority citation for part 144 continues to read as follows:

**Authority:** Secs. 2701 through 2763, 2791, and 2792 of the Public Health Service Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92).

2. Section 144.101 is revised to read as follows:

### § 144.101 Basis and purpose.

(a) Part 146 of this subchapter implements sections 2701 through 2723 of the Public Health Service Act (PHS Act, 42 U.S.C. 300gg, *et seq.*). Its purpose is to improve access to group health insurance coverage, guarantee the renewability of all coverage in the group market, provide certain protections for mothers and newborns with respect to coverage for hospital stays in connection with childbirth, and provide parity between the application of annual and lifetime dollar limits to mental health benefits and those limits for other health benefits and to provide certain protections for patients who elect breast reconstruction in connection with a mastectomy.

(b) Part 148 of this subchapter implements sections 2741 through 2763 of the PHS Act. Its purpose is to improve access to individual health insurance coverage for certain individuals who previously had group coverage, guarantee the renewability of all health insurance coverage in the individual market, and provide certain protections for mothers and newborns with respect to coverage for hospital stays in connection with childbirth, and to provide certain protections for patients who elect breast reconstruction in connection with a mastectomy.

(c) Part 150 of this subchapter implements the enforcement provisions of sections 2722 and 2761 of the PHS Act with respect to the following:

(1) States that fail to substantially enforce one or more provisions of part 146 concerning group health insurance or the requirements of part 148 of this subchapter concerning individual health insurance.

(2) Insurance issuers in States described in paragraph (c)(1) of this section.

(3) Group health plans that are non-Federal governmental plans.

(d) Sections 2791 and 2792 of the PHS Act define terms used in the regulations in this subchapter and provide the basis for issuing these regulations.

3. In § 144.102, paragraph (d) is added to read as follows:

### § 144.102 Scope and applicability.

* * * * *

(d) Provisions relating to HCFA enforcement of one or more provisions of part 146 or the requirements of part 148, or both, are contained in part 150 of this subchapter.

4. In § 144.103, the title, the introductory text, and the definition of non-Federal governmental plan are revised and a definition of ''HCFA'' is added to read as follows:

### § 144.103 Definitions.

For purposes of parts 146 (group market), 148 (individual market), and 150 (enforcement) of this subchapter, the following definitions apply unless otherwise provided:

* * * * *

*HCFA* means the Health Care Financing Administration.

* * * * *

*Non-Federal governmental plan* means a governmental plan established or maintained for its employees by the government of any State or political subdivision thereof, or by any agency or instrumentality of either.

* * * * *

## PART 146—[AMENDED]

B. Part 146 is amended as follows:

1. The authority citation continues to read as follows:

**Authority:** Secs. 2701 through 2723, 2791, and 2792 of the PHS Act, 42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92.

### § 146.180 [Amended]

2. The cross-reference in § 146.180(i)(2) to ''§ 146.184(d)(7)(iii)(B)'' is revised to read ''§ 150.341(a)(2).''

3. The cross-reference in § 146.180(i)(3) to ''§ 146.184'' is revised to read ''part 150 of this subchapter.''

### § 146.184 [Removed]

4. Section 146.184 is removed.

## PART 148—[AMENDED]

C. Part 148 is amended as follows:

1. The authority citation continues to read as follows:

**Authority:** Secs. 2741 through 2763, 2791, and 2792 of the Public Health Service Act (42 U.S.C. 300gg–41 through 300gg–63, 300gg–91, and 300gg–92).

### § § 148.200 and 148.202 [Removed]

2. Sections 148.200 and 148.202 are removed.

D. Part 150 is added to read as follows:

## PART 150—HCFA ENFORCEMENT IN GROUP AND INDIVIDUAL INSURANCE MARKETS

### Subpart A—General Provisions

Sec.
150.101 Basis and scope.
150.103 Definitions.

### Subpart B—HCFA Enforcement Processes For Determining Whether States Are Failing to Substantially Enforce HIPAA Requirements

Sec.
150.201 State enforcement.
150.203 Circumstances requiring HCFA enforcement.
150.205 Sources of information triggering an investigation of State enforcement.
150.207 Procedure for determining that a State fails to substantially enforce HIPAA requirements.
150.209 Verification of exhaustion of remedies and contact with State officials.
150.211 Notice to the State.
150.213 Form and content of notice.
150.215 Extension for good cause.
150.217 Preliminary determination.
150.219 Final determination.
150.221 Transition to State enforcement.

**Subpart C—HCFA Enforcement With Respect to Issuers and Non-Federal Governmental Plans—Civil Money Penalties**

150.301 General rule regarding the imposition of civil money penalties.
150.303 Basis for initiating an investigation of a potential violation.
150.305 Determination of entity liable for civil money penalty.
150.307 Notice to responsible entities.
150.309 Request for extension.
150.311 Responses to allegations of noncompliance.
150.313 Market conduct examinations.
150.315 Amount of penalty—General.
150.317 Factors HCFA uses to determine the amount of penalty.
150.319 Determining the amount of the penalty—mitigating circumstances.
150.321 Determining the amount of penalty—aggravating circumstances.
150.323 Determining the amount of penalty—other matters as justice may require.
150.325 Settlement authority.
150.341 Limitations on penalties.
150.343 Notice of proposed penalty.
150.345 Appeal of proposed penalty.
150.347 Failure to request a hearing.
Appendix A to Subpart C of Part 150—Examples of Violations

**Subpart D—Administrative Hearings**

150.401 Definitions.
150.403 Scope of ALJ's authority.
150.405 Filing of request for hearing.
150.407 Form and content of request for hearing.
150.409 Amendment of notice of assessment or request for hearing.
150.411 Dismissal of request for hearing.
150.413 Settlement.
150.415 Intervention.
150.417 Issues to be heard and decided by ALJ.
150.419 Forms of hearing.
150.421 Appearance of counsel.
150.423 Communications with the ALJ.
150.425 Motions.
150.427 Form and service of submissions.
150.429 Computation of time and extensions of time.
150.431 Acknowledgment of request for hearing.
150.435 Discovery.
150.437 Submission of briefs and proposed hearing exhibits.
150.439 Effect of submission of proposed hearing exhibits.
150.441 Prehearing conferences.
150.443 Standard of proof.
150.445 Evidence.
150.447 The record.
150.449 Cost of transcripts.
150.451 Posthearing briefs.
150.453 ALJ decision.
150.455 Sanctions.
150.457 Review by Administrator.
150.459 Judicial review.
150.461 Failure to pay assessment.
150.463 Final order not subject to review.
150.465 Collection and use of penalty funds.

**Authority:** Secs. 2701 through 2763, 2791, and 2792 of the PHS Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92).

## Subpart A—General Provisions

### § 150.101 Basis and scope.

(a) *Basis.* HCFA's enforcement authority under sections 2722 and 2761 of the PHS Act and its rulemaking authority under section 2792 of the PHS Act provide the basis for issuing regulations under this part 150.

(b) *Scope*—(1) *Enforcement with respect to group heath plans. The provisions of title XXVII of the PHS Act that apply to group health plans that are non-Federal governmental plans are enforced by HCFA using the procedures described in § 150.301 et seq.*

(2) *Enforcement with respect to health insurance issuers.* The States have primary enforcement authority with respect to the requirements of title XXVII of the PHS Act that apply to health insurance issuers offering coverage in the group or individual health insurance market. If HCFA determines under subpart B of this part that a State is not substantially enforcing title XXVII of the PHS Act, including the implementing regulations in part 146 and part 148 of this subchapter, HCFA enforces them under subpart C of this part.

### § 150.103 Definitions.

The definitions that appear in part 144 of this subchapter apply to this part 150, unless stated otherwise. As used in this part:

*Amendment, endorsement,* or *rider* means a document that modifies or changes the terms or benefits of an individual policy, group policy, or certificate of insurance.

*Application* means a signed statement of facts by a potential insured that an issuer uses as a basis for its decision whether, and on what basis to insure an individual, or to issue a certificate of insurance, or that a non-Federal governmental health plan uses as a basis for a decision whether to enroll an individual under the plan.

*Certificate of insurance* means the document issued to a person or entity covered under an insurance policy issued to a group health plan or an association or trust that summarizes the benefits and principal provisions of the policy.

*Complaint* means any expression, written or oral, indicating a potential denial of any right or protection contained in HIPAA requirements (whether ultimately justified or not) by an individual, a personal representative or other entity acting on behalf of an individual, or any entity that believes such a right is being or has been denied an individual.

*Group health insurance policy or group policy* means the legal document or contract issued by an issuer to a plan sponsor with respect to a group health plan (including a plan that is a non-Federal governmental plan) that contains the conditions and terms of the insurance that covers the group.

*HIPAA requirements* means the requirements of title XXVII of the PHS Act and its implementing regulations in parts 146 and 148 of this subchapter.

*Individual health insurance policy or individual policy* means the legal document or contract issued by the issuer to an individual that contains the conditions and terms of the insurance. Any association or trust arrangement that is not a group health plan as defined in § 144.103 of this subchapter or does not provide coverage in connection with one or more group health plans is individual coverage subject to the requirements of part 148 of this subchapter. The term ''individual health insurance policy'' includes a policy that is——

(1) Issued to an association that makes coverage available to individuals other than in connection with one or more group health plans; or

(2) Administered, or placed in a trust, and is not sold in connection with a group health plan subject to the provisions of part 146 of this subchapter.

*Plan document* means the legal document that provides the terms of the plan to individuals covered under a group health plan, such as a non-Federal governmental health plan.

*State law* means all laws, decisions, rules, regulations, or other State action having the effect of law, of any State as defined in § 144.103 of this subchapter. A law of the United States applicable to the District of Columbia is treated as a State law rather than a law of the United States.

## Subpart B—HCFA Enforcement Processes for Determining Whether States Are Failing to Substantially Enforce HIPAA Requirements

### § 150.201 State enforcement.

Except as provided in subpart C of this part, each State enforces HIPAA requirements with respect to health insurance issuers that issue, sell, renew, or offer health insurance coverage in the State.

### § 150.203 Circumstances requiring HCFA enforcement.

HCFA enforces HIPAA requirements to the extent warranted (as determined by HCFA) in any of the following circumstances:

(a) *Notification by State.* A State notifies HCFA that it has not enacted legislation to enforce or that it is not otherwise enforcing HIPAA requirements.

(b) *Determination by HCFA.* If HCFA receives or obtains information that a State may not be substantially enforcing HIPAA requirements, it may initiate the process described in this subchapter to determine whether the State is failing to substantially enforce these requirements.

(c) *Special rule for guaranteed availability in the individual market.* If a State has notified HCFA that it is implementing an acceptable alternative mechanism in accordance with § 148.128 of this subchapter instead of complying with the guaranteed availability requirements of § 148.120, HCFA's determination focuses on the following:

(1) Whether the State's mechanism meets the requirements for an acceptable alternative mechanism.

(2) Whether the State is implementing the acceptable alternative mechanism.

(d) *Consequence of a State not implementing an alternative mechanism.* If a State is not implementing an acceptable alternative mechanism, HCFA determines whether the State is substantially enforcing the requirements of §§ 148.101 through 148.126 and § 148.170 of this subchapter.

**§ 150.205 Sources of information triggering an investigation of State enforcement.**

Information that may trigger an investigation of State enforcement includes, but is not limited to, any of the following:

(a) A complaint received by HCFA.

(b) Information learned during informal contact between HCFA and State officials.

(c) A report in the news media.

(d) Information from the governors and commissioners of insurance of the various States regarding the status of their enforcement of HIPAA requirements.

(e) Information obtained during periodic review of State health care legislation. HCFA may review State health care and insurance legislation and regulations to determine whether they are:

(1) Consistent with HIPAA requirements.

(2) Not pre-empted as provided in § 146.143 (relating to group market provisions) and § 148.120 (relating to individual market requirements) on the basis that they prevent the application of a HIPAA requirement.

(f) Any other information that indicates a possible failure to substantially enforce.

**§ 150.207 Procedure for determining that a State fails to substantially enforce HIPAA requirements.**

Sections 150.209 through 150.219 describe the procedures HCFA follows to determine whether a State is substantially enforcing HIPAA requirements.

**§ 150.209 Verification of exhaustion of remedies and contact with State officials.**

If HCFA receives a complaint or other information indicating that a State is failing to enforce HIPAA requirements, HCFA assesses whether the affected individual or entity has made reasonable efforts to exhaust available State remedies. As part of its assessment, HCFA may contact State officials regarding the questions raised.

**§ 150.211 Notice to the State.**

If HCFA is satisfied that there is a reasonable question whether there has been a failure to substantially enforce HIPAA requirements, HCFA sends, in writing, the notice described in § 150.213 of this part, to the following State officials:

(a) The governor or chief executive officer of the State.

(b) The insurance commissioner or chief insurance regulatory official.

(c) If the alleged failure involves HMOs, the official responsible for regulating HMOs if different from the official listed in paragraph (b) of this section.

**§ 150.213 Form and content of notice.**

The notice provided to the State is in writing and does the following:

(a) Identifies the HIPAA requirement or requirements that have allegedly not been substantially enforced.

(b) Describes the factual basis for the allegation of a failure or failures to enforce HIPAA requirements.

(c) Explains that the consequence of a State's failure to substantially enforce HIPAA requirements is that HCFA enforces them.

(d) Advises the State that it has 30 days from the date of the notice to respond, unless the time for response is extended as described in § 150.215 of this subpart. The State's response should include any information that the State wishes HCFA to consider in making the preliminary determination described in § 150.217.

**§ 150.215 Extension for good cause.**

HCFA may extend, for good cause, the time the State has for responding to the notice described in § 150.213 of this subpart. Examples of good cause include an agreement between HCFA and the State that there should be a public hearing on the State's enforcement, or evidence that the State is undertaking expedited enforcement activities.

**§ 150.217 Preliminary determination.**

If, at the end of the 30-day period (and any extension), the State has not established to HCFA's satisfaction that it is substantially enforcing the HIPAA requirements described in the notice, HCFA takes the following actions:

(a) Consults with the appropriate State officials identified in § 150.211 (or their designees).

(b) Notifies the State of HCFA's preliminary determination that the State has failed to substantially enforce the requirements and that the failure is continuing.

(c) Permits the State a reasonable opportunity to show evidence of substantial enforcement.

**§ 150.219 Final determination.**

If, after providing notice and a reasonable opportunity for the State to show that it has corrected any failure to substantially enforce, HCFA finds that the failure to substantially enforce has not been corrected, it will send the State a written notice of its final determination. The notice includes the following:

(a) Identification of the HIPAA requirements that HCFA is enforcing.

(b) The effective date of HCFA's enforcement.

**§ 150.221 Transition to State enforcement.**

(a) If HCFA determines that a State for which it has assumed enforcement authority has enacted and implemented legislation to enforce HIPAA requirements and also determines that it is appropriate to return enforcement authority to the State, HCFA will enter into discussions with State officials to ensure that a transition is effected with respect to the following:

(1) Consumer complaints and inquiries.

(2) Instructions to issuers.

(3) Any other pertinent aspect of operations.

(b) HCFA may also negotiate a process to ensure that, to the extent practicable, and as permitted by law, its records documenting issuer compliance and other relevant areas of HCFA's enforcement operations are made available for incorporation into the records of the State regulatory authority that will assume enforcement responsibility.

## Subpart C—HCFA Enforcement With Respect to Issuers and Non-Federal Governmental Plans—Civil Money Penalties

### § 150.301 General rule regarding the imposition of civil money penalties.

If any health insurance issuer that is subject to HCFA's enforcement authority under § 150.101(b)(2), or any non-Federal governmental plan (or employer that sponsors a non-Federal governmental plan) that is subject to HCFA's enforcement authority under § 150.101(b)(1), fails to comply with HIPAA requirements, it may be subject to a civil money penalty as described in this subpart.

### § 150.303 Basis for initiating an investigation of a potential violation.

(a) *Information.* Any information that indicates that any issuer may be failing to meet the HIPAA requirements or that any non-Federal governmental plan that is a group health plan as defined in section 2791(a)(1) of the PHS Act and 45 CFR § 144.103 may be failing to meet an applicable HIPAA requirement, may warrant an investigation. HCFA may consider, but is not limited to, the following sources or types of information:

(1) Complaints.

(2) Reports from State insurance departments, the National Association of Insurance Commissioners, and other Federal and State agencies.

(3) Any other information that indicates potential noncompliance with HIPAA requirements.

(b) *Who may file a complaint.* Any entity or individual, or any entity or personal representative acting on that individual's behalf, may file a complaint with HCFA if he or she believes that a right to which the aggrieved person is entitled under HIPAA requirements is being, or has been, denied or abridged as a result of any action or failure to act on the part of an issuer or other responsible entity as defined in § 150.305.

(c) *Where a complaint should be directed.* A complaint may be directed to any HCFA regional office.

### § 150.305 Determination of entity liable for civil money penalty.

If a failure to comply is established under this Part, the responsible entity, as determined under this section, is liable for any civil money penalty imposed.

(a) *Health insurance issuer is responsible entity*—(1) *Group health insurance policy.* To the extent a group health insurance policy issued, sold, renewed, or offered to a private plan sponsor or a non-Federal governmental plan sponsor is subject to applicable HIPAA requirements, a health insurance issuer is subject to a civil money penalty, irrespective of whether a civil money penalty is imposed under paragraphs (b) or (c) of this section, if the policy itself or the manner in which the policy is marketed or administered fails to comply with an applicable HIPAA requirement.

(2) *Individual health insurance policy.* To the extent an individual health insurance policy is subject to an applicable HIPAA requirement, a health insurance issuer is subject to a civil money penalty if the policy itself, or the manner in which the policy is marketed or administered, violates any applicable HIPAA requirement.

(b) *Non-Federal governmental plan is responsible entity.* (1) *Basic rule.* If a non-Federal governmental plan is sponsored by two or more employers and fails to comply with an applicable HIPAA requirement, the plan is subject to a civil money penalty, irrespective of whether a civil money penalty is imposed under paragraph (a) of this section. The plan is the responsible entity irrespective of whether the plan is administered by a health insurance issuer, an employer sponsoring the plan, or a third-party administrator.

(2) *Exception.* In the case of a non-Federal governmental plan that is not provided through health insurance coverage, this paragraph (b) does not apply to the extent that the non-Federal governmental employers have elected under § 146.180 to exempt the plan from applicable HIPAA requirements.

(c) *Employer is responsible entity.* (1) *Basic rule.* If a non-Federal governmental plan is sponsored by a single employer and fails to comply with an applicable HIPAA requirement, the employer is subject to a civil money penalty, irrespective of whether a civil money penalty is imposed under paragraph (a) of this section. The employer is the responsible entity irrespective of whether the plan is administered by a health insurance issuer, the employer, or a third-party administrator.

(2) *Exception.* In the case of a non-Federal governmental plan that is not provided through health insurance coverage, this paragraph (c) does not apply to the extent the non-Federal governmental employer has elected under § 146.180 to exempt the plan from applicable HIPAA requirements.

(d) *Actions or inactions of agent.* A principal is liable for penalties assessed for the actions or inactions of its agent.

### § 150.307 Notice to responsible entities.

If an investigation under § 150.303 indicates a potential violation, HCFA provides written notice to the responsible entity or entities identified under § 150.305. The notice does the following:

(a) Describes the substance of any complaint or other information. (See Appendix A to this subpart for examples of violations.)

(b) Provides 30 days from the date of the notice for the responsible entity or entities to respond with additional information, including documentation of compliance as described in § 150.311.

(c) States that a civil money penalty may be assessed.

### § 150.309 Request for extension.

In circumstances in which an entity cannot prepare a response to HCFA within the 30 days provided in the notice, the entity may make a written request for an extension from HCFA detailing the reason for the extension request and showing good cause. If HCFA grants the extension, the responsible entity must respond to the notice within the time frame specified in HCFA's letter granting the extension of time. Failure to respond within 30 days, or within the extended time frame, may result in HCFA's imposition of a civil money penalty based upon the complaint or other information alleging or indicating a violation of HIPAA requirements.

### § 150.311 Responses to allegations of noncompliance.

In determining whether to impose a civil money penalty, HCFA reviews and considers documentation provided in any complaint or other information, as well as any additional information provided by the responsible entity to demonstrate that it has complied with HIPAA requirements. The following are examples of documentation that a potential responsible entity may submit for HCFA's consideration in determining whether a civil money penalty should be assessed and the amount of any civil money penalty:

(a) Any individual policy, group policy, certificate of insurance, application, rider, amendment, endorsement, certificate of creditable coverage, advertising material, or any other documents if those documents form the basis of a complaint or allegation of noncompliance, or the basis for the responsible entity to refute the complaint or allegation.

(b) Any other evidence that refutes an alleged noncompliance.

(c) Evidence that the entity did not know, and exercising due diligence could not have known, of the violation.

(d) Documentation that the policies, certificates of insurance, or non-Federal governmental plan documents have been amended to comply with HIPAA requirements either by revision of the contracts or by the development of riders, amendments, or endorsements.

(e) Documentation of the entity's issuance of conforming policies, certificates of insurance, plan documents, or amendments to policyholders or certificate holders before the issuance of the notice of intent to assess a penalty described in § 150.307.

(f) Evidence documenting the development and implementation of internal policies and procedures by an issuer, or non-Federal governmental health plan or employer, to ensure compliance with HIPAA requirements. Those policies and procedures may include or consist of a voluntary compliance program. Any such program should do the following:

(1) Effectively articulate and demonstrate the fundamental mission of compliance and the issuer's, or non-Federal governmental health plan's or employer's, commitment to the compliance process.

(2) Include the name of the individual in the organization responsible for compliance.

(3) Include an effective monitoring system to identify practices that do not comply with HIPAA requirements and to provide reasonable assurance that fraud, abuse, and systemic errors are detected in a timely manner.

(4) Address procedures to improve internal policies when noncompliant practices are identified.

(g) Evidence documenting the entity's record of previous compliance with HIPAA requirements.

**§ 150.313 Market conduct examinations.**

(a) *Definition.* A market conduct examination means the examination of health insurance operations of an issuer, or the operation of a non-Federal governmental plan, involving the review of one or more (or a combination) of a responsible entity's business or operational affairs, or both, to verify compliance with HIPAA requirements.

(b) *General.* If, based on the information described in § 150.303, HCFA finds evidence that a specific entity may be in violation of a HIPAA requirement, HCFA may initiate a market conduct examination to determine whether the entity is out of compliance. HCFA may conduct the examinations either at the site of the issuer or other responsible entity or a site HCFA selects. When HCFA selects a site, it may direct the issuer or other responsible entity to forward any documentation HCFA considers relevant for purposes of the examination to that site.

(c) *Appointment of examiners.* When HCFA identifies an issue that warrants investigation, HCFA will appoint one or more examiners to perform the examination and instruct them as to the scope of the examination.

(d) *Appointment of professionals and specialists.* When conducting an examination under this part, HCFA may retain attorneys, independent actuaries, independent market conduct examiners, or other professionals and specialists as examiners.

(e) *Report of market conduct examination.* (1) *HCFA review.* When HCFA receives a report, it will review the report, together with the examination work papers and any other relevant information, and prepare a final report. The final examination report will be provided to the issuer or other responsible entity.

(2) *Response from issuer or other responsible entity.* With respect to each examination issue identified in the report, the issuer or other responsible entity may:

(i) Concur with HCFA's position(s) as outlined in the report, explaining the plan of correction to be implemented.

(ii) Dispute HCFA's position(s), clearly outlining the basis for its dispute and submitting illustrative examples where appropriate.

(3) *HCFA's reply to a response from an issuer or other responsible entity.* Upon receipt of a response from the issuer or other responsible entity, HCFA will provide a letter containing its reply to each examination issue. HCFA's reply will consist of one of the following:

(i) Concurrence with the issuer's or non-Federal governmental plan's position.

(ii) Approval of the issuer's or non-Federal governmental plan's proposed plan of correction.

(iii) Conditional approval of the issuer's or non-Federal governmental plan's proposed plan of correction, which will include any modifications HCFA requires.

(iv) Notice to the issuer or non-Federal governmental plan that there exists a potential violation of HIPAA requirements.

**§ 150.315 Amount of penalty—General.**

A civil money penalty for each violation of 42 U.S.C. 300gg *et seq.* may not exceed $100 for each day, for each responsible entity, for each individual affected by the violation. Penalties imposed under this part are in addition to any other penalties prescribed or allowed by law.

**§ 150.317 Factors HCFA uses to determine the amount of penalty.**

In determining the amount of any penalty, HCFA takes into account the following:

(a) *The entity's previous record of compliance.* This may include any of the following:

(1) Any history of prior violations by the responsible entity, including whether, at any time before determination of the current violation or violations, HCFA or any State found the responsible entity liable for civil or administrative sanctions in connection with a violation of HIPAA requirements.

(2) Documentation that the responsible entity has submitted its policy forms to HCFA for compliance review.

(3) Evidence that the responsible entity has never had a complaint for noncompliance with HIPAA requirements filed with a State or HCFA.

(4) Such other factors as justice may require.

(b) *The gravity of the violation.* This may include any of the following:

(1) The frequency of the violation, taking into consideration whether any violation is an isolated occurrence, represents a pattern, or is widespread.

(2) The level of financial and other impacts on affected individuals.

(3) Other factors as justice may require.

**§ 150. 319 Determining the amount of the penalty—mitigating circumstances.**

For every violation subject to a civil money penalty, if there are substantial or several mitigating circumstances, the aggregate amount of the penalty is set at an amount sufficiently below the maximum permitted by § 150.315 to reflect that fact. As guidelines for taking into account the factors listed in § 150.317, HCFA considers the following:

(a) *Record of prior compliance.* It should be considered a mitigating circumstance if the responsible entity has done any of the following:

(1) Before receipt of the notice issued under § 150.307, implemented and followed a compliance plan as described in § 150.311(f).

(2) Had no previous complaints against it for noncompliance.

(b) *Gravity of the violation(s).* It should be considered a mitigating circumstance if the responsible entity has done any of the following:

(1) Made adjustments to its business practices to come into compliance with HIPAA requirements so that the following occur:

(i) All employers, employees, individuals and non-Federal governmental entities are identified that are or were issued any policy, certificate of insurance or plan document, or any form used in connection therewith that failed to comply.

(ii) All employers, employees, individuals, and non-Federal governmental plans are identified that were denied coverage or were denied a right provided under HIPAA requirements.

(iii) Each employer, employee, individual, or non-Federal governmental plan adversely affected by the violation has been, for example, offered coverage or provided a certificate of creditable coverage in a manner that complies with HIPAA requirements that were violated so that, to the extent practicable, that employer, employee, individual, or non-Federal governmental entity is in the same position that he, she, or it would have been in had the violation not occurred.

(iv) The adjustments are completed in a timely manner.

(2) Discovered areas of noncompliance without notice from HCFA and voluntarily reported that noncompliance, provided that the responsible entity submits the following:

(i) Documentation verifying that the rights and protections of all individuals adversely affected by the noncompliance have been restored; and

(ii) A plan of correction to prevent future similar violations.

(3) Demonstrated that the violation is an isolated occurrence.

(4) Demonstrated that the financial and other impacts on affected individuals is negligible or nonexistent.

(5) Demonstrated that the noncompliance is correctable and that a high percentage of the violations were corrected.

**§ 150.321 Determining the amount of penalty—aggravating circumstances.**

For every violation subject to a civil money penalty, if there are substantial or several aggravating circumstances, HCFA sets the aggregate amount of the penalty at an amount sufficiently close to or at the maximum permitted by § 150.315 to reflect that fact. HCFA considers the following circumstances to be aggravating circumstances:

(a) The frequency of violation indicates a pattern of widespread occurrence.

(b) The violation(s) resulted in significant financial and other impacts on the average affected individual.

(c) The entity does not provide documentation showing that substantially all of the violations were corrected.

**§ 150.323 Determining the amount of penalty—other matters as justice may require.**

HCFA may take into account other circumstances of an aggravating or mitigating nature if, in the interests of justice, they require either a reduction or an increase of the penalty in order to assure the achievement of the purposes of this part, and if those circumstances relate to the entity's previous record of compliance or the gravity of the violation.

**§ 150.325 Settlement authority.**

Nothing in §§ 150.315 through 150.323 limits the authority of HCFA to settle any issue or case described in the notice furnished in accordance with § 150.307 or to compromise on any penalty provided for in §§ 150.315 through 150.323.

**§ 150.341 Limitations on penalties.**

(a) *Circumstances under which a civil money penalty is not imposed.* HCFA does not impose any civil money penalty on any failure for the period of time during which none of the responsible entities knew, or exercising reasonable diligence would have known, of the failure. HCFA also does not impose a civil money penalty for the period of time after any of the responsible entities knew, or exercising reasonable diligence would have known of the failure, if the failure was due to reasonable cause and not due to willful neglect and the failure was corrected within 30 days of the first day that any of the entities against whom the penalty would be imposed knew, or exercising reasonable diligence would have known, that the failure existed.

(b) *Burden of establishing knowledge.* The burden is on the responsible entity or entities to establish to HCFA's satisfaction that no responsible entity knew, or exercising reasonable diligence would have known, that the failure existed.

**§ 150.343 Notice of proposed penalty.**

If HCFA proposes to assess a penalty in accordance with this part, it delivers to the responsible entity, or sends to that entity by certified mail, return receipt requested, written notice of its intent to assess a penalty. The notice includes the following:

(a) A description of the HIPAA requirements that HCFA has determined that the responsible entity violated.

(b) A description of any complaint or other information upon which HCFA based its determination, including the basis for determining the number of affected individuals and the number of days for which the violations occurred.

(c) The amount of the proposed penalty as of the date of the notice.

(d) Any circumstances described in §§ 150.317 through 150.323 that were considered when determining the amount of the proposed penalty.

(e) A specific statement of the responsible entity's right to a hearing.

(f) A statement that failure to request a hearing within 30 days permits the assessment of the proposed penalty without right of appeal in accordance with § 150.347.

**§ 150.345 Appeal of proposed penalty.**

Any entity against which HCFA has assessed a penalty may appeal that penalty in accordance with § 150.401 *et seq.*

**§ 150.347 Failure to request a hearing.**

If the responsible entity does not request a hearing within 30 days of the issuance of the notice described in § 150.343, HCFA may assess the proposed civil money penalty, a less severe penalty, or a more severe penalty. HCFA notifies the responsible entity in writing of any penalty that has been assessed and of the means by which the responsible entity may satisfy the judgment. The responsible entity has no right to appeal a penalty with respect to which it has not requested a hearing in accordance with § 150.405 unless the responsible entity can show good cause, as determined under § 150.405(b), for failing to timely exercise its right to a hearing.

**Appendix A to Subpart C of Part 150—Examples of Violations**

This appendix lists actions in the group and individual markets for which HCFA may impose civil money penalties. This list is not all-inclusive.

**Note 1:** All cross-references to sections of the Code of Federal Regulations are cross-references to sections in parts 144, 146, or 148 of this subchapter.

**Note 2:** Except as otherwise expressly noted, all references to non-Federal governmental plans refer to non-Federal governmental plans that are *not* exempt from HIPAA requirements (as defined in § 150.103) under section 2721(b)(2) of the PHS Act and § 146.180.

*I. Basis for Imposition of Civil Money Penalties—Actions in the Group Market*

a. Failure to comply with the limitations on pre-existing condition exclusions (§ 146.111).

Violations of the limitations on preexisting condition exclusions, set forth in § 146.111, includes those circumstances in which a non-Federal governmental plan or health insurance issuer offering group health insurance coverage does the following:

(1) Imposes a preexisting condition exclusion period that exceeds 12 months or, in the case of a late enrollee, 18 months, from the enrollment date (the first day of coverage or the first day of the waiting period, if any).

(2) Fails to reduce a pre-existing condition exclusion period by creditable coverage as provided in §§ 146.111(a)(1)(iii) and 146.113.

(3) Imposes a pre-existing condition exclusion period without first giving the two written notices required in §§ 146.111(c) and 146.115(d). The first notice is a general notice to all plan participants of the existence and terms of any pre-existing condition exclusion under the plan, and the rights of individuals to demonstrate creditable coverage. The notice should explain the right of an individual to request a certificate from a previous plan or issuer, if necessary, and include a statement that the current plan or issuer will assist in obtaining a certificate from a previous plan or issuer, if necessary. The second notice is required to be sent to any individual who has presented evidence of creditable coverage, and to whom a pre-existing condition exclusion period will be applied. This second notice informs the individual of the plan's determination of any pre-existing condition exclusion period, the basis for such determination, a written explanation of any appeals procedures established by the plan or issuer, and a reasonable opportunity to submit additional evidence of creditable coverage.

(4) Treats pregnancy as a pre-existing condition, as prohibited by § 146.111(b)(4). For example, an issuer may not refuse to pay for prenatal care and delivery effective with the date maternity coverage began because the individual did not have maternity coverage at the time the pregnancy began.

(5) Imposes a pre-existing condition exclusion with regard to a child who enrolls in a group health plan within 30 days of birth, adoption, or placement for adoption.

(6) Imposes a pre-existing condition exclusion with regard to a child who was enrolled in another group health plan within 30 days of birth, adoption, or placement for adoption and who does not experience significant break in coverage.

(7) Uses a pre-existing condition look-back period that exceeds the six-month period ending on the enrollment date in violation of § 146.111(a)(1) of this chapter.

(8) Determines whether a pre-existing condition exclusion applies by using a standard other than whether medical advice, diagnosis, care, or treatment was actually recommended or received during the look-back period. A determination that a reasonably prudent person would or should have sought medical care for the condition is an unacceptable standard by which to determine whether a pre-existing condition exclusion applies.

(9) Uses genetic information as part of the definition of pre-existing condition in the absence of a diagnosis of the condition related to the genetic information.

(10) Otherwise fails to comply with § 146.111.

b. Failure to comply with the provisions relating to creditable coverage (§ 146.113).

Failure to comply with the § 146.113 rules relating to creditable coverage includes those circumstances in which a non-Federal governmental plan or issuer offering group health insurance coverage does the following:

(1) Fails to treat all forms of coverage listed in § 146.113(a) as creditable coverage.

(2) Counts creditable coverage in a manner inconsistent with the standard method described in § 146.113(b) or the alternative method described in § 146.113(c), if it elects to use the alternative method.

(3) Treats an individual with fewer than 63 consecutive days without creditable coverage as having a significant break in coverage in violation of § 146.113(b)(2)(iii).

(4) Takes either a waiting period or an affiliation period into account when calculating a significant break in coverage, as prohibited by § 146.113(b)(2)(iii).

(5) Otherwise fails to comply with § 146.113.

c. Failure to comply with the provisions regarding certification and disclosure of previous coverage (§ 146.115).

Except as provided in paragraph (c)(b), the plan sponsor of a self-funded non-Federal governmental plan may not elect to exempt its plan from the requirements of this paragraph.

Failure to comply with the requirements in § 146.115 regarding certification and disclosure of previous coverage includes those circumstances in which a non-Federal governmental plan or issuer offering group health insurance coverage does the following:

(1) Fails to ensure that individuals who request certification receive it.

(2) Fails to automatically provide certificates of creditable coverage promptly, either—

(i) When the individual ceases to be covered under the plan (whether or not COBRA continuation coverage is offered or elected); or

(ii) When the COBRA continuation coverage is exhausted or is terminated by the individual, if COBRA continuation coverage was offered and was elected.

(3) Fails to provide certificates of creditable coverage promptly upon request.

(4) Fails to provide the required information in certificates of creditable coverage.

(5) Fails to provide certificates of creditable coverage to dependents.

(6) Fails to accept other evidence of creditable coverage as provided in § 146.115(c). (The plan sponsor of a self-funded non-Federal governmental plan may elect to exempt its plan from the requirements of this paragraph (6)).

(7) Otherwise fails to comply with § 146.115.

d. Failure to comply with the provisions regarding special enrollment periods (§ 146.117).

Failure to comply with the § 146.117 requirements regarding special enrollment periods includes those circumstances in which an issuer or a non-Federal governmental plan does the following:

(1) Fails to permit employees and dependents to enroll for coverage if they satisfy the conditions of § 146.117(a) or (b).

(2) Fails to provide coverage on a timely basis to individuals protected by a special enrollment period as provided in § 146.117.

(3) Fails to provide the employee with a description of the plan's or issuer's special enrollment rules on or before the time the employee is offered the opportunity to enroll as provided in § 146.117(c).

(4) Otherwise fails to comply with § 146.117.

e. Failure to comply with the HMO affiliation period provisions (§ 146.119).

Failure to comply with the § 146.119 affiliation period requirements includes those circumstances in which an HMO that offers group health insurance coverage does the following:

(1) Imposes a pre-existing condition exclusion period.

(2) Charges a premium for months in an affiliation period.

(3) Fails to impose an affiliation period uniformly without regard to any health status-related factor.

(4) Imposes an affiliation period that is longer than 2 months (or 3 months for late enrollees), or one that begins later than the enrollment date or does not run concurrently with any waiting period.

(5) Otherwise fails to comply with § 146.119.

f. Failure to comply with the provisions regarding nondiscrimination (§ 146.121).

Failure to comply with the § 146.121 prohibitions regarding nondiscrimination includes those circumstances in which an issuer or a non-Federal governmental plan does the following:

(1) Applies rules of eligibility (including continued eligibility) to enroll under the terms of the plan based any of the health-status related factors described in § 146.121(a).

(2) Requires an individual as a condition of enrollment or re-enrollment to pay a higher premium than others similarly situated by reason of a health-status related factor of the individual or the individual's dependent.

(3) Otherwise fails to comply with § 146.121.

g. Failure to comply with the provisions relating to benefits for mothers and newborns (§ 146.130) in States where the § 146.130 standards are applicable.

Failure of an issuer or a non-Federal governmental plan to comply with the standards in § 146.130 relating to benefits for mothers and newborns includes the following:

(1) Restricts benefits for a mother or her newborn to less than 48 hours following a vaginal delivery or less than 96 hours following a delivery by cesarean section, unless the attending provider decides, in consultation with the mother, to discharge the mother or newborn earlier.

(2) Fails to calculate the length of stay from the time of delivery when delivery occurs in a hospital, or from the time of admission when delivery occurs outside the hospital.

(3) Penalizes an attending provider for complying with the law.

(4) Offers incentives to an attending provider to provide care in a manner inconsistent with the provisions of § 146.130.

(5) Denies the mother or newborn eligibility or continued eligibility to enroll under the plan to avoid complying with § 146.130.

(6) Provides payments or rebates to mothers to encourage them to accept less than the minimum stay required.

(7) Requires an attending provider to obtain authorization to prescribe a hospital length of stay of up to 48 hours (or 96 hours) after delivery.

(8) Imposes deductibles, coinsurance, or other cost-sharing measures for any portion of a 48-hour (or 96-hour) hospital stay that are less favorable than those imposed on any preceding portion of the stay.

(9) In the case of a non-Federal governmental plan, fails to provide participants and beneficiaries with a statement describing the requirements of the Newborns' and Mothers' Health Protection Act of 1996, using the language provided at § 146.130(d)(2), not later than 60 days after the first day of the first plan year beginning on or after January 1, 1999.

(10) Otherwise fails to comply with § 146.130.

h. Failure to comply with the provisions pertaining to parity in the application of certain limits to mental health benefits in the large group market (§ 146.136).

Failure of a non-Federal governmental plan offered by a large employer or health insurance issuer offering health insurance coverage to large employers to comply with the § 146.136 provisions pertaining to parity in the application of certain limits to mental health benefits (with respect to a plan that must comply with such provisions) includes the following:

(1) Sale of a product by a health insurance issuer that fails to comply with the mental health parity provisions of § 146.136.

(2) Failure of a non-Federal governmental plan to comply with the annual and lifetime dollar limits provisions concerning mental health parity.

i. Failure to comply with the Women's Health and Cancer Rights Act of 1998 (section 2706 of the PHS Act, 42 U.S.C. 300gg–06).

j. Failure to comply with the provisions regarding guaranteed availability of coverage in the small group market (§ 146.150).

Failure to provide guaranteed availability in the small group market as provided in § 146.150 includes those circumstances in which a health insurance issuer offering any health insurance coverage to group health plans in the small group market does the following:

(1) Fails to offer all products on a guaranteed availability basis to all small employers.

(2) Fails to define a small employer using the definition at § 144.103, unless otherwise provided under State law; that is, generally an employer with between 2 and 50 employees.

(3) Fails to count as employees all individual employees that an employer wants to include in the group by applying a more restrictive definition of ''employee'' than is permitted by § 144.103.

(4) Fails to accept all employee dependents who are qualified under the terms of the employer's group health plan.

(5) Sets agent commissions for sales to small employers so low as to discourage agents from marketing policies to, or enrolling, these groups so that a failure to offer coverage results.

(6) Unreasonably delays the processing of applications submitted by small employers, so that a break in coverage of more than 63 days results.

(7) Fails to offer to any small employer on a guaranteed availability basis any product that the issuer sells to small employers through one or more associations that are not bona fide associations, as defined in § 144.103. The requirement to guarantee availability of such products to all small employers applies whether or not the small employer is a member of, or could qualify for membership in, that association.

(8) Otherwise fails to comply with § 146.150.

k. Failure to comply with the requirements regarding guaranteed renewability in either the large or small group market (§ 146.152).

Failure to provide guaranteed renewability of coverage as provided in § 146.152 includes those circumstances in which a health insurance issuer offering health insurance coverage to a group health plan in the small or large group market does the following:

(1) Fails to renew or continue in force coverage at the option of the plan sponsor unless one of the specific exceptions in § 146.152(b) is met.

(2) Fails to follow the requirements as described in § 146.152(c)–(e) relating to the discontinuance of a particular product or withdrawal from the market of a particular product.

(3) Fails to renew coverage of an individual employer who has been a member of an association when the individual employer ceases to be a member of the association, unless it is a bona fide association as defined in § 144.103, and the issuer terminates coverage for all former members on a uniform basis.

(4) Fails to act uniformly if the issuer cancels coverage.

(5) Otherwise fails to comply with § 146.152.

l. Failure to comply with the requirements relating to disclosure of information (§ 146.160).

Failure to make reasonable disclosure as provided in § 146.160 includes those circumstances in which an issuer offering group health insurance coverage to a small employer, as defined in § 144.103, does the following:

(1) Fails to disclose all information concerning all products available from the issuer in the small group market as defined in § 144.103.

(2) Otherwise fails to comply with § 146.160.

*II. Basis for Imposition of Civil Money Penalties—Actions in the Individual Market*

a. Failure to comply with the requirements regarding guaranteed availability of coverage (§ 148.120).

In States that are not implementing an acceptable alternative mechanism described in § 148.128, failure to provide guaranteed availability with no preexisting condition exclusion period as provided in § 148.120 includes those circumstances in which an issuer does the following:

(1) Fails to provide to eligible individuals, on a guaranteed availability basis, at least one of the following:

(i) Enrollment in all individual market policies it actually markets.

(ii) The two most popular policies described in § 148.120(c)(2).

(iii) Two representative policy forms as described in § 148.120(c)(3).

(2) Imposes any preexisting condition exclusion or affiliation period on eligible individuals under any policy that it sells on a guaranteed availability basis.

(3) Sets agent commissions for sales to eligible individuals so low as to discourage agents from marketing policies to, or enrolling, these individuals so that a failure to offer coverage results.

(4) Unreasonably delays the processing of applications submitted by eligible individuals.

(5) Fails to offer to any eligible individual as defined in § 148.103 (on a guaranteed availability basis with no preexisting condition exclusions) any product the issuer sells to individuals through one or more associations that are not bona fide associations, as defined in § 144.103, unless the issuer has designated at least two other products (as its two most popular or its two representative policies) that it will sell to eligible individuals.

(6) Denies an eligible individual a policy on the basis that the individual has had a significant break in coverage even though a substantially complete application was filed on or before the 63rd day after the prior group coverage ended.

(7) Otherwise fails to comply with § 148.120.

b. Failure to comply with the requirements regarding guaranteed renewability of coverage (§ 148.122).

Failure to provide guaranteed renewability as provided in § 148.122 includes those circumstances in which an issuer does the following:

(1) Fails to renew or continue in force coverage at the option of the individual, unless one of the specific exceptions in § 148.122 is met.

(2) Fails to follow the requirements relating to the discontinuance of a particular product or withdrawal from the market of a particular product as described in § 148.122(d).

(3) Fails to continue coverage at the option of the individual after the individual becomes eligible for Medicare.

(4) Fails to renew coverage for an individual who has been a member of an association when the individual ceases to be a member of the association, unless the association is a bona fide association as defined in § 144.103 and the issuer uniformly terminates coverage for all former members.

(5) Otherwise fails to comply with § 148.122.

c. Failure to comply with the requirements regarding certification and disclosure of coverage (§ 148.124).

Failure to comply with the requirements of § 148.124 regarding certification and

disclosure of previous coverage includes those circumstances in which an issuer does any of the following:

(1) Fails to provide automatic certificates of creditable coverage promptly.

(2) Fails to disclose the required information in certificates of creditable coverage as provided in § 148.124(b).

(3) Fails to provide certificates of creditable coverage to dependents who are insured in the individual market and whose coverage ceases under an individual policy.

(4) Fails to credit coverage or establish eligibility as provided in § 148.124 solely because the individual is unable to obtain a certificate. This includes failing to accept, acknowledge, consider, or otherwise use other evidence of creditable coverage described in § 146.115(c) submitted by, or on behalf of, an individual to establish that person is an eligible individual.

(5) Otherwise fails to comply with § 148.124.

d. Failure to comply with the requirements regarding determination of an eligible individual (§ 148.126).

Failure to determine, as provided in § 148.126, that an applicant for health insurance is an eligible individual includes those circumstances in which an issuer does the following:

(1) Fails to identify eligible individuals, to provide information regarding all coverage options, and to issue policies promptly.

(2) Requires eligible individuals to specify their desire to invoke the requirements of part 148 or to explicitly request their rights under the law in order to obtain information about products available to them.

(3) Otherwise fails to comply with § 148.126.

e. Failure to comply with the standards relating to benefits for mothers and newborns (§ 148.170).

In States where the § 148.170 standards are applicable (see § 148.170(e)), failure to comply with the § 148.170 standards relating to benefits for mothers and newborns includes those circumstances in which a health insurance issuer does the following:

(1) Restricts benefits for a mother or her newborn to fewer than 48 hours following a vaginal delivery or fewer than 96 hours following a delivery by cesarean section, unless the attending provider decides, in consultation with the mother, to discharge the mother or newborn earlier.

(2) Fails to calculate the length of stay from the time of delivery when delivery occurs in a hospital, or from the time of admission when delivery occurs outside the hospital.

(3) Requires an attending provider to obtain authorization to prescribe a hospital length of stay of up to 48 hours (or 96 hours, if applicable) after delivery.

(4) Imposes deductibles, coinsurance, or other cost-sharing measures for any portion of a 48-hour (or 96-hour, if applicable) hospital stay that are less favorable than those imposed on any preceding portion of the stay.

(6) Penalizes a provider for complying with the law.

(7) Offers incentives to a provider to provide care in a manner inconsistent with the provisions of § 148.170 to avoid complying with § 148.170.

(8) Denies the mother or newborn eligibility or continued eligibility solely to avoid the requirements of § 148.170.

(9) Provides incentives to mothers to encourage them to accept less than the minimum stay requirement.

(10) Fails to provide participants and beneficiaries with a statement describing the requirements of the Newborns' and Mothers' Health Protection Act of 1996, using the language provided at § 148.170 (d)(2), not later than March 1, 1999.

(11) Otherwise fails to comply with § 148.170.

f. Failure to comply with the Women's Health and Cancer Rights Act of 1998 (section 2752 of the PHS Act, 42 U.S.C. 300gg–52) and any additional implementing regulations.

## Subpart D—Administrative Hearings

### § 150.401 Definitions.

In this subpart, unless the context indicates otherwise:

*ALJ* means administrative law judge of the Departmental Appeals Board of the Department of Health and Human Services.

*Filing date* means the date postmarked by the U.S. Postal Service, deposited with a carrier for commercial delivery, or hand delivered.

*Hearing* includes a hearing on a written record as well as an in-person or telephone hearing.

*Party* means HCFA or the respondent.

*Receipt date* means five days after the date of a document, unless there is a showing that it was in fact received later.

*Respondent* means an entity that received a notice of proposed assessment of a civil money penalty issued pursuant to § 150.343.

### § 150.403 Scope of ALJ's authority.

(a) The ALJ has the authority, including all of the authority conferred by the Administrative Procedure Act, to adopt whatever procedures may be necessary or proper to carry out in an efficient and effective manner the ALJ's duty to provide a fair and impartial hearing on the record and to issue an initial decision concerning the imposition of a civil money penalty.

(b) The ALJ's authority includes the authority to modify, consistent with the Administrative Procedure Act (5 U.S.C. 552a), any hearing procedures set out in this subpart.

(c) The ALJ does not have the authority to find invalid or refuse to follow Federal statutes or regulations.

### § 150.405 Filing of request for hearing.

(a) A respondent has a right to a hearing before an ALJ if it files a request for hearing that complies with § 150.407(a), within 30 days after the date of issuance of either HCFA's notice of proposed assessment under § 150.343 or notice that an alternative dispute resolution process has terminated. The request for hearing should be addressed as instructed in the notice of proposed determination. ''Date of issuance'' is five (5) days after the filing date, unless there is a showing that the document was received earlier.

(b) The ALJ may extend the time for filing a request for hearing only if the ALJ finds that the respondent was prevented by events or circumstances beyond its control from filing its request within the time specified above. Any request for an extension of time must be made promptly by written motion.

### § 150.407 Form and content of request for hearing.

(a) The request for hearing must do the following:

(1) Identify any factual or legal bases for the assessment with which the respondent disagrees.

(2) Describe with reasonable specificity the basis for the disagreement, including any affirmative facts or legal arguments on which the respondent is relying.

(b) The request for hearing must identify the relevant notice of assessment by date and attach a copy of the notice.

### § 150.409 Amendment of notice of assessment or request for hearing.

The ALJ may permit HCFA to amend its notice of assessment, or permit the respondent to amend a request for hearing that complies with § 150.407(a), if the ALJ finds that no undue prejudice to either party will result.

### § 150.411 Dismissal of request for hearing.

An ALJ will order a request for hearing dismissed if the ALJ determines that:

(a) The request for hearing was not filed within 30 days as specified by § 150.405(a) or any extension of time granted by the ALJ pursuant to § 150.405(b).

(b) The request for hearing fails to meet the requirements of § 150.407.

(c) The entity that filed the request for hearing is not a respondent under § 150.401.

(d) The respondent has abandoned its request.

(e) The respondent withdraws its request for hearing.

### § 150.413 Settlement.

HCFA has exclusive authority to settle any issue or any case, without the consent of the administrative law judge at any time before or after the administrative law judge's decision.

**§ 150.415 Intervention.**

(a) The ALJ may grant the request of an entity, other than the respondent, to intervene if all of the following occur:

(1) The entity has a significant interest relating to the subject matter of the case.

(2) Disposition of the case will, as a practical matter, likely impair or impede the entity's ability to protect that interest.

(3) The entity's interest is not adequately represented by the existing parties.

(4) The intervention will not unduly delay or prejudice the adjudication of the rights of the existing parties.

(b) A request for intervention must specify the grounds for intervention and the manner in which the entity seeks to participate in the proceedings. Any participation by an intervenor must be in the manner and by any deadline set by the ALJ.

(c) The Department of Labor or the IRS may intervene without regard to paragraphs (a)(1) through (a)(3) of this section.

**§ 150.417 Issues to be heard and decided by ALJ.**

(a) The ALJ has the authority to hear and decide the following issues:

(1) Whether a basis exists to assess a civil money penalty against the respondent.

(2) Whether the amount of the assessed civil money penalty is reasonable.

(b) In deciding whether the amount of a civil money penalty is reasonable, the ALJ—

(1) Applies the factors that are identified in § 150.317.

(2) May consider evidence of record relating to any factor that HCFA did not apply in making its initial determination, so long as that factor is identified in this subpart.

(c) If the ALJ finds that a basis exists to assess a civil money penalty, the ALJ may sustain, reduce, or increase the penalty that HCFA assessed.

**§ 150.419 Forms of hearing.**

(a) All hearings before an ALJ are on the record. The ALJ may receive argument or testimony in writing, in person, or by telephone. The ALJ may receive testimony by telephone only if the ALJ determines that doing so is in the interest of justice and economy and that no party will be unduly prejudiced. The ALJ may require submission of a witness' direct testimony in writing only if the witness is available for cross-examination.

(b) The ALJ may decide a case based solely on the written record where there is no disputed issue of material fact the resolution of which requires the receipt of oral testimony.

**§ 150.421 Appearance of counsel.**

Any attorney who is to appear on behalf of a party must promptly file, with the ALJ, a notice of appearance.

**§ 150.423 Communications with the ALJ.**

No party or person (except employees of the ALJ's office) may communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for both parties to participate. This provision does not prohibit a party or person from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

**§ 150.425 Motions.**

(a) Any request to the ALJ for an order or ruling must be by motion, stating the relief sought, the authority relied upon, and the facts alleged. All motions must be in writing, with a copy served on the opposing party, except in either of the following situations:

(1) The motion is presented during an oral proceeding before an ALJ at which both parties have the opportunity to be present.

(2) An extension of time is being requested by agreement of the parties or with waiver of objections by the opposing party.

(b) Unless otherwise specified in this subpart, any response or opposition to a motion must be filed within 20 days of the party's receipt of the motion. The ALJ does not rule on a motion before the time for filing a response to the motion has expired except where the response is filed at an earlier date, where the opposing party consents to the motion being granted, or where the ALJ determines that the motion should be denied.

**§ 150.427 Form and service of submissions.**

(a) Every submission filed with the ALJ must be filed in triplicate, including one original of any signed documents, and include:

(1) A caption on the first page, setting forth the title of the case, the docket number (if known), and a description of the submission (such as ''Motion for Discovery'').

(2) The signatory's name, address, and telephone number.

(3) A signed certificate of service, specifying each address to which a copy of the submission is sent, the date on which it is sent, and the method of service.

(b) A party filing a submission with the ALJ must, at the time of filing, serve a copy of such submission on the opposing party. An intervenor filing a submission with the ALJ must, at the time of filing, serve a copy of the submission on all parties. Service must be made by mailing or hand delivering a copy of the submission to the opposing party. If a party is represented by an attorney, service must be made on the attorney.

**§ 150.429 Computation of time and extensions of time.**

(a) For purposes of this subpart, in computing any period of time, the time begins with the day following the act, event, or default and includes the last day of the period unless it is a Saturday, Sunday, or legal holiday observed by the Federal government, in which event it includes the next business day. When the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal government are excluded from the computation.

(b) The period of time for filing any responsive pleading or papers is determined by the date of receipt (as defined in § 150.401) of the submission to which a response is being made.

(c) The ALJ may grant extensions of the filing deadlines specified in these regulations or set by the ALJ for good cause shown (except that requests for extensions of time to file a request for hearing may be granted only on the grounds specified in section § 150.405(b)).

**§ 150.431 Acknowledgment of request for hearing.**

After receipt of the request for hearing, the ALJ assigned to the case or someone acting on behalf of the ALJ will send a letter to the parties that acknowledges receipt of the request for hearing, identifies the docket number assigned to the case, provides instructions for filing submissions and other general information concerning procedures, and sets out the next steps in the case.

**§ 150.435 Discovery.**

(a) The parties must identify any need for discovery from the opposing party as soon as possible, but no later than the time for the reply specified in § 150.437(c). Upon request of a party, the ALJ may stay proceedings for a reasonable period pending completion of discovery if the ALJ determines that a party would not be able to make the submissions required by § 150.437 without discovery. The parties should attempt to resolve any discovery issues informally before seeking an order from the ALJ.

(b) Discovery devices may include requests for production of documents,

requests for admission, interrogatories, depositions, and stipulations. The ALJ orders interrogatories or depositions only if these are the only means to develop the record adequately on an issue that the ALJ must resolve to decide the case.

(c) Each discovery request must be responded to within 30 days of receipt, unless that period of time is extended for good cause by the ALJ.

(d) A party to whom a discovery request is directed may object in writing for any of the following reasons:

(1) Compliance with the request is unduly burdensome or expensive.

(2) Compliance with the request will unduly delay the proceedings.

(3) The request seeks information that is wholly outside of any matter in dispute.

(4) The request seeks privileged information. Any party asserting a claim of privilege must sufficiently describe the information or document being withheld to show that the privilege applies. If an asserted privilege applies to only part of a document, a party withholding the entire document must state why the nonprivileged part is not segregable.

(e) Any motion to compel discovery must be filed within 10 days after receipt of objections to the party's discovery request, within 10 days after the time for response to the discovery request has elapsed if no response is received, or within 10 days after receipt of an incomplete response to the discovery request. The motion must be reasonably specific as to the information or document sought and must state its relevance to the issues in the case.

**§ 150.437 Submission of briefs and proposed hearing exhibits.**

(a) Within 60 days of its receipt of the acknowledgment provided for in § 150.431, the respondent must file the following with the ALJ:

(1) A statement of its arguments concerning HCFA's notice of assessment (respondent's brief), including citations to the respondent's hearing exhibits provided in accordance with paragraph (a)(2) of this section. The brief may not address factual or legal bases for the assessment that the respondent did not identify as disputed in its request for hearing or in an amendment to that request permitted by the ALJ.

(2) All documents (including any affidavits) supporting its arguments, tabbed and organized chronologically and accompanied by an indexed list identifying each document (respondent's proposed hearing exhibits).

(3) A statement regarding whether there is a need for an in-person hearing and, if so, a list of proposed witnesses and a summary of their expected testimony that refers to any factual dispute to which the testimony will relate.

(4) Any stipulations or admissions.

(b) Within 30 days of its receipt of the respondent's submission required by paragraph (a) of this section, HCFA will file the following with the ALJ:

(1) A statement responding to the respondent's brief, including the respondent's proposed hearing exhibits, if appropriate. The statement may include citations to HCFA's proposed hearing exhibits submitted in accordance with paragraph (b)(2) of this section.

(2) Any documents supporting HCFA's response not already submitted as part of the respondent's proposed hearing exhibits, organized and indexed as indicated in paragraph (a)(2) of this section (HCFA's proposed hearing exhibits).

(3) A statement regarding whether there is a need for an in-person hearing and, if so, a list of proposed witnesses and a summary of their expected testimony that refers to any factual dispute to which the testimony will relate.

(4) Any admissions or stipulations.

(c) Within 15 days of its receipt of HCFA's submission required by paragraph (b) of this section, the respondent may file with the ALJ a reply to HCFA's submission.

**§ 150.439 Effect of submission of proposed hearing exhibits.**

(a) Any proposed hearing exhibit submitted by a party in accordance with § 150.437 is deemed part of the record unless the opposing party raises an objection to that exhibit and the ALJ rules to exclude it from the record. An objection must be raised either in writing prior to the prehearing conference provided for in § 150.441 or at the prehearing conference. The ALJ may require a party to submit the original hearing exhibit on his or her own motion or in response to a challenge to the authenticity of a proposed hearing exhibit.

(b) A party may introduce a proposed hearing exhibit following the times for submission specified in § 150.437 only if the party establishes to the satisfaction of the ALJ that it could not have produced the exhibit earlier and that the opposing party will not be prejudiced.

**§ 150.441 Prehearing conferences.**

An ALJ may schedule one or more prehearing conferences (generally conducted by telephone) on the ALJ's own motion or at the request of either party for the purpose of any of the following:

(a) Hearing argument on any outstanding discovery request.

(b) Establishing a schedule for any supplements to the submissions required by § 150.437 because of information obtained through discovery.

(c) Hearing argument on a motion.

(d) Discussing whether the parties can agree to submission of the case on a stipulated record.

(e) Establishing a schedule for an in-person hearing, including setting deadlines for the submission of written direct testimony or for the written reports of experts.

(f) Discussing whether the issues for a hearing can be simplified or narrowed.

(g) Discussing potential settlement of the case.

(h) Discussing any other procedural or substantive issues.

**§ 150.443 Standard of proof.**

(a) In all cases before an ALJ—

(1) HCFA has the burden of coming forward with evidence sufficient to establish a prima facie case;

(2) The respondent has the burden of coming forward with evidence in response, once HCFA has established a prima facie case; and

(3) HCFA has the burden of persuasion regarding facts material to the assessment; and

(4) The respondent has the burden of persuasion regarding facts relating to an affirmative defense.

(b) The preponderance of the evidence standard applies to all cases before the ALJ.

**§ 150.445 Evidence.**

(a) The ALJ will determine the admissibility of evidence.

(b) Except as provided in this part, the ALJ will not be bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate; for example, to exclude unreliable evidence.

(c) The ALJ excludes irrelevant or immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence is excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement made in this

action will be inadmissible to the extent provided in the Federal Rules of Evidence.

(g) Evidence of acts other than those at issue in the instant case is admissible in determining the amount of any civil money penalty if those acts are used under §§ 150.317 and 150.323 of this part to consider the entity's prior record of compliance, or to show motive, opportunity, intent, knowledge, preparation, identity, or lack of mistake. This evidence is admissible regardless of whether the acts occurred during the statute of limitations period applicable to the acts that constitute the basis for liability in the case and regardless of whether HCFA's notice sent in accordance with §§ 150.307 and 150.343 referred to them.

(h) The ALJ will permit the parties to introduce rebuttal witnesses and evidence.

(i) All documents and other evidence offered or taken for the record will be open to examination by all parties, unless the ALJ orders otherwise for good cause shown.

(j) The ALJ may not consider evidence regarding the willingness and ability to enter into and successfully complete a corrective action plan when that evidence pertains to matters occurring after HCFA's notice under § 150.307.

**§ 150.447 The record.**

(a) Any testimony that is taken in-person or by telephone is recorded and transcribed. The ALJ may order that other proceedings in a case, such as a prehearing conference or oral argument of a motion, be recorded and transcribed.

(b) The transcript of any testimony, exhibits and other evidence that is admitted, and all pleadings and other documents that are filed in the case constitute the record for purposes of an ALJ decision.

(c) For good cause, the ALJ may order appropriate redactions made to the record.

**§ 150.449 Cost of transcripts.**

Generally, each party is responsible for 50 percent of the transcript cost. Where there is an intervenor, the ALJ determines what percentage of the transcript cost is to be paid for by the intervenor.

**§ 150.451 Posthearing briefs.**

Each party is entitled to file proposed findings and conclusions, and supporting reasons, in a posthearing brief. The ALJ will establish the schedule by which such briefs must be filed. The ALJ may direct the parties to brief specific questions in a case and may impose page limits on posthearing briefs. Additionally, the ALJ may allow the parties to file posthearing reply briefs.

**§ 150.453 ALJ decision.**

The ALJ will issue an initial agency decision based only on the record and on applicable law; the decision will contain findings of fact and conclusions of law. The ALJ's decision is final and appealable after 30 days unless it is modified or vacated under § 150.457.

**§ 150.455 Sanctions.**

(a) The ALJ may sanction a party or an attorney for failing to comply with an order or other directive or with a requirement of a regulation, for abandonment of a case, or for other actions that interfere with the speedy, orderly or fair conduct of the hearing. Any sanction that is imposed will relate reasonably to the severity and nature of the failure or action.

(b) A sanction may include any of the following actions:

(1) In the case of failure or refusal to provide or permit discovery, drawing negative fact inferences or treating such failure or refusal as an admission by deeming the matter, or certain facts, to be established.

(2) Prohibiting a party from introducing certain evidence or otherwise advocating a particular claim or defense.

(3) Striking pleadings, in whole or in part.

(4) Staying the case.

(5) Dismissing the case.

(6) Entering a decision by default.

(7) Refusing to consider any motion or other document that is not filed in a timely manner.

(8) Taking other appropriate action.

**§ 150.457 Review by Administrator.**

(a) The Administrator of HCFA (which for purposes of this subsection may include his or her delegate), at his or her discretion, may review in whole or in part any initial agency decision issued under § 150.453.

(b) The Administrator may decide to review an initial agency decision if it appears from a preliminary review of the decision (or from a preliminary review of the record on which the initial agency decision was based, if available at the time) that:

(1) The ALJ made an erroneous interpretation of law or regulation.

(2) The initial agency decision is not supported by substantial evidence.

(3) The ALJ has incorrectly assumed or denied jurisdiction or extended his or her authority to a degree not provided for by statute or regulation.

(4) The ALJ decision requires clarification, amplification, or an alternative legal basis for the decision.

(5) The ALJ decision otherwise requires modification, reversal, or remand.

(c) Within 30 days of the date of the initial agency decision, the Administrator will mail a notice advising the respondent of any intent to review the decision in whole or in part.

(d) Within 30 days of receipt of a notice that the Administrator intends to review an initial agency decision, the respondent may submit, in writing, to the Administrator any arguments in support of, or exceptions to, the initial agency decision.

(e) This submission of the information indicated in paragraph (d) of this section must be limited to issues the Administrator has identified in his or her notice of intent to review, if the Administrator has given notice of an intent to review the initial agency decision only in part. A copy of this submission must be sent to the other party.

(f) After receipt of any submissions made pursuant to paragraph (d) of this section and any additional submissions for which the Administrator may provide, the Administrator will affirm, reverse, modify, or remand the initial agency decision. The Administrator will mail a copy of his or her decision to the respondent.

(g) The Administrator's decision will be based on the record on which the initial agency decision was based (as forwarded by the ALJ to the Administrator) and any materials submitted pursuant to paragraphs (b), (d), and (f) of this section.

(h) The Administrator's decision may rely on decisions of any courts and other applicable law, whether or not cited in the initial agency decision.

**§ 150.459 Judicial review.**

(a) *Filing of an action for review.* Any responsible entity against whom a final order imposing a civil money penalty is entered may obtain review in the United States District Court for any district in which the entity is located or in the United States District Court for the District of Columbia by doing the following:

(1) Filing a notice of appeal in that court within 30 days from the date of a final order.

(2) Simultaneously sending a copy of the notice of appeal by registered mail to HCFA.

(b) *Certification of administrative record.* HCFA promptly certifies and files with the court the record upon which the penalty was assessed.

(c) *Standard of review.* The findings of HCFA and the ALJ may not be set aside unless they are found to be unsupported by substantial evidence, as provided by 5 U.S.C. 706(2)(E).

**§ 150.461 Failure to pay assessment.**

If any entity fails to pay an assessment after it becomes a final order, or after the court has entered final judgment in favor of HCFA, HCFA refers the matter to the Attorney General, who brings an action against the entity in the appropriate United States district court to recover the amount assessed.

**§ 150.463 Final order not subject to review.**

In an action brought under § 150.461, the validity and appropriateness of the final order described in § 150.459 is not subject to review.

**§ 150.465 Collection and use of penalty funds.**

(a) Any funds collected under § 150.461 are paid to HCFA.

(b) The funds are available without appropriation until expended.

(c) The funds may be used only for the purpose of enforcing the HIPAA requirements for which the penalty was assessed.

Dated: April 16, 1999.

**Nancy-Ann Min DeParle,**

*Administrator, Health Care Financing Administration.*

Dated May 25, 1999.

**Donna E. Shalala,**

*Secretary.*

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# Part VII

# Environmental Protection Agency

## Final Guidance on Environmentally Preferable Purchasing for Executive Agencies; Notice

**ENVIRONMENTAL PROTECTION AGENCY**

**[OPPTS–00149A; FRL–6095–4]**

**RIN 2070–AC78**

## Final Guidance on Environmentally Preferable Purchasing for Executive Agencies

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This document announces the availability of a general guidance designed to assist Executive agencies in identification and acquisition of environmentally preferable products and services. The final guidance is in response to section 503 of Executive Order 13101, entitled ''Greening the Government Through Waste Prevention, Recycling and Federal Acquisition'' (63 FR 49641, September 16, 1998), which requires EPA to issue guidance to address environmentally preferable purchasing by the Federal government. The guidance is designed to assist Executive agencies with the implementation of the environmentally preferable purchasing provisions of Executive Order 13101 and Section 23.704 of the Federal Acquisition Regulations. The implementation of this guidance will result in increased purchases by the Federal government of products and services which minimize harmful effects on human health and the environment.

**FOR FURTHER INFORMATION CONTACT:** For information contact: Eun-Sook Goidel, Office of Pollution Prevention and Toxics, Pollution Prevention Division, 7409, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, telephone: (202) 260–3296, fax: (202) 260–0178, e-mail: goidel.eunsook@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. Does this Apply to Me?

You may be potentially affected by this notice if you are an Executive agency employee responsible for the acquisition and use of products and services. Those who produce and sell products and services for use by the Federal government may also find the information in this notice to be of interest. If you have any questions regarding the applicability of this notice to a particular organization, consult the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

### II. How Can I Get Additional Information or Copies of this Document or Other Documents?

For the convenience of the reader, the final guidance is published below in its entirety in Unit VII.

1. *Electronically*. You may also obtain electronic copies of this document and various support documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''Federal Register--Environmental Documents.'' You can also go directly to the ''Federal Register'' listings at http://www.epa.gov/fedrgstr/. Alternatively, you can go to the Environmentally Preferable Purchasing program's website: http://www.epa.gov/opptintr/epp.

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–00149A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

### III. Introduction

On September 14, 1998, President Clinton signed Executive Order 13101, entitled ''Greening the Government through Waste Prevention, Recycling and Federal Acquisition.'' Section 503 of this Executive Order requires EPA to establish guidance to ''address environmentally preferable purchasing.''

The guidance that is being made available today is designed to help Executive agencies meet their obligations under Executive Order 13101 to identify and purchase environmentally preferable products and services. ''Environmentally preferable'' is defined in section 201 of the Executive Order to mean products or services that have a ''lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose.'' The guidance is intended to draw on the extensive procurement experience of the Executive agencies and on the environmental expertise of EPA and others both within and outside of the government. It provides a broad decision-making framework for environmentally preferable purchasing and is a first step to help Executive agencies systematically integrate environmental preferability into the Federal government's buying decisions.

### IV. Background

This Final Guidance on Environmentally Preferable Purchasing is based on EPA's September 1995 Proposed Guidance on the Acquisition of Environmentally Preferable Products and Service and the comments received on that proposal. EPA announced the availability of and sought comment on the Proposed Guidance on the Acquisition of Environmentally Preferable Products and Service on September 29, 1995 (60 FR 50721) (FRL–4760–5). The process EPA used to develop the proposed guidance is described in that **Federal Register** notice. In addition, lessons and insights from early pilot projects have guided the development of the Final Guidance.

Since 1995, a variety of things have occurred that will directly affect the Federal government's environmentally preferable purchasing practices. Foremost are the 1997 revisions to the Federal Acquisition Regulations that incorporate policies for the acquisition of environmentally preferable and energy-efficient products and services. These changes require the consideration of environmental factors in all aspects of Federal acquisition, including acquisition planning (part 7), conducting market surveys (part 10), describing an agency's needs (part 11), evaluating and selecting a vendor (parts 14 and 15), and contract administration (part 42), as well as other provisions.

Another milestone is the 1996 enactment of the National Technology Transfer and Advancement Act of 1995 (NTTAA) which requires the Federal government to use consensus-based industry standards when available rather than creating a government-unique standard.

The acquisition streamlining reform initiatives have also brought many changes to the way the Federal government purchases products and

services. One example is increased decentralization of the purchasing decision, best exemplified by the meteoric increase in credit card use by Federal agency personnel. The number of card holders increased from 10,000 in 1989 to 250,000 in 1996 with the dollar volume increasing from $460,000 to close to $3 billion during the same time period. This trend highlights the importance of reaching out to those beyond the acquisition community with the environmentally preferable purchasing message.

Another trend is the increased interest at all levels of government--local, state and foreign--in using the government's purchasing power as a policy tool to drive environmental improvement. This trend will likely accelerate the anticipated spill-over effect of environmentally preferable purchasing practices. Beyond the governments' interest, other large institutional purchasers--non-profits and individual companies--are also beginning to include environmental factors in their buying decisions.

## V. Lessions Learned

In the years since the Proposed Guidance was first issued, a number of pilot projects were initiated to demonstrate how EPA's Proposed Guidance could be applied to specific product categories. Though limited in number, these projects have provided important insights into the development of the Final Guidance as well as the direction of EPA's Environmentally Preferable Purchasing program.

First, it is important to have the participation of both the environmental and the acquisition/procurement personnel. The acquisition of environmentally preferable products and services in the Federal government context involves both defining what is environmentally preferable for a given product or service and ensuring that the procurement process encourages the purchases of these products. Innovative approaches that leverage the expertise of the environmental and procurement experts is essential to accomplishing these tasks and institutionalizing environmentally preferable purchasing practices.

Second, on a very positive note, early pilots have shown that vendors understand that providing a broad range of environmental information is an important part of doing business with the government and that it can serve as a competitive advantage. Generally speaking, however, information about environmental performance of products and services, particularly along the various life cycle stages, and easy-to-use tools to assess environmental performance remain scarce, limiting the wide-spread adoption of environmentally preferable purchasing. This is likely to change as Executive agencies begin to implement the changes to the Federal Acquisition Regulations and as agencies begin to use information and technical expertise of non-governmental entities.

Lastly, early pilots indicate that there is not a single, ''one size fits all,'' approach to incorporate environmental preferability into Federal acquisition. Using common sense, we need to tailor our approach and level of analysis to fit the complexity of the product and service categories being purchased.

Much progress has been made since Executive Order 12873 was issued in October 1993. A number of pilot projects have been implemented by key purchasing agencies that have provided valuable insights and lessons on ways to integrate environmental considerations into the Federal procurement process. These pilots have helped to identify gaps in information and tools. Future pilots will be instrumental in guiding both EPA's and other Executive agencies' efforts in environmentally preferable purchasing. As EPA and the other agencies move forward, the debate about the appropriate approaches and goals will likely continue. This is desirable given the dynamic nature of the issue. Based on feedback from all stakeholders, EPA will continue to test a variety of approaches and develop and refine tools to allow agencies to more readily apply the concepts of environmental preferability in government purchasing decisions.

## VI. Major Changes to the Guidance

This section describes some of the key changes made to the 1995 Proposed Guidance. EPA has also prepared a more detailed Response to Comment document, which has been included in the public record for this guidance.

### *A. Guidance Framework*

The Guidance framework remains largely unchanged and includes an introduction (Section I), intended audience (Section II), approach (Section III), a set of guiding principles (Section IV), suggested steps for Executive agency implementation (Section V), and appendices (Section VII). A new section, Section VI, lists available resources and tools related to environmentally preferable purchasing.

### *B. Guiding Principles*

A number of changes have been made to the guiding principles, including the addition of a new principle and the merging of a number of principles. As a result, the Final Guidance now has five, rather than seven, guiding principles. Taken together, the principles are intended to provide a broad guide to help Executive agency purchasers address environmental preferability in acquisition of products and services. Specifically, the following changes have been made:

1. A new principle on product safety, price, environmental considerations, performance and availability has been added as Principle #1 and reads:

> Environmental considerations should become part of normal purchasing practice consistent with such traditional factors as product safety, price, performance, and availability.

This was in response to a number of comments requesting more emphasis be placed on the point that the addition of environment is not in lieu of traditional purchasing factors. Although the original proposal noted this, the addition of this new principle should send a clearer message on the importance of putting environmental considerations in the context of other purchasing factors.

2. The guiding principles on life cycle and multiple attributes have been collapsed into one principle (Principle #3) and reads:

> A product's or service's environmental preferability is a function of multiple attributes from a life cycle perspective.

This change is based on comments and also EPA's strong belief that the two concepts are integral in determining environmental preferability. The discussion that follows the guiding principle has also been modified to reflect that although the determination of environmental preferability should be based on multiple attributes, the purchasing decision may at times be based on a single attribute.

3. The guiding principles on impacts and local conditions have been modified and collapsed into one principle (Principle #4) and reads:

> Determining environmental preferability may involve comparing environmental impacts. In comparing environmental impacts, Federal agencies should consider: the reversibility and geographic scale of the environmental impacts, the degree of difference among competing products or services, and the overriding importance of protecting human health.

This change was made to remove the perceived conflict between the two original principles and to provide purchasers with more guidance on how to assess relative impacts. The original principles were intended to convey that, in general, global and irreversible

environmental impacts should be given greater weight in determining preferability than local and rapidly reversible environmental impacts. However, we also recognize that there may be situations in which there are unique mitigating circumstances locally, and in those cases, the purchaser can make the judgement that the local conditions and impacts should be given priority.

4. The principles on competition and product attribute have been revised and a new principle (Principle #5) on environmental information has been added. It reads:

> Comprehensive, accurate and meaningful information about the environmental performance of products or services is necessary in order to determine environmental preferability.

This revision was based on lessons from the pilots and reflects the importance of having relevant environmental information for determining environmental preferability. The discussion related to competition which originally appeared under guiding Principle #6 is now captured under guiding Principle #1.

*C. Federal Agency Implementation*

A number of changes have been made to facilitate Executive agency implementation of environmentally preferable purchasing, including:

1. EPA recommends that Executive agencies look to EPA's list of the top 20 prioritized product categories to focus their pilot projects. The description of this list is included in Section VI of the Final Guidance and the complete list is available on EPA's Environmentally Preferable Purchasing Program's website: www.epa.gov/opptintr. The prioritized list was developed pursuant to Section 503(a) of Executive Order 13101 which states that EPA's guidance ''should be. . .targeted towards products and services that have the most effect.''

2. In implementing pilot projects, EPA recommends, pursuant to section 503(b)(2) of Executive Order 13101, that agencies use all of the options available to determine environmentally preferable attributes of products and services in pilot projects, including the use of technical expertise of non-governmental entities such as labeling, certification, or standards developing organizations. Additional guidance on the use of these organizations is elaborated in the Office of Federal Environmental Executive and EPA's April 1998 policy letter. The full text of this policy letter has been added as Appendix E.

3. EPA recommends that agencies document their pilot efforts. In order to facilitate this, the Final Guidance includes a sample case study template (Appendix E).

*D. Appendices*

A number of changes have been made to this section, including:

1. The addition of three new items:

i. Sample Policy Directive (Appendix C).

ii. Full Text of April 1998 Policy Letter on Non-governmental Entities (Appendix D).

iii. Sample Case Study Template (Appendix E).

2. The deletion of the original Appendix D, ''A Summary of the Federal Trade Commission's Guides to the Use of Environmental Marketing Claims.'' The Guides were updated in May 1998 and the information on how to access the most recent Guides is now included in Section VI--Resources.

## VII. Final Guidance on Environmentally Preferable Purchasing for Executive Agencies

For the convenience of the reader, the final guidance is published below in its entirety.

BILLING CODE 6560–50–F

# Final Guidance on Environmentally Preferable Purchasing

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# *Guidance on Environmentally Preferable Purchasing*

## I. Introduction

On September 14, 1998, President Clinton signed Executive Order (EO)13101, entitled "Greening the Government through Waste Prevention, Recycling and Federal Acquisition." Executive Order 13101 (EO 13101) supersedes EO 12873, Federal Acquisition, Recycling and Waste Prevention, issued on October 20, 1993, but retains a similar requirement for the U.S. Environmental Protection Agency (EPA) to develop guidance to "address environmentally preferable purchasing." (Section 503, EO 13101) The Final Guidance that follows is based on EPA's September 1995 *Proposed Guidance on the Acquisition of Environmentally Preferable Products and Services* (60 FR 50721, September 29, 1995) and comments received on that Proposed Guidance as well as lessons learned from pilot projects conducted to date.

The Final Guidance below is designed to help Executive agencies meet their obligations under EO 13101 to identify and purchase environmentally preferable products and services. Section 503 (c) of EO 13101 directs Executive agencies to "use the principles and concepts in the EPA Guidance on Acquisition of Environmentally Preferable Products and Services, in addition to the lessons from the pilot and demonstration projects to the maximum extent practicable, in identifying and purchasing environmentally preferable products and services" and "modify their procurement programs as appropriate." Furthermore, Section 23.704 of the Federal Acquisition Regulation requires agencies to "affirmatively implement" the objective of "obtaining products and services considered to be environmentally preferable (based on EPA-issued guidance)."

"Environmentally preferable" is defined in Section 201 of EO 13101 to mean products or services that "have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance or disposal of the product or service."

Implementation of the Final Guidance will draw on the procurement experience of the Executive agencies and on the environmental expertise of EPA and other organizations both within and outside of the Federal government. This guidance provides a broad framework of issues to consider in environmentally preferable purchasing and will help Executive agencies systematically integrate environmental preferability principles into their buying decisions.

The guidance is <u>not</u>, however, a step-by-step, "how to" guide and it is not intended to answer many of the specific questions that might arise in the acquisition of a particular product category or service. The list of resources in Section VI provides more specific guidance and information about various product and service categories, environmental attributes that have been identified for them, and the approaches used to consider those attributes in acquisition decisions. For the latest information on other resources and tools under development, Executive agency personnel and others are directed to EPA's Environmentally Preferable Purchasing Program Web site at:<www.epa.gov/opptintr/epp>

The Final Guidance strives to meet the National Performance Review and procurement reform goals of simplifying and streamlining Federal purchasing while recognizing that the definition of "environmentally preferable" will likely require the consideration of different environmental factors as appropriate for different situations. In sum, the guidance:

- Applies to all acquisition types, from supplies and services to buildings and systems.
- Provides a set of guiding principles.
- Requests Executive agencies to select and implement pilot acquisitions or demonstration projects.
- Provides a framework for Executive agencies to implement the environmentally preferable purchasing provisions of EO13101.

## II. Intended Audience for the Guidance

The target audience of this guidance includes all Executive agency employees involved in the acquisition of supplies, services, systems, and/or facilities. The general guidance and the information generated by the pilot projects also will be useful to Executive agency employees who request, maintain, or use the supplies, services, systems and facilities. In addition, both the general guidance and the pilot project information should provide pragmatic direction for private sector businesses who wish to manufacture, market, or provide environmentally preferable products and services for use by the Federal government.

## III. Overall Approach for Implementing Executive Order 13101

Section 503 of EO 13101 has two key components: (1) development of this guidance; and (2) implementation of the guidance through pilot and demonstration projects. This guidance sets a broad policy framework for implementing environmentally preferable purchasing within the context of Federal government. For the second component, Section 503 (b) of the EO states "[A]gencies are encouraged to immediately test and evaluate the principles and concepts contained in the EPA's Guidance...through pilot projects...". These pilots may be undertaken using the in-house expertise of EPA and other Executive agencies, as well as the technical expertise of nongovernmental entities, including, but not limited to, voluntary consensus standards bodies (see§ 12(d) of the National Technology Transfer and Advancement Act (Pub. L. 104-113, §12(d), 15 U.S.C. 272 note), environmental standard setting organizations, third party certification programs, environmental labeling or environmental "report card" programs, and other environmental consulting organizations. Section V of this Final Guidance provides more detail about how these pilot projects might work. These pilots are expected to yield more specific and practical information about applying this Final Guidance to purchases of particular products and services.

In addition to promoting environmentally preferable purchasing, EO 13101 encourages Executive agencies to purchase bio-based products. (Section 504 (b)). Under the EO, "biobased product" means "a commercial or industrial product (other than food or feed) that utilizes biological products or renewable domestic agricultural (plant, animal and marine) or forestry materials."

Bio-based products may also be environmentally preferable. Made from renewable resources by definition, these products have many positive environmental aspects and should be considered by agencies looking to make environmentally preferable purchases. However, Federal purchasers should not assume all bio-based products are automatically environmentally preferable. As with other products, Executive agencies should consider a range of environmental impacts associated with bio-based products when making purchasing decisions. In some cases, factors such as pesticide use or high water consumption might make a bio-based product less environmentally preferable. The list of bio-based products which the U.S. Department of Agriculture will issue under Section 504 of EO 13101 will be a good starting point for Executive agencies looking to identify environmentally preferable purchasing. During the development of pilots under Section 503 (b) of the EO, EPA will look for opportunities involving bio-based products.

## IV. Guiding Principles

EPA has developed five guiding principles to provide broad guidance for applying environmentally preferable purchasing in the Federal government setting. Applicability of these principles in specific acquisitions will vary depending on a variety of factors, such as: the type and complexity of the product or service being purchased; whether or not the product or service is commercially-available; the type of procurement method used (e.g., negotiated contract, sealed bid, etc.); the time frame for the requirement; and the dollar amount of the requirement.

In all acquisitions, Executive agency personnel use their professional judgement and common sense, whether assessing a product or service's performance, cost, or availability. Similarly, in applying these environmentally preferable principles Executive agency personnel should use reasonable discretion about the level of analysis needed to determine environmental preferability. For example, an extensive life cycle assessment might not be conducted to purchase rubber bands. On the other hand, for large-volume or systems acquisitions, or for complex products, such assessments may be appropriate, and might already be required. Or, in some cases, much of the information upon which to build such an analysis might have already been collected.

***Guiding Principle 1: Environment + Price + Performance = Environmentally Preferable Purchasing***

*Environmental considerations should become part of normal purchasing practice, consistent with such traditional factors as product safety, price, performance, and availability.*

The manufacture, use, and disposal of certain products might have adverse impacts on human health and the environment. These impacts impose costs that the purchasing entity, and ultimately, society as a whole, end up paying for in one way or another. For the Federal government, the hazardous or toxic nature of a product or service can result in significant cleanup or liability costs, as well as in less directly quantifiable, but cumulative and persistent environmental damage. Even non-hazardous waste is associated with ever-increasing disposal costs that can be avoided or reduced. Responsible management, beginning with the initial purchase of products and services that minimize environmental burdens, can diminish the Federal government's raw material, operating, maintenance, and disposal costs. In addition, a product or service's environmental preferability can often have positive impacts on its overall performance.

For these reasons, the Federal government's purchasing decisions are no longer confined to considerations of price and functional performance but should include considerations of environmental performance as well. Today agencies can obtain improved environmental attributes not at the expense of, but instead may operate in concert with, other traditional factors like price and functional performance. Those product or service providers who can optimize all these factors will capture and maintain the largest market-share of government customers.

Just like price, performance, and health and safety, environmental factors should be a subject of competition among vendors seeking government contracts. In turn, this increased competition among vendors should stimulate continuous environmental improvement and increase the availability of environmentally preferable products and services. The purpose of this guidance is to encourage Executive agencies to award contracts to companies that take environmental concerns into account. This process, consequently, will lead to the development of environmentally preferable products and services that perform better and cost less because they reduce waste and negative environmental impacts. As stated, this principle reflects the spirit of a number of reinvention initiatives at EPA and across the Federal government aimed at testing cleaner, cheaper, and smarter approaches to environmental protection.

Agencies have considerable discretion in incorporating environmental preferability into procurement decisions, especially within the context of "best value" contracting. For example, environmental considerations that result in payment of a price premium for goods or services may be reasonably related to an agency's definition of its "minimum needs" and, therefore, may be permissible. This is not much different than paying a higher price for better performance or quality. Federal personnel may consider paying a reasonable premium for environmentally preferable products on a number of grounds. For example, a reasonable price premium may be justified because the environmental attributes of a product or service provide offsetting reductions in operating and disposal costs.

***Guiding Principle 2: Pollution Prevention***

*Consideration of environmental preferability should begin early in the acquisition process and be rooted in the ethic of pollution prevention, which strives to eliminate or reduce, up-front, potential risks to human health and the environment.*

It is never too early in the acquisition process to begin considering environmental preferability. Pollution prevention, the reduction or elimination of waste at the source, can not only reduce pollution, but it can save money for agencies as well. Defense and civilian Federal agencies have ongoing programs for pollution prevention under EO 12856 and other authorities that can result in cost savings throughout the product or service life cycle. Furthermore, pollution prevention measures can lead to a higher degree of environmental protection by reducing subsequent costs for disposal or cleanup of hazardous wastes and materials. A key reason for environmentally preferable purchasing is to protect the environment by reducing waste and pollution at the source with the resulting benefit of reduced overall cost to the government and the public (taxpayers and society as a whole).

Under this guiding principle, pollution prevention should be the primary motivation and strategy for the Federal government's implementation of environmentally preferable purchasing. There are many ways to apply pollution prevention to the acquisition process:

a) Customized purchases or projects in which program managers, architects, engineers, systems designers, or others have input into the design phase afford agencies an early opportunity to apply environmentally preferable concepts. In addition, early involvement offers agencies a unique point of leverage from which to address environmental impacts. Although these types of purchases are not the bulk of Federal acquisition requirements, the early stage of customized product or project design is the time when decisions about different approaches, materials, and manufacturing processes are made. Estimates show that 70 percent or more of the costs associated with product development, manufacture, and use are determined during the initial design stages.[1] By incorporating environmental factors during product or service design, Federal agencies can minimize environmental problems and their associated costs. For example, early environmental consideration helps agencies avoid potential liabilities due to fines as well as the costs of record keeping and reporting.

b) During the early stages of acquisition, Executive agency personnel can also apply a systems analysis approach for certain products or services (such as computers, buildings, and transportation systems) in which a number of components have interdependent functions. A systems analysis approach takes into consideration the full set of product

[1]U.S. Congress, Office of Technology Assessment, Green products by Design: Choices for a Cleaner Environment, OTA-E-541 (Washington, D.C.:U.S. Government Printing Office, October, 1992)

elements, focusing on how they interact from a life cycle perspective and helping to identify the most efficient options for meeting the government's needs.

c) Executive agency personnel might also appropriately ask whether a product or a service is even necessary or can be replaced by a less damaging process. For instance, in degreasing operations, questions arise as to whether an efficient cleaner using halogenated solvents is better or worse for the environment than an aqueous-based cleaner. A more appropriate question may be whether the cleaning/degreasing step can be eliminated without affecting the overall performance of the product or system. This might be accomplished, for example, by consolidating cleaning and degreasing in a later stage of the manufacturing process or changing the process itself. As this example illustrates, environmental preferability does not just involve substituting a "green" product for another. It also involves questioning whether a function needs to be performed and how it can best be performed to minimize negative environmental impacts.

The Department of Defense integrates pollution prevention into all of its major weapons system acquisition programs. For example, the New Attack Submarine (NSSN) Program has worked to include environmental considerations in all phases of the submarine's life cycle, from initial design to eventual disposal some 30 or more years later.

By considering all viable environmental alternatives during the design phase, the NSSN Program identified a number of options that will result in benefits. Just a few examples are listed below:

- A redesigned nuclear reactor core will eliminate the need for refueling and disposal of spent nuclear fuel, while achieving a multi-million dollar cost avoidance.
- 31 percent reduction in the number of paints and coatings used in manufacturing the NSSN while ensuring that all of the selected paints satisfy applicable performance and environmental requirements.
- 61 percent reduction in the number of adhesive products to be used on the NSSN compared to the number required for previous submarine classes.
- 80 percent reduction in the number of solvents and cleaners.
- Research and development effort to identify and test a biodegradable hydraulic fluid for submarines to replace the current toxic mineral oil-based fluid.

By recognizing early on that the key to reducing environmental impact throughout the ship's life cycle is pollution prevention and hazardous material control and management, the NSSN Program was able to design a submarine that meets strict safety and performance requirements, achieves significant cost savings, and minimizes risk to the environment.

### *Guiding Principle 3: Life Cycle Perspective/Multiple Attributes*

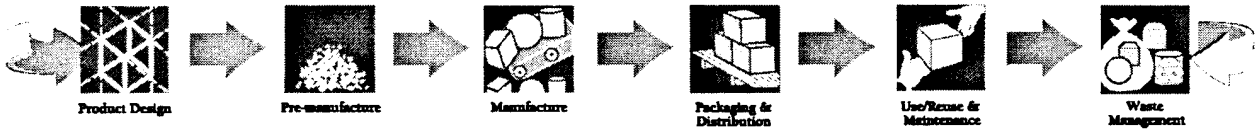
*A product or service's environmental preferability is a function of multiple attributes from a life cycle perspective.*

Federal agencies should consider the following concepts in applying this principle :

a) Life cycle perspective—A product or service has environmental impacts long before and after the Federal government purchases and uses it. The manufacture, use,

distribution, and disposal of products create a variety of burdens on the environment. Federal agencies should strive to purchase products or services with as few negative environmental impacts in as many life cycle stages as possible. In other words, Federal agencies should determine the "environmental preferability" of a product or service by comparing the severity of environmental damage it causes throughout its life cycle with that caused by competing products—from the point of raw materials acquisition, product manufacturing, packaging, and transportation to its use and ultimate disposal. By doing so, the Federal government can minimize the overall environmental impacts of products and services. In addition, by actively seeking and considering life cycle information to inform buying decisions, Executive agency personnel can send a clear signal that government business will go to those who consider the effect of their product's life cycle on the environment.

## Life Cycle Stages of a Typical Product




Although most people would agree that considering life cycle impacts in purchasing decisions is desirable, there are disagreements on how to make purchasing decisions that best reflect a life cycle perspective. Even the term "life cycle" is interpreted differently by different people. To some, it connotes an exhaustive, extremely time-consuming, and very expensive analysis. To others, a life cycle perspective is possible in an abbreviated process, in which a long list of potential environmental attributes and/or impacts is narrowed to a few, allowing for comparison across a particular product category. In addition, the ability of Federal purchasers to make buying decisions from a life cycle perspective depends on a variety of factors including: the type of product or service being purchased; the availability of life cycle information and/or willingness by the provider to give the information; and the availability of easy-to-use tools that can translate this information to support purchasing decisions by the Federal government. EPA recognizes that agencies may find it easier to apply a life cycle perspective when the result will be internal agency environmental benefits and/or cost savings rather than external benefits. Nevertheless, EPA encourages agencies to consider reducing impacts along all stages of the product or service life cycle.

This guidance promotes the use of a range of practices, from life cycle considerations to a more rigorous, scientifically defensible life cycle assessment methodology. EPA encourages Executive agencies to use currently available tools as well as help refine and address the needs of Federal purchasers. Examples of available tools and references are

listed in Section VI. For the most current list of available tools, Executive agency personnel are referred to EPA's EPP Program Web site: <www.epa.gov/opptintr/epp>. EPA also encourages experts both within and outside of the Federal community to develop additional life cycle tools to support environmental preferability decisions.

b) Multiple environmental attributes — Environmental preferability should reflect the consideration of multiple environmental attributes such as increased energy efficiency, reduced toxicity, or reduced impacts on fragile ecosystems. In addition, these attributes should be considered from a life cycle perspective. Focusing on one environmental attribute of a product or a service, without considering others, might inadvertently exclude important impacts on the determination of environmental preferability. For example, improving one attribute (e.g., increased energy efficiency or reduced toxicity) may result in other unintended environmental life cycle impacts. It is also possible that focusing on a single aspect of the product or service will cause Executive agency personnel to overlook improvements that the vendor has or can make in other aspects of the product or service. In short, it is difficult to be confident that an alternative product is environmentally preferable without some consideration of multiple attributes from a life cycle perspective. Analytical tools such as life cycle assessment can help Federal agencies ensure the product or service they purchase does not create new problems for some other aspect of the environment by identifying other potential negative impacts that should be alleviated.

Although the determination of environmental preferability should be based on multiple environmental attributes, Federal agencies may at times make purchasing decisions based on a single attribute when that attribute distinguishes the product or service in a category. In its environmentally preferable purchasing effort, EPA aims to build upon those attributes that are well-defined, measurable and familiar to Federal purchasers (e.g., recycled content and energy efficiency). EPA also seeks to support the development of similar definitions and measures for other attributes that are less understood and to advance consideration of multiple environmental attributes in purchasing decisions.

The menu of environmental attributes described in Appendix B offers a preliminary look at what should be considered in environmentally preferable purchasing decisions. Many of the attributes are relevant to a number of different product life cycle stages, while others are more pertinent to one particular stage. The menu should serve as a means to inform Executive agency personnel about the different types of attributes that can make a product or service environmentally preferable. Each and every element in the menu is not meant to be applicable to all products and services nor is the menu all-inclusive

***Guiding Principle 4: Comparison of Environmental Impacts***

*Determining environmental preferability might involve comparing environmental impacts. In comparing environmental impacts, Federal agencies should consider: the reversibility and geographic scale of the environmental impacts, the degree of difference*

*among competing products or services, and the overriding importance of protecting human health.*

In determining environmental preferability, Executive agency personnel might need to compare the various environmental impacts among competing products or services. For example, would the reduced energy requirements of one product be more important than the water pollution reductions associated with the use of a competing product? The ideal option would be a product that optimized energy efficiency and minimized water pollution. When this is not possible, however, Executive agency personnel will have to choose between the two attributes. It is important to consider both the nature of the environmental impact and the degree of difference among competing products.

There is no widely accepted hierarchy that ranks the attributes or environmental impacts that are most important. The following three factors are intended to help Executive agency personnel analyze the environmental impacts of competing products and services and make decisions about environmental preferability when faced with trade-offs among environmental attributes. These factors are not listed in order of importance.

a) Recovery time and geographic scale—Federal agencies should consider recovery time and geographic scale in comparing environmental impacts. To what extent is an environmental impact reversible? An impact is less acceptable if the recovery time is longer.[2] The geographic scale of the problem and the importance of the affected ecosystems are also significant. Global environmental impacts are more significant, therefore, than ecological stressors that have a local or regional ecosystem impact.[3]

The table shown below provides a basic framework for considering the reversibility and geographical scale of environmental impacts and includes some examples of how certain impacts might fit into the matrix.

While some environmental standards or other sources of comparative information on products are national or international in scope, Federal agencies should also be prepared to consider unique local impacts and site-specific uses. Information based on an assessment of national or global needs, by its nature, rarely allows for the consideration of local impacts associated with how products are used,

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[2]This is based on the findings of the Science Advisory Board, published in its 1990 report entitled "Reducing Risk: Setting Priorities and Strategies for Environmental Protection," a statement of policy on priority pollutants affecting environmental and public health. In this report, environmental stressors were judged to be significant based on two primary criteria—the geographic scale and degree of reversibility of the impact.

The Science Advisory Board is a public advisory group providing extramural scientific information and advice to the Administrator and other officials of the Environmental Protection Agency. The Board is structured to provide balanced, expert assessment of scientific matters related to problems facing the Agency.

[3]Refer to above footnote.

recycled, and/or discarded. Executive agency personnel are encouraged to consider local factors, where they are relevant, and not rely exclusively on national or global information. For example, although it may be generally accepted that an aqueous-based degreaser is preferred over a halogenated solvent degreaser, the environmentally preferable purchasing decision may depend on whether there is sufficient local wastewater treatment capacity to deal with the aqueous waste.

There may be rare occasions where the goal of minimizing a local impact, such as smog, is in conflict with the goal of minimizing a global impact, such as ozone depletion and global climate change. In these instances, EPA encourages purchasers to engage as much as possible in applying Principle #2 and aiming to prevent pollution, thereby avoiding such trade-offs. Where there are unique local circumstances, the purchaser can make the judgment that the local conditions and impacts should be given priority.

## ECOLOGICAL PRIORITY IMPACTS MATRIX

| | | *Reversibility* | | |
|---|---|---|---|---|
| | | *Years* | *Decades* | *Centuries/ Indefinite* |
| *Geographic Scale* | *Local/Regional* | * Erosion<br>* Conventional Pollutants | | |
| | *National* | *Hazardous Air Pollutants<br>* Chemical Releases | * Bioaccumulative Pollutants | |
| | *Global* | | | * Loss of biodiversity<br>* Ozone Depleting Chemicals<br>* Global Warming Gases |

++ This matrix provides a few examples of how certain environmental stressors and impacts might fall into the different categories of reversibility and geographic scale considerations and is not meant to be comprehensive.

b) Differences among competing products—In some situations, a purchaser may determine preferability by looking at the differences of environmental performance among competing products, rather than by comparing environmental problems. Guiding Principle 3 addresses the importance of identifying relevant attributes for a product. There might be significant differences among competing products for some of these attributes, while for others, the differences could be minimal. In purchase comparisons, Executive agencies might prefer the product or service that provides a significant improvement over competing products, without making a determination that one environmental problem is more significant than another. For example, a product that significantly reduces

toxicity might be preferable to one that makes a minimal reduction in waste reduction.

*c)* *Human health* -A product or a service should be at least equivalent to comparable products/services in protecting human health to be considered environmentally preferable. EPA's Science Advisory Board listed the environmental factors listed to the right as significant contributors to human health risks.

**List of High Priority Human Health Stressors**
(not in any order of importance):

Ambient air pollutants
Hazardous air pollutants
Indoor air pollution
Occupational exposure to chemicals
Bioaccumulative pollutants

EPA recognizes that Executive agencies considering these three factors ( recovery time and geographic scale; differences among products; and human health) must rely on providers of products and services to supply practical environmental information on products. EPA encourages organizations that provide environmental standards or other types of comparative product information to consider these factors in evaluating and reporting environmental information for purchasers.

***Guiding Principle 5: Environmental Performance Information***

*Comprehensive, accurate, and meaningful information about the environmental performance of products or services is necessary in order to determine environmental preferability.*

a) Importance of Environmental Information — Executive agency personnel will need comprehensive, accurate and meaningful life cycle-based information about the environmental characteristics of products and services in order to evaluate whether one product or service is more or less damaging than another. Even with this thorough information, however, making these evaluations can be difficult. Yet, without such information, determinations of environmental preferability are even more challenging. Executive agency personnel are encouraged to seek, and product and service providers are encouraged to provide, life cycle-based information about the environmental performance of products and services. This information should be sought and provided in all appropriate stages of the acquisition process including, but not limited to market surveys, request for proposals, etc. (See Federal Acquisition Regulation, (FAR) 48 C.F.R. Subpart 23.7, which includes a mandate for the acquisition of environmentally preferable and energy-efficient products and services.

Executive agency purchasers may encourage product and service providers to describe their product or service's performance according to the menu of environmental attributes included in Appendix B (1).

Product and service providers' disclosure of environmental information about their products and services will also foster competition and encourage a market-driven approach to environmental improvement. The accessibility of the information to the public (both Executive agency personnel and the general public) will help ensure its accuracy and credibility.

b) What/How Information is Conveyed - A number of resources about the environmental performance of products or services are currently available. Two general categories of information sources can be distinguished: (1) manufacturers who provide environmental information (e.g., environmental claims, product profiles, etc.) about their products either on the label or through product literature, including advertisements; and (2) environmental information compiled, evaluated, and reported by non-governmental entities. Included in this second category are third-party certification programs that evaluate the environmental aspects of products and award symbols (e.g., "seals-of-approval") or compile "report cards" of environmental information. Non-governmental entities may also verify specific claims made by manufacturers (e.g., paper contains 30 percent recycled content).

Information conveyed through claims and seals can help Executive agency personnel identify environmentally preferable products, depending on the types of products being purchased and the legal acquisition requirements involved. A more detailed discussion of how Executive agencies can use technical expertise and research of non-governmental entities in their environmentally preferable purchasing practices is included in Section V and Appendix D. In evaluating the environmental attribute claims made by anyone, whether they are manufacturers, vendors, or other non-governmental entities, Executive agency personnel should refer to the Federal Trade Commission's (FTC's) *"Guides for the Use of Environmental Marketing Terms." (Green Guides.)*

## V. Executive Agency Implementation

This section recommends steps that each agency can take to implement the environmentally preferable purchasing provisions of EO 13101.

### A. Policy directive and affirmative procurement plans

Recognizing that effective implementation of environmentally preferable purchasing will require clear direction and support from the top levels of each agency, this Final Guidance recommends that each Executive agency issue a Policy Directive promoting the practice. A sample is included in Appendix C. The policy directive should include the elements listed below:

An overall statement of policy:

- Agency personnel should seek to reduce the environmental damages associated with their purchases by increasing their acquisition of environmentally preferable products and services to the extent feasible, consistent with price, performance, availability, and safety considerations.

- Environmental factors should be taken into account as early as possible in the acquisition planning and decision-making process. (See EO 13101, Section 401.)

- Responsibility for environmentally preferable purchasing should be shared among the program, acquisition, and procurement personnel.

A commitment to the following:

- Increasing the acquisition of environmentally preferable products and services. (See EO 13101, Sections 102, 503 (.c), and 602.)

  Under section 6002 of the Resource Conservation and Recovery Act of 1976 and FAR Subpart 23.4, procuring agencies are required to establish affirmative procurement programs for purchasing EPA-designated recycled products. EPA recommends that agencies expand the scope of their affirmative procurement programs to include environmentally preferable products and services. EO 13101, Section 302, (a)(1)(a) calls for a Strategic Plan to include the "direction and initiatives for acquisition of recycled and recyclable products and environmentally preferable products and services." Furthermore, Section 302 (b) (1) requires Agency Environmental Executives to "translate [this] Government-wide Strategic Plan into specific agency and service plans."

- Identifying and implementing pilot projects (See Section V (B) below).

- Establishing internal agency incentive and award programs to recognize those people, teams, and interagency work groups who are most successful at promoting the purchase of environmentally preferable purchasing (see Executive Order 13101, Section 802). Collaboration among agencies to provide education and training is highly encouraged.

In order to minimize the burden on Executive agencies, EPA recommends that each agency incorporate in its Policy Directive to promote environmentally preferable purchasing into its Affirmative Procurement and Strategic Plans. This incorporation can transpire as agencies revise their plans. Agencies should ensure that their Policy Directive is made available to the field-level procurement and environmental personnel.

B. Pilot Projects

Section 503 (b) of EO 13101 states "[A]gencies are encouraged to immediately test and evaluate the principles and concepts contained in the EPA's Guidance on the Acquisition of Environmentally Preferable Products and Services through pilot projects to provide practical information to the EPA for further updating of the guidance." Furthermore, Section 704 states "Each executive agency shall establish a model demonstration program. . . to demonstrate and test new and innovative approaches such as incorporating environmentally preferable...products...." into model facility programs. To help Executive agencies implement these provisions of the EO, this Final Guidance includes some suggested steps for initiating and implementing pilot acquisitions.

The suggestions that follow are based on lessons from early pilots undertaken by the General Services Administration and the Department of Defense in partnership with EPA. Case studies from these and other pilot projects are available from the Pollution Prevention Information Clearinghouse (202 260-1023) or they can be accessed through EPA's EPP Program Web site <www.epa.gov/opptintr/epp>.

Additional pilot acquisitions will be important testing grounds for applying the guiding principles and testing their applicability. The pilots will also provide valuable information for the development of tools and resources to facilitate widespread adoption of environmentally preferable purchasing practices.

EPA will track pilots that are planned or already underway on the EPP Web site, providing a clearinghouse for information on government-wide activities related to environmentally preferable purchasing. (See EO 13101, Section 503 (b)(4).) EPA will disseminate information about different pilots among the agencies through the EPP Web site, updates, and fact sheets to ensure that lessons learned are shared and used to inform other pilot projects.

The discussion below further describes how these pilots and demonstration projects might proceed. EPA encourages Executive agencies to undertake pilots and use all existing sources of information and technical expertise to carry them out. EPA is committed to supporting these pilots and providing overall coordination and technical assistance, as resources allow.

1. Selection of pilots. Selection of pilot acquisitions is at the discretion of the individual Executive agencies. There are at least two options for how agencies can approach this selection process. First, an agency may want to identify an environmental problem that it wants or needs to address. Once the problem has been identified, the agency can develop a list of products and services that contribute to that specific environmental problem. Alternatively, an agency may start out with a product or service category for which it wants to find alternatives. In either case, criteria that agencies might wish to consider in selecting pilot acquisitions include:

- Potential for a reduction in risk to human health and the environment.

- Status on EPA's prioritized list. Pursuant to EO 13101, Section 503 (a), and in order to assist Executive agencies focus their efforts on minimizing serious environmental impacts, EPA has developed a prioritized list of the top 20 product categories. The complete list, along with a discussion of the methodology used in its development can be found in EPA's EPP Web site at <www.epa.gov/opptintr/epp>.

- Existence of less harmful product or service alternatives. Alternatives could vary anywhere along the product or services' life cycle, for example, different ways of manufacturing or disposing. Alternatives might also include different ways of getting the same result, even if it means acquiring a completely different type of product or service.

- Feasibility/degree of flexibility in the acquisition.

- Products or services that are widely used within the Federal government and are representative or typical of the procurement system. This maximizes the pilot's potential value to others by providing lessons about the effectiveness of the guidance and increasing the likelihood that the pilot could be replicated. (See EO 13101, Section 503 (b) (1).)

2. Implementation of pilot projects. In implementing the pilot projects, Executive agencies can look to the process and results of projects others have completed or develop a different approach for environmentally preferable purchasing. In undertaking the pilots, agencies are encouraged to:

- Ensure the participation of environmental and procurement experts.

- Use all of the options available to them to determine the environmentally preferable attributes of products and services in their pilot projects, including the technical expertise of non-governmental entities. This is pursuant to EO 13101, Section 503 (b) (2). More specific guidance on the use of non-governmental entities is included in Appendix D.

Once a product or service has been chosen, pilots typically involve:

a) Determining environmentally preferable products and services. This can be accomplished by Executive agencies:

    - Identifying product attributes that can serve as indicators of environmental preferability. Agencies can look to Appendix B for a menu of attributes. Selection of attributes should be tied to the most significant environmental problems or impacts.

- Collecting information from product and service providers. This may require the development of contract language to ensure that vendors provide environmental information.

  With the recent changes to the FAR and the trend toward best value contracting, agencies can now more easily consider environmental factors when making purchasing decisions. However, environmental information is often not provided by vendors. Thus, it may be necessary for Executive agency personnel to clearly request or require relevant environmental information from vendors in market surveys and proposals whenever appropriate.

- Evaluating the environmental information.

b) Incorporating results of the environmental information research into the acquisition process to purchase environmentally preferable products and services. While the acquisition strategy and method are determined by the purchasing agency, EPA asks that agencies select a strategy that:

- Maximizes the number of environmentally preferable product or service choices available to the purchasing agency.

- Promotes competition across products and services in terms of environmental performance.

- Stimulates product and service process innovation and continuous improvement.

- Allows for the consideration of local environmental conditions.

- Promotes a definition of environmentally preferable products and services that can improve over time.

c) Documenting the pilot effort, including a description of how the project was initiated and implemented and the lessons learned. A sample case study template is attached in Appendix E and is also available on EPA's EPP Web site. The results of pilot projects will be shared among Executive agencies through EPA's EPP Web site.

More specific information about pilot implementation will be made available through a variety of tools that EPA currently is developing including: an interactive training module; a "best practices guide" with examples of specific contract language that have been used by purchasing agencies; and a database of existing environmental standards that have been developed by governmental and non-governmental entities.

Section 12(d) of The National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104-113, §12(d), 15 U.S.C. 272 note) and OMB Circular A-119 (63 FR 8546, February 19, 1998) direct Federal agencies to use both domestic and international voluntary consensus standards in lieu of government-unique standards in their procurement and regulatory activities, except where it would be inconsistent with applicable law or otherwise impractical. The Act's purpose is to reduce the cost of procurement and regulation by requiring a Federal agency to draw upon any suitable technical standard already used in commerce or industry rather than inventing a new standard. Some of those standards might relate to evaluating environmental performance and measuring the environmental attributes of products or services. In establishing Environmental Preferable Purchasing pilot projects or planning other environmentally-sensitive activities, agencies should first determine whether there is an applicable voluntary consensus standard that would meet its needs.

The NTTAA also requires a Federal agency, when it is consistent with the agency's mission, authorities, priorities, and budget resources, to participate in the standards-setting activities of voluntary consensus standards bodies. Such participation helps ensure the development of standards that meet the agency's needs, including those related to Environmental Preferable Purchasing concerns. This collaboration can also promote national goals and objectives. OMB Circular A-119 specifically mentions the need to promote the use of environmentally sound and energy-efficient materials, products, systems, services, or practices as well as the improvement of public health and safety. (See OMB A-119, Section 7a.)

In the long run, institutionalizing the purchase of environmentally preferable products and services requires that Executive agencies continue their efforts after the pilot's are completed. Given that environmental information about products and services is still scarce, agencies should rely on all sources of information and technical expertise in making determinations about environmental preferability. To foster agencies continue acquisition of "green" products, EPA will coordinate the development and standardization of environmental information about potential product and service categories for future pilots. This effort will consist of identifying environmental performance characteristics and measurement methods and will involve technical experts both inside and outside the Federal government. Executive agencies should examine all information generated through these types of efforts. The agencies, and not the nongovernmental entities, must make all final determinations regarding environmental preferability.

The experience gained from Executive agency pilots will be key in determining the scope and nature of EPA's long-term activities to advance Federal environmentally preferable purchasing. The lessons learned and partnerships formed from these pilots will help establish a broader infrastructure to support this initiative. EPA might use existing mechanisms or help develop new resources such as guidance, networks, and databases in support of the Federal purchasing community— to build this infrastructure. The infrastructure will help bridge the gap between the environmental and procurement expertise within the Executive agencies.

All Executive agency personnel will have a role in creating a demand for environmentally preferable products and services. Thus, the infrastructure will also have to support the development of tools that are easy and convenient for general and diverse use.

In light of the evolving acquisition landscape and the dynamic nature of the marketplace, the infrastructure will have to be flexible. In the increased globalization of the economy and trends toward commercialization of the Federal marketplace, will also require agencies to coordinate this initiative with new international trade and standardization developments. Ultimately, the measure of this initiative's success will be in the increased availability and purchase of products and services that pose fewer adverse impacts on human health and the environment.

## VI. List of Resources

This section includes a partial list of current resources that Executive agency personnel may find useful in implementing environmentally preferable purchasing. For a more complete and updated list, please refer to EPA's EPP Web site, described below.

A. EPA's EPP Program Web site: <www.epa.gov/opptintr/epp>

This comprehensive Web site serves as the main repository of information and resources related to environmentally preferable purchasing, including:

- Publications such as case studies, program updates and fact sheets.
- Interactive features designed to elicit information exchange such as topical discussion forums, a listing of upcoming events, a bulletin board for posting questions and comments and sharing users' experiences, as well as tools that have been helpful in implementing EPP.
- A list of top twenty prioritized product and service categories selected because they represent large volume federal procurements with environmental impacts, along with a description of the methodology used. The list is provided to assist Executive agencies in selecting pilots that will have the most effect.

The site will also include training modules, a collection of promising green contracting practices, and a database of existing environmental standards, specifications and contract language.

B. Federal Case Studies of Environmentally Preferable Purchasing

EPA has developed a number of documents that describe the results of EPP pilot projects, including:

- "*Cleaners Pilot Project Case Study*" documents a collaboration between the General Services Administration and the Environmental Protection Agency.

- *"Paving the Road to Success"* describes Department of Defense's efforts to "green" a parking lot repair and maintenance contract.

- *"Leading by Example"* documents how EPA incorporated environmental features into two new buildings, the Ronald Reagan Building and the Research Triangle Park office complex.

- *"Defending the Environment at the Department of Defense"* describes the addition of environmental factors in the maintenance of the Pentagon and other DOD facilities.

In addition, Executive agencies have either initiated or are contemplating a number of other pilot projects involving products such as degreasing agents, paints, adhesives and copier paper[4], and services such as conferencing. Examples of where environmental preferability was factored into purchasing decisions can be found under "How to Do EPP" as well as "EPP Resources" on EPA's EPP Web site.

C. Life Cycle-Based Resources

- *Building for Environmental and Economic Sustainability*

  A life cycle-based, decision-support software tool to assist users in balancing environmental and economic concerns among products. The tool generates relative scores for alternative products based on environmental and economic performance weights that individual users can set. Although originally designed for building materials and product comparisons, the tool will be expanded to include other materials. The disks can be obtained by contacting the Pollution Prevention Information Clearinghouse at 202 260–1023.

- *Federal Facility Pollution Prevention Project Analysis: A Primer for Applying Life Cycle and Total Cost Assessment Concepts*

[4] Under the Pulp and Paper Cluster Rule published in 1998, EPA's Air and Water Offices have created the Voluntary Advanced Technology Incentives Program in order to move the industry toward the minimum environmental impact "mill of the future." EPA also has proposed to add a procurement incentive in line with this goal in the near future. The purchase of recycled content, chlorine-free paper would be a way to advance several Administration initiatives, including the Technology Incentives Program, President Clinton's directive to purchase paper containing 30 percent post-consumer fiber and the President's directive to agencies to purchase environmentally preferable products and services. For those interested in EPA's views on recycling and chlorine content in copier paper, please see EPA's *Effluent Guidelines and Standards for Pulp, Paper, and Paperboard Category, Phase I*, promulgated on April 15, 1998. (See 40 CFR Parts 63, 261 & 430)

D. Agency Environmental Catalogs

The General Services Administration (GSA) and the Defense Logistics Agency (DLA) in the Department of Defense, the two major suppliers for the rest of the Federal government, publish product catalogs that highlight some environmental attributes. These catalogs are listed below:

- *Environmental Products Guide*
  Published by the GSA, this guide contains a list of over 3,000 products and services with environmental attributes, such as low volatile organic compound content, recycled content, energy-efficiency, etc. All products featured in the guide are available through the supply system of GSA's Federal Supply Service. The guide is available on MUFFIN (Multi-Use File for Interagency News).

- *Environmental Products Catalog*
  Published by the DLA, this catalog includes products that meet the requirements of EPA's Comprehensive Procurement Guidelines as well as products that help reduce hazardous waste or eliminate the use of ozone-depleting chemicals. Currently, the catalog does not have a systematic way of screening products for their environmental characteristics, so inclusion in the catalog does not necessarily connote an environmentally preferable product. A DLA pilot is underway to develop environmental standards for a category of products in the catalog. For more information, contact the Defense General Supply Center at 1 800 352-2852.

E. Federal Trade Commission's *Guides to the Use of Environmental Marketing Claims (Green Guides)*, 16 C.F.R. Part 260

The *Green Guides*, recently revised in May 1998, are intended to reduce consumer confusion and prevent false or misleading use of environmental terms in product advertising and labeling. The *Green Guides* indicate how the Federal Trade Commission will apply Section 5 of the Federal Trade Commission Act, which prohibits unfair or deceptive acts or practices, in environmental marketing claims. The Green Guides apply to all forms of product and service marketing to the public, including advertisements, labels, package inserts, promotional materials, and electronic media. The *Green Guides* can be accessed via FTC's Web site: <www.ftc.gov> (Select "Consumer Protection", then select "Environment", and then select "Guides"). For hard copies, contact FTC at 202 FTC-HELP (382-4357). For questions, contact Janice Podoll Frankle at 202 326-3022.

F. Office of Federal Environmental Executive's Web Site —<www.ofee.gov>

The Office of the Federal Environmental Executive (OFEE) maintains a comprehensive Web site. Updated frequently, it includes background information on OFEE's mission, history, and staff; resources for implementing EO 13101; best practices and success stories for environmental procurement, recycling, and waste prevention; federal agency compliance guidance; and posts information on current and upcoming conferences, activities, publications, and other relevant news. The site also showcases the *Closing the Circle Awards* recognizing outstanding performance towards "greening" the government. OFEE also manages an interactive forum (list serve) for the exchange of information on environmental purchasing, recycling, and waste prevention.

G. Other Resources and Tools

- "Greening" of the Federal Logistics Information System (FLIS)
  The Defense Logistics Agency is working through a multi-agency group to incorporate positive environmental attributes (such as recycled content, energy efficiency and water efficiency) into FLIS, is a database of more than 7 million supply items purchased by the Federal government. With the supply items tagged with environmental attributes, FLIS will provide Federal consumers with specific environmental information about the products they buy.

- There are a variety of other resources and tools that are currently available or under development to assist Executive agency personnel implement environmentally preferable purchasing practices. For the latest list of resources and tools, please check the EPP Web site <www.epa.gov/opptintr/epp>.

## VII. Appendices

Appendix A Glossary of Terms

Appendix B Environmental Attributes
(1) Menu of Environmental Attributes
(2) Definitions for Terms on the Menu of Environmental Attributes

Appendix C Sample EPP Policy Directive

Appendix D Text of Office of Federal Environmental Executive and U.S. Environmental Protection Agency's April 1998 Policy Letter on Use of Non-Governmental Entities

Appendix E Pilot Project Case Study Template

## Appendix A—Glossary of Terms

***Acquisition*** - means the acquiring of products and services (including construction) by contract with appropriated funds by and for the use of the Federal government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to meet those needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract. (EO 13101, Section 201)

***Bio-based products*** - are defined as commercial or industrial products (other than food or feed) that utilize biological products or renewable, domestic, agricultural (e.g., plant, animal and marine), or forestry materials. (EO 13101, Section 201)

***Environmentally preferable*** - products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. The product or service comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal. (EO 13101, Section 201)

***Life cycle assessment*** - means the comprehensive examination of a product's environmental and economic aspects and potential impacts throughout its lifetime, including raw material extraction, transportation, manufacturing, use, and disposal. (EO 13101, Section 201)

The International Standards Organization, through ISO 14040, has defined life cycle assessment slightly differently as follows: Compilation and evaluation of the inputs, outputs, and the potential environmental impacts of a product system throughout its life cycle.

***Life cycle cost*** - means the amortized annual cost of a product, including capital costs, installation costs, operating costs, maintenance costs and disposal costs discounted over the lifetime of the product, according to OMB Circular A-94 and Executive Order 13101, Section 201. However, this definition does not include external costs (i.e., those not borne directly by the entity that owns and operates a product/service, such as environmental costs to society at large). For the purposes of this guidance, EPA encourages agencies to consider all internal and external costs associated with a product, process, or activity throughout its entire life cycle—from raw materials acquisition to manufacture, recycling and final disposal.

***Non-governmental entities*** - within the context of this guidance, non-governmental entities include, but are not limited to, voluntary consensus standards bodies (see§ 12(d) of the National Technology Transfer and Advancement Act (Pub. L. 104-113, §12(d), 15 U.S.C. 272 note), environmental standard setting organizations, third party certification programs, environmental labeling or environmental "report card" programs and other environmental consulting organizations.

***Pollution prevention*** - "source reduction," as defined under the Pollution Prevention Act of 1990 (42 U.S.C. § 13102), and other practices that reduce or eliminate the creation of pollutants through: increased efficiency in the use of raw materials, energy, water, or other resources; or protection of natural resources by conservation..

The Pollution Prevention Act defines **source reduction** to mean any practice that:

- Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal

- Reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

The term includes: equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control.

## Appendix B—Lists of Environmental Attributes

Below is a list of environmental attributes that can help Executive agencies assess the environmental performance of products and services. This list, viewed from a life cycle perspective can enable Executive agency purchasers to select the product or service that minimizes adverse environmental impact. Although, it is a preliminary list of the major sources of potential human health and environmental risk, this source should not be considered definitive. Definitions for each of the attributes follow the list. Agency personnel can use this list in two ways:

(1) To provide a framework for identifying the most important environmental attributes of products and services, and using that information in product or service comparisons.

(2) As a check list of environmental issues to consider when designing and acquiring systems or buildings.

Not all of the environmental attributes will apply to each product or service; indeed, in some cases, information on just a few key environmental attributes will enable Executive agency personnel to determine environmental preferability.

The list of environmental attributes suggests that Federal agency personnel can use two different approaches to soliciting information from providers of products and services. The first includes consideration of releases of pollutants that occur during the life-cycle of the product. In the research on product life-cycle assessments that have been conducted over the past several years, these releases are known as ``inventory" items. Alternatively, the risks (or risk surrogates) associated with various life-cycle stages of a product can be identified. This approach seeks to identify actual environmental impacts rather than solely environmental releases. When calculating risks, general population (both environmental and human) exposures and occupational exposures need to be considered. Executive agencies may consider using both risk and release data in their decisions to purchase environmentally preferable products and services.

If product and service providers use this list as a basis for making environmental marketing claims, the claims should conform to the FTC's *Guides for the Use of Environmental Marketing Claims (Green Guides)*, 16 C.F.R. Part 260). A copy of the *Green Guides* can be obtained through FTC's Web site <www.ftc.gov>. Any party making a claim (or an independent third party that is certifying a claim) concerning a product's environment attribute must, at the time the claim is made, possess and rely upon a reasonable basis for substantiating the claim (16 C.F.R.§ 260.5). A reasonable basis consists of competent and reliable evidence. In the context of environmental marketing claims, such substantiation will often require competent and reliable scientific evidence, defined as tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

The *Green Guides* state that either an unqualified or inadequately qualified claim that a product is "environmentally preferable" implies to consumers that a product is generally environmentally superior to others. "Environmentally preferable" claims should be accompanied by language limiting the superiority claim to the particular attributes that can be substantiated. For example, *Green Guides* state that environmental seals-of-approval should be accompanied by information on product labels explaining the basis for the award.

## Appendix B(1) — Menu of Environmental Attributes

**Executive agency personnel are reminded that the attributes listed and defined below are not comprehensive. In addition, Executive agency personnel should note that not all of these attributes will be applicable to every product or service. Furthermore, different attributes may be applicable to each product or service life cycle stage being considered.**

### A. Natural Resources Use

- **Ecosystem impacts**, such as endangered species, wetlands loss, fragile ecosystems, erosion, animal welfare, etc.
- **Energy consumption**, which can serve as an indicator of acid rain, climate change potential, air pollution, and associated human health risks.
- **Water consumption** which can serve as an indicator of water quality impacts, risks to aquatic ecosystems, and degradation of drinking water resources.
- **Non-renewable resource consumption**, which can serve as an indicator of acid rain, climate change potential, air pollution, and associated human health risks and risks to endangered species and fragile ecosystems.
- **Renewable resource consumption**, which can serve as an indicator of loss of biodiversity and increased erosion. Although in many cases the use of renewable resources is considered environmentally preferable to use of nonrenewable resources, products made from renewable resources may also have negative environmental impacts (e.g., ethanol is derived from a renewable resource, yet its manufacture can lead to releases of VOCs).

### B. Human Health and Ecological Stressors

- **Bioaccumulative pollutants**.
- **Ozone depleting chemical global warming gases.**
- **Chemical releases** (Toxics Release Inventory (TRI) list chemicals or others.)
- **Ambient air releases** (other than TRI, including volatile organic compounds and particular matter).
- **Indoor environmental releases** (consumer and occupational).
- **Conventional pollutants released to water.**
- **Hazardous waste.**

- **Non-hazardous solid waste** (e.g., municipal solid waste, large volume waste, surface impoundments).
- **Other stressors.**

**C. Hazard Factors Associated With Materials**

- **Human Health Hazards**:
  - — acute toxicity
  - — carcinogenicity
  - — developmental/reproductive toxicity
  - — immunotoxicity
  - — irritancy
  - — neurotoxicity
  - — sensitization
  - — corrosivity
  - — flammability
  - — reactivity
  - — other chronic toxicity

- **Ecological Hazards**:
  - — aquatic toxicity
  - — avian toxicity
  - — terrestrial species toxicity

**D. Positive Attributes**

The attributes listed below are viewed as positive because they either serve as proxies for minimizing natural resource use or avoiding waste and the associated environmental impacts identified in A, B, and C. These attributes also are linked to authorities and requirements in statutes or executive orders that encourage the Federal government to promote their use. "Recyclability" and "recycled content" are attributes encouraged under RCRA. There are executive orders that encourage Federal agencies acquire bio-based products, and to promote energy efficiency and water conservation. "Durability", "reusability", "take-back", and "reconditioned or remanufactured" are positive attributes that encourage source reduction. "Product disassembly potential" increases the potential for source reduction and recycling of product components. Agencies should note that the presence of these attributes alone does not automatically make a product or service environmentally preferable. When making purchasing

decisions, executive agencies should consider a range of environmental impacts associated with products from a life cycle perspective when making purchasing decisions.

- **Recycled content**
- **Recyclability**
- **Product disassembly potential**
- **Durability**
- **Reusability**
- **Reconditioned or remanufactured**
- **Take-back**
- **Bio-based**
- **Energy efficiency**
- **Water efficiency**
- **Other attributes with positive environmental effects**

## Appendix B(2)—Definitions for Terms on the List of Environmental Attributes

### A. Natural Resource Use

(1) **Ecosystem impacts**- adverse impacts on the ecosystem, for example, endangered species, wetlands loss, fragile ecosystems, erosion.

(2) **Energy consumption**- the total amount of energy consumed for product or service manufacture, use, and disposal. Different sources of energy are associated with different environmental impacts.

(3) **Water consumption**- refers to the water resources that are consumed or used, which can serve as an indicator of water quality impacts, risks to aquatic ecosystems, and degradation of drinking water resources.

(4) **Non-renewable resource consumption**- those resources consumed that are not renewable in 200 years (e.g., fossil fuels, minerals). This can serve as an indicator of acid rain, climate change potential, air pollution, and associated human health risks and risks to endangered species and fragile ecosystems.

(5) **Renewable resource consumption**: refers to a continuum of resources, from those that are renewable in under 200 years, such as timber-based products, which can serve as an indicator of biodiversity loss and increased erosion, to those which are renewable in less than 2 years, such as grain-based feed stocks.

### B. Human Health and Ecological Stressors

(1) **Bioaccumulative pollutants**- those chemicals that bioconcentrate in the environment as described in the *Significant New Use Rule* for new chemicals. (40 CFR 721.3.)

(2) **Ozone depleting chemicals**- defined in the Protection of Stratospheric Ozone Final Rule. (58 FR 65018, December 10, 1993.)

(3) **Global warming gases**- listed in *Climate Change 1992, The Scientific Report on the IPCC Scientific Assessment.* (Table A 2.1.)

(4) **Chemical releases**- ambient releases of chemicals of concern such as those reported in the TRI of the Emergency Planning and Community Right-to-Know Act. The current list is reported in 40 CFR 372.65.

(5) **Ambient air pollutants**- pollutants for which ambient air quality standards have been developed. (40 CFR 50.4- 50.12.) These pollutants include nitrogen dioxide, sulfur dioxide, ozone precursors, particulate matter, carbon monoxide, and lead.

(6) **Indoor environmental releases**- releases to an indoor environment of potentially hazardous chemicals such as those reported in the TRI in both occupational and consumer settings.

(7) **Conventional pollutants**- defined in 40 CFR 401.16. These pollutants include biochemical oxygen demand, total suspended solids, fecal coliform, pH, and oil and grease.

(8) Hazardous waste- Quantity of Resource Conservation and Recovery Act (RCRA) hazardous waste as defined in 40 CFR 261.3.

(9) **Non-hazardous waste**- solid waste as defined in 40 CFR 261.3. Includes municipal solid waste, large volume waste (e.g., oil and gas, mining, etc.) and solids disposed of in surface impoundments.

(10) Other stressors- any other stressors associated with the product or service but not captured elsewhere.

## C. Factors Associated With Materials

### Human Health Hazards

(1) **Acute toxicity**- the potential of a chemical substance to cause adverse health effects from short-term exposure.

(2) **Carcinogenicity**- defined by EPA through a weight-of-evidence approach. (51 FR 33992, September 24, 1986 and 61 FR 17960, April 23, 1996.) When quantification is possible, slope factors or other measures such as LED10 can also be used to express carcinogenic potency.

(3) **Development/reproductive toxicity**- adverse effects on the developing organism that result from chemical exposure prior to conception (i.e., either parent), during prenatal development, or, postnatally, to the time of sexual maturation. (56 FR 63798, December 5, 1991.) Reproductive toxicity is any adverse effect on an organism's ability to reproduce. (61 FR 56274, October 31, 1996.)

(4) **Immunotoxicity**- any adverse effect on an organism's immune system that results from exposure to a chemical substance.

(5) **Irritancy**- defined according to the Occupational Safety and Health Administration (OSHA) Hazard Communication Standard (29 CFR part 1910.1200) or other standard scales such as EPA or Organization for Economic Cooperation and Development (OECD) Guidelines (EPA 712-C-98-196, August, 1998.)

(6) **Neurotoxicity**- any adverse change in the development, structure, or function of the central and peripheral nervous system following exposure to a chemical agent (59 FR 42272, August 17, 1994.)

(7) **Sensitization**- an immunologically mediated cutaneous reaction to a substance. EPA test methods for evaluating sensitization potential are found in 40 CFR part 798.4100.

(8) **Other chronic toxicity**- the potential of a chemical substance to cause an adverse effect on any organ or system following absorption and distribution to a site distant from the toxicant's entry point.

( 9) **Corrosivity**- dermal corrosion is defined by EPA as the production of irreversible tissue damage in the skin following application of a test substance. Test methods for evaluating dermal corrosion can be found in the harmonized Office of Prevention, Pesticide and Toxic Substances (OPPTS) guidelines for acute dermal irritation. (OPPTS 870.2500.) These guidelines harmonize the TSCA, FIFRA and OECD requirements in this area. The OSHA HazCom Standard listed above for irritancy also explicitly or implicitly covers corrosivity, sensitization, neurotoxicity, and all other toxic endpoints.

(10) **Flammability**- defined by the OSHA HazCom Standard (29 CFR 1910.1200) and ignitability is defined in 40 CFR part 261.21.

(11) **Reactivity**- defined in 40 CFR 261.23.

**Ecological Hazards**

(1) **Aquatic toxicity**- the potential of a substance to have an adverse effect on aquatic species. Measurement methods for aquatic toxicity can be found in 40 CFR part 797, subpart B.

(2) **Avian toxicity**- the potential of a substance to have an adverse effect on avian species.

(3) **Terrestrial species toxicity**- the potential of a substance to have an adverse effect on terrestrial species, other than man.

**D. Positive Attributes**

The following attributes are generally viewed as positive because they either serve as proxies for minimizing natural resource use or avoiding waste and the associated environmental impacts identified in A, B and C. Agencies should note that the presence of these attributes alone do not automatically make a product or service environmentally preferable. Executive agencies should consider a range of environmental impacts associated with products from a life cycle perspective when making purchasing decisions.

(1) **Recycled content**: Materials that have been recovered from the solid waste stream, either during the manufacturing process (pre-consumer), or after consumer use (post-consumer) (see Federal Trade Commission Environmental Marketing Guides mentioned above for more detail). Executive agencies are required to purchase EPA-designated items with recycled content (40 C.F.R. Part 247). Purchasers may want to consider whether the material contains pre-consumer or post-consumer recycled content. Recycled content, under the Federal Trade Commission guides, includes recycled raw material, that would have otherwise been incinerated or land filled, as well as used, reconditioned and remanufactured components. For products that are only partially made of recycled material, a recycled claim should indicate the percentage, by weight, of recycled content in the finished product. Unless it is otherwise clear from the context of the sale, for products that contain used, reconditioned or remanufactured components, a recycled claim should make clear that such components are used, reconditioned or remanufactured. Manufacturer's scrap material that would have, in any case, been incorporated into the product does not qualify as recycled under the Federal Trade Commission's guides. Refer to 16 C.F.R. § 260.7(e).

(2) **Recyclability**: Refers to products or materials that can be collected, separated or otherwise recovered from the solid waste stream for reuse, or in the manufacture or assembly of another package or product, through an established recycling program. For products that are made of both recyclable and non-recyclable components, the recyclable claim should be adequately qualified to avoid consumer deception about which portions or components are recyclable. In addition, unless recycling collection programs for the product are available to a substantial majority of communities or consumers where the product is sold, claims of recyclability need to be qualified to indicate the limited of availability of recycling collection sites. A product that is made from recyclable material, but, due to its shape, size or some other attribute, is not accepted in recycling programs for such material, should not be marketed as recyclable. Refer to the FTC Environmental Marketing Guides, 16 C.F.R. § 260.7(d).

(3) **Product disassembly potential**: Refers to the ease with which a product can be disassembled for maintenance, parts replacement, or recycling.

(4) **Durability**: Refers to the expected lifetime of the product.

(5) **Reusability**: Refers to how many times a product may be reused. Since reusable products generally require more up-front costs than disposable products, they are often subjected to a cost/benefit analysis in order to determine the life cycle cost.

(6) **Reconditioned/Remanufactured**: Refers to the process of restoring used, durable products to meet original performance standards. Remanufacturing has many other names, including: rebuilding (automotive sector); retreading (tire remanufacturing); reconditioning; and refurbishing. Remanufacturing results in less waste and raw material and energy use.

(7) **Take-back**: Refers to the manufacturer or designee accepting a return of end-of-life product; who pays for the transportation of the product may be situation-specific.

(8) **Bio-based**: Refers to a commercial or industrial product (other than food or feed) that utilizes biological products or renewable, domestic, agricultural (plant, animal and marine), or forestry materials.

(9) **Energy efficiency**: Refers to products that meet or exceed the Department of Energy (DOE)/Federal Energy Management Program's product energy efficiency recommendations which identify the top 25 percent of energy efficiency for all similar products or that meet the energy efficiency criteria of the Environmental Protection Agency (EPA)/DOE Energy Star program.

(10) **Water efficiency**: Refers to any plumbing fixtures that meet or exceed the Department of Energy's Federal Energy Management Program recommended performance standards for flow rates.

(11) Other attributes: Refers to any other positive attributes that are associated with the product but are not listed here.

## Appendix C—Sample Environmentally Preferable Purchasing Policy Directive

### Environmentally Preferable Purchasing Policy

The purchase and use of products and services can have a profound impact on the environment. [NAME OF DEPARTMENT OR AGENCY] recognizes the positive impact that it can make on the environment through the purchasing decisions that its employees make. It is the intent of [NAME OF DEPARTMENT OR AGENCY] to integrate environmental considerations into every aspect of acquisition. Although the environment may not be the core of our professional mission, the integration of these factors will result in economic, health, and environmental gains that will further our goals.

Overall Statement of Policy

- Agency personnel should seek to reduce the environmental damages associated with their purchases by increasing their acquisition of environmentallypreferable products and services to the extent feasible, consistent with price, performance, availability, and safety considerations.
- Environmental factors should be taken into account as early as possible in the acquisition planning and decision-making process.
- Responsibility for environmentally preferable purchasing should be shared among the program, acquisition, and procurement personnel.
- Environmentally preferable purchasing represents one important component of this agency's commitment to pollution prevention.

[NAME OF DEPARTMENT OR AGENCY] is committed to the following:

- Increasing the acquisition of environmentally preferable products and services.
- Identifying and implementing pilot projects to test the best ways to incorporate environmental preferability into acquisition.
- Establishing incentive and award programs to recognize those people, teams, and interagency work groups who are most successful at promoting the purchase of environmentally preferable products.

## Appendix D—Text of Office of Federal Environmental Executive and U.S. Environmental Protection Agency's April 1998 Policy Letter on Use of Non-Governmental Entities

### Pilot Project Approach on Use of Non-Governmental Entities to Implement Section 503 of Executive Order 12873 on Federal Acquisition, Recycling, and Waste Prevention

**Background:**

Section 503(a) of Executive Order 12873 directs EPA to "issue guidance that recommends principles that Executive agencies should use in making determinations for the preference and purchase of environmentally preferable products." Section 503 (b) states that Executive agencies shall use EPA's guidance to "identify and purchase environmentally preferable products" and to "modify their procurement programs by reviewing and revising specifications, solicitation procedures, and policies as appropriate."

On September 28, 1995, EPA issued a proposed *Guidance on the Acquisition of Environmentally Preferable Products and Services* which includes a series of principles that are intended to guide Federal purchasers as they consider environmental preferability in their acquisition decisions. This proposed *Guidance* was the culmination of numerous discussions EPA had with staff from key purchasing agencies and departments as well as representatives from industry and environmental and other interested organizations.

In EPA's proposed *Guidance* (Supplementary Information - Section III (E)), EPA acknowledged the existence of non-governmental entities -- including, but not limited to, environmental standard setting organizations, third party certification programs, environmental labeling or environmental "report card" programs and other environmental consulting organizations -- to which Executive agencies, in appropriate circumstances, may refer for technical assistance[1] in meeting the Executive Order goals.

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[1] For example, Executive agencies might seek technical assistance from non-governmental entities to help Executive agencies:

(a) analyze life cycle and multiple environmental attributes;
(b) analyze basic environmental performance characteristics for specific categories of products/services;
(c) identify environmentally preferable product/service criteria for a given product category based on agencies' core environmental values; and
(d) identify products/services in a given category which meet agencies' predetermined set of environmental performance criteria.

Executive agencies are reminded that they must critically examine all information from non-governmental entities. The Executive agencies involved, and not the non-governmental entities, must make all final determinations regarding environmental preferability.

In this paper, EPA suggests a pilot project approach to test the utility of various means of using non-governmental entities to achieve environmentally preferable purchasing goals. This pilot project approach will be publicized through a *Notice of Availability* in the *Federal Register*. Ultimately the findings from the pilot project approach will provide practical information to EPA in the development of its final *Guidance.*

**Spectrum of Approaches**

First, it must be emphasized that Executive agencies may choose to implement EPA's proposed *Guidance* without technical assistance from non-governmental entities. A number of on-going environmentally preferable purchasing (EPP) pilot projects are relying successfully on the in-house environmental and procurement expertise of EPA and the partnering Executive agency (e.g., General Services Administration and the Department of Defense). Therefore, this **paper should in no way be interpreted as an EPA endorsement of a specific non-governmental entity, organization or program, nor should agencies feel obligated in any way to utilize the technical assistance of such entities.**

However, to the extent that the Agencies are interested in tapping the expertise that resides outside the Government, EPA concludes that Agencies, in carrying out existing mandates for environmentally preferable purchasing may use non-governmental entities in accordance with appropriate operating guidelines. Executive agencies should note that they must avoid favoring, without reasonable justification, one non-governmental entity over another. Executive agencies should also inform their personnel about the Federal Trade Commission's *Guides for the Use of Environmental Marketing Claims* which govern environmental claims made by anyone, including manufacturers or environmental labeling or "report card" programs.

Thus far, EPA has identified a number of different potential approaches for how Executive agencies could use the technical expertise of non-governmental entities in furthering their environmentally preferable purchasing goals. <u>All of the potential approaches described below require that the Executive agencies involved critically examine all information from non-governmental entities. The Executive agencies involved, and not the non-governmental entities, must make all final determinations regarding environmental preferability.</u>

This list of approaches is not comprehensive. Agencies are encouraged to bring to EPA's attention other potential approaches for using non-governmental entities. In utilizing an approach, agencies have considerable discretion in incorporating environmental preferability into procurement decisions. For example, environmental considerations that result in limiting competition or in the payment of a price premium for goods or services may be reasonably related to an agency's definition of its "minimum needs" and therefore permissible.

***Approach 1: Use of Existing Information Developed by Non-governmental Entities***

Executive agencies' personnel could use existing information developed by non-governmental entities regarding environmental preferability of products and services, along with other available information (such as product performance and price) in defining the requirements for procurements and making more informed procurement and acquisition decisions. For example, Agencies might consider undertaking pilot projects to test the utility of non-governmental entities in the following instances:

a) Executive agencies could examine and evaluate already existing environmental criteria or standards developed by non-governmental entities for products or product categories (as well as for services or service categories), along with other available information, to identify a range of environmental attributes which can inform the agencies' own determinations of environmental preferability. Those determinations of environmental preferability could then translate into agency requirements, or at the very least, important criteria in the evaluation and selection of competing vendors or manufacturers.

b) In buying commercial items off-the-shelf, Executive agencies could inform their personnel to take into consideration environmental information (e.g., environmental claims, product profiles, "report cards", or environmental seals along with accompanying explanation, etc.,) either displayed on the products or provided through product literature or other materials (e.g., newsletters) in making purchasing decisions. This environmental information could be provided by vendors or manufacturers or by non-governmental entities. Executive agency personnel should be cautioned to avoid making their purchasing decisions on broad claims of environmental superiority.[2]

c) At the request of vendors or manufacturers, an Executive agency could include in its catalogs or schedules symbols from non-governmental entities denoting certain environmental characteristics, provided that (1) these symbols are accompanied by additional information that specify the reasons why a product has been "tagged" with a

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[2]The following excerpt from FTC's *Guides for the Use of Environmental Marketing Claims* illustrates this point:

*A product is advertised as "environmentally preferable." This claim is likely to convey to consumers that this product is environmentally superior to other products. If the manufacturer cannot substantiate this broad claim, the claim would be deceptive. The claim would not be deceptive if it were accompanied by clear and prominent qualifying language limiting the environmental superiority representation to the particular product attribute or attributes for which it could be substantiated, provided that no other deceptive implications were created by the context.* (From FTC's *Guides*, (a) General Environmental Benefit Claims, Example 6)

symbol; (2) the catalogs or schedules clearly emphasize that Executive agency personnel are not required to purchase products or services that are tagged; and (3) procurement officials should not rely on the symbols to make purchasing decisions, but instead, are required to take into account the environmental information underlying the symbol for relevance to the procurement.[3] Agencies including such symbols in their schedules or catalogs should ensure that their employees receive appropriate guidance in utilizing this approach. Vendors or manufacturers who choose not to obtain a seal or other symbols denoting certain environmental characteristics from non-governmental entities may nevertheless also request that environmental information about their products be included in the agency's catalogs or schedules.

This option will be piloted on a limited basis so that it can be closely monitored to determine its effectiveness.

d) On its own initiative, an Executive agency could tag products or services in its catalogs or schedules with its own symbol which denotes environmental characteristics that the Executive agency, through its own determination, deems preferable. This symbol could be based on existing information (e.g., environmental claims, product profiles, "report cards", or environmental seals along with accompanying explanation, etc.) available from non-governmental entities or from vendors or manufacturers themselves. This symbol should be accompanied by specific information explaining the basis for "tagging" a product as well as the source of the information. Catalogs or schedules should emphasize that Executive agency personnel would not be required to purchase products or services which are tagged, but are requested to take into account the environmental information underlying the symbol for relevance to the procurement.

### *Approach 2: Use of Non-governmental Entities as Certifiers of Specific Claims*

Executive agencies could require vendors or manufacturers to have specific, measurable and verifiable claims certified by qualified non-governmental entities. A product's percentage content of volatile organic compounds (VOCs), for example, would be considered measurable

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[3]The following excerpt from FTC's ***Guides for the Use of Environmental Marketing Claims*** provides an example of this point:

> *A product label contains an environmental seal, either in the form of a globe icon, or a globe icon with only the text "Earth Smart" around it. Either label is likely to convey to consumers that the product is environmentally superior to other products. If the manufacturer cannot substantiate this broad claim, the claim would be deceptive. The claims would not be deceptive if they were accompanied by clear and prominent qualifying language limiting the environmental superiority representation to the particular product attribute or attributes for which they could be substantiated, provided that no other deceptive implications were created by the context.* (From FTC's *Guides*, (a) General Environmental Benefit Claims, Example 5)

and verifiable. The rationale behind this approach is that credible certification by non-governmental entities (or actual evidence from vendors or manufacturers themselves) could increase the credibility of claims that may be displayed on products. Such certification, or a vendor's or a manufacturer's ability otherwise to prove particular claims of environmental preferability, could be a prerequisite for competitive consideration.

This approach assumes that (1) no particular non-governmental entity is favored (without reasonable justification) over any other non-governmental entity; and (2) vendors or manufacturers who choose not to be certified by non-governmental entities are provided the opportunity to present credible evidence that their products or services conform to established standards.

***Approach 3: Use of Non-government Entities as "Consultants" under Advisory and Assistance Contracts***

Pursuant to the competitive contracting process as set forth in the Federal Acquisition Regulation (FAR), non-governmental entities could provide consulting services to Executive agencies. Non-governmental entities may provide advice and recommendations about environmentally preferable purchasing, for example, through the identification of key environmental characteristics of product categories. Under this approach, Executive agencies would define environmental preferability with the assistance of a non-governmental entity on a procurement-by-procurement basis. As per FAR Subpart 9.5, Executive agencies must fully consider the potential for conflict of interest concerns where a non-governmental entity may be unable to render impartial advice or assistance because of private business or financial interests. Also, Executive agencies should make every effort to maximize competition in awarding these advisory and assistance contracts to avoid any exclusive or preferential relationship with any particular non-governmental entity. Finally, the environmental preferability standards developed under this approach could be used as a basis for defining the agency's "minimum needs" in particular procurements and for developing criteria for evaluating competing vendors.

**EPA's Suggested Next Steps**

One of the key tenets of EPA's proposed *Guidance* is to have Executive agencies undertake a series of pilot projects that can demonstrate the applicability and workability of the guiding principles as contained in EPA's proposed *Guidance*. The success of our efforts depends on learning from these pilot projects and sharing the results widely among the different Executive agencies. <u>It is in this spirit that EPA strongly encourages Executive agencies to enter into pilot projects that test the potential approaches for using non-governmental entities as described above</u>.

Moving forward with this non-governmental entities pilot approach is desirable for a number of reasons: 1) EPA can capture the lessons from the pilots and share them among the Executive agencies so that there is no duplication of effort; 2) we can determine where the use of expertise outside of the government is appropriate and useful and where it is not; and 3) the net effect of creating a market for such EPP services may encourage increased competition among existing and new organizations or programs that can support Federal procurement of environmentally preferable products and services. Ultimately, the results from this and other pilot project approaches will help Executive agencies identify the most effective and practical ways to achieve the goals of environmentally preferable purchasing.

EPA recognizes that any pilot project involving a non-governmental entity will initially raise practical questions such as which non-governmental entities are legitimate and are credible and which are not; is there a need to certify a certifier? While EPA is not currently able to offer an "approved" list of non-governmental programs best suited to assist the agencies, it is prepared to provide assistance to Executive agencies on an individual procurement-by-procurement basis. As an initial step, Agencies are directed to the list of questions for evaluating non-governmental entities contained in Section III, [E] Third Party Certification Programs of EPA's proposed *Guidance on the Acquisition of Environmentally Preferable Products and Services*. The list of questions is included as Appendix 1 of this letter.

Specifically, within the context of this non-governmental entity pilot project approach, EPA's Environmentally Preferable Purchasing Program in the Office of Pollution Prevention and Toxics, is prepared to:

1) assist Executive agencies in structuring a pilot project involving non-governmental entities, including providing support to assess the utility of non-governmental entities on an individual procurement-by-procurement basis;

2) seek out and identify non-governmental entities who have expertise in the area of environmentally preferable purchasing through a variety of means, such as, but not limited to, Federal Register notices or announcements in the Commerce Business Daily (CBD). To make such a task manageable, EPA will identify, with help and guidance from the agencies, a few product or service categories upon which to focus at first. If successful, further federal register notices or CBD announcements could be issued focusing on additional product or service categories;

3) assemble a list of product categories for which eco-labeling criteria and standards have been established, both domestically and internationally for agencies to consider in developing their own criteria for environmental preferability. If appropriate, EPA will assist in such evaluations; and

4) assist Executive agencies in structuring an environmentally preferable purchasing pilot project that does not involve non-governmental entities.

In turn, Executive agencies should consult with EPA when undertaking pilots which may raise environmental issues beyond their expertise (e.g., where a pilot involves consideration of the way a product is made).

Furthermore, Executive agencies who choose to undertake pilots under option 1(c) should consult with EPA in developing a written process or procedure for the role seals or symbols and the associated information would play in their pilots. For example, agencies should provide clear guidance which specifies the importance of considering the underlying criteria, not the seal or the symbol.

As EPA and Executive agencies embark on these activities, EPA will continue to explore a number of different ways that it can address issues which are raised within the pilot project context more definitively. Executive agencies will be kept informed of developments on these issues. Agencies should inform EPA of their efforts in environmentally preferable purchasing, whether such efforts involve non-governmental entities or not in order to share lessons learned among other agencies and to aid in the evaluation of the pilot projects. In this way, EPA can make EPP concepts more practical for use within the Federal acquisition context. To facilitate this, Agencies are requested to send the attached FAX BACK form. Pilot projects involving non-governmental entities will be evaluated over a period of the next three years. EPA will use the findings from that evaluation to inform the development of its final *Guidance*.

For further information and to inform EPA of pilot project efforts, please contact:

Eun-Sook Goidel, Program Manager, Environmentally Preferable Purchasing Program, Pollution Prevention Division, Office of Pollution Prevention and Toxics (202)260-3296; (202)260-0178 FAX; e-mail: goidel.eunsook@epamail.epa.gov

For legal issues associated with use of non-governmental entities in environmentally preferable purchasing, please contact:

Tali Zemel, Esq., Office of General Counsel (202)564-4708; e-mail: Zemel.Avital@epamail.epa.gov

**Attachment 1. List of Questions for Evaluating Non-Governmental Entities[4]**

Executive agencies should consider the following list of questions in evaluating non-governmental entities before using their expertise to further internal environmental preferable purchasing goals. Does the program have:

- an open, public process that involves key stakeholders (businesses, environmental, consumer groups, and states, etc.) in developing its criteria or standards?
- award criteria, assumptions, methods, and data used to evaluate the product or product categories that are transparent (i.e., they are publicly available, easily accessed, and understandable to the lay person)?
- a system of data verification and data quality?
- a peer review process (with representation of all stakeholders) for developing the standards or criteria?
- criteria that are developed based on a "systems" or life cycle approach (i.e., "cradle to grave")?
- an outreach program to educate the consumer, which includes clear communications to consumers that provide key information concerning environmental impacts associated with the product?
- an established goal of updating standards or criteria as technology and scientific knowledge advance?
- authority to inspect the certified product's facility to ensure compliance with the standards or criteria?
- testing protocols for the certified products that ensure testing is conducted by a credible institution?
- access to obtaining the seal by small-and medium-sized companies (e.g., the cost of the seal is not so high as to prevent access by smaller companies)?
- compliance with the Federal Trade Commission's (FTC) *Guides for the Use of Environmental Marketing Claims*?

[4]Excerpted from EPA's proposed *Guidance on the Acquisition of Environmentally Preferable Products and Services*.

## FAX BACK FORM

## PLEASE INFORM EPA ABOUT YOUR PILOT PROJECT INVOLVING THE USE OF NON-GOVERNMENTAL ENTITIES IN ENVIRONMENTALLY PREFERABLE PURCHASING!

**Name:**

**Department/Agency:**

**Address:**

**Address:**

**Phone:**

**FAX**

**E-mail:**

**Type of Acquisition/Procurement:**

(e.g., small purchase, credit card purchase, competitive bid, etc.)

**Product/Service Category:**

**Name of Non-Governmental Entity:**

**Type of Non-Governmental Entity** (check all that apply):

___ environmental standard setting organizations

___ third-party environmental certification programs

___ environmental labeling organizations

___ environmental report card organization

___ environmental consultants

___ other (please specify: _____)

**Type of Information/Assistance Sought from Non-Governmental Entity:**

___ general environmental information about a product/service category;

___ analyze life cycle and multiple environmental attributes

___ analyze basic environmental performance characteristics for specific categories of products/services

___ identify environmentally preferable product/service criteria for a given product category based on agencies' core environmental values

___ identify products/services in a given category that meet agencies' predetermined set of environmental performance criteria; and

___ other (please specify:_____)

**Please FAX BACK to:** Eun-Sook Goidel at U.S. EPA 202 260-0178.

## Appendix E — EPP Case Study Template

### Project Basics

- What does your agency/department/office do? Where is it based?
- What, if anything, is unique about your efforts to purchase environmentally preferable products and services?
- What were the motivating factors behind the project?
- What kinds of products and services are you purchasing with environmental attributes in mind? Do you focus on a particular group of products or services? If so, why?

### Implementation

- How have you incorporated environmental attributes into the purchasing process? Did you alter the established procurement process in any way to accommodate environmentally preferable products?
- What obstacles did you encounter (if any) in incorporating environmental attributes into the purchasing process? How were these obstacles dealt with?
- Did you incorporate environmental attributes into procurement specifications, standards, or policies; requests for proposals; bid announcements; manufacturer certifications; etc.? (If so, please provide examples.)

### Product and Service Evaluation

- How do you evaluate the products or services you purchase that have environmental attributes? Do you rely solely on information provided by vendors, or have you developed your own criteria or your own evaluation system?
- Do you consider more than one attribute when evaluating a certain product (e.g., considering both recycled-content and bleaching when purchasing paper products)? If so, how do you go about taking multiple attributes into consideration?
- Are products or services that meet your environmental attributes priced competitively with other comparable products or services? Do you have a price preference for products or services meeting your environmental criteria?

## Vendor Reactions

- How do you inform vendors about your preference for products with environmental attributes?
- Were vendors already providing environmental information before you requested it?
- How did vendors react to your request for environmental attributes of their products?

## Customer (End-User) Reactions

- Who has been most affected by the changes brought about by your efforts to purchase environmentally preferable products (i.e., procurement staff, other employees, contractors, citizens, end-users)? How have they been affected?
- Have you attempted to inform or educate your customers about products' environmental attributes? How?
- How have customers responded to the environmental information you provided? Are you keeping track of their responses?
- Have customers been pleased with the performance of environmentally preferable products (especially when compared to products that are not considered environmentally preferable)?

## Project Results

- How are you tracking/measuring the success of your Environmental Preferable Purchasing efforts? Have you been able to quantify your success in terms of positive effects on the environment?
- Have any cost savings resulted from the purchase of environmentally preferable products? How were these calculated?
- Do you think your experience with purchasing environmentally preferable products could be valuable to others who purchase different products?
- What are your future plans regarding the purchase of environmentally preferable products? Do you expect to incorporate additional attributes or examine other product categories? What are some of the opportunities and challenges you foresee in expanding your Environmental Preferable Purchasing efforts?

**List of Subjects**

Environmental protection.

Dated: August 13, 1999.

**Carol M. Browner,**

*Administrator.*

[FR Doc. 99–21664 Filed 8–19–99; 8:45 am]

BILLING CODE 6560–50–C

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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## LIST OF PUBLIC LAWS

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**H.R. 211/P.L. 106–48**

To designate the Federal building and United States courthouse located at 920 West Riverside Avenue in Spokane, Washington, as the ''Thomas S. Foley United States Courthouse'', and the plaza at the south entrance of such building and courthouse as the ''Walter F. Horan Plaza''. (Aug. 17, 1999; 113 Stat. 230)

**H.R. 1219/P.L. 106–49**

Construction Industry Payment Protection Act of 1999 (Aug. 17, 1999; 113 Stat. 231)

**H.R. 1568/P.L. 106–50**

Veterans Entrepreneurship and Small Business Development Act of 1999 (Aug. 17, 1999; 113 Stat. 233)

**H.R. 1664/P.L. 106–51**

Emergency Steel Loan Guarantee and Emergency Oil and Gas Guaranteed Loan Act of 1999 (Aug. 17, 1999; 113 Stat. 252)

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Military Construction Appropriations Act, 2000 (Aug. 17, 1999; 113 Stat. 259)

**S. 507/P.L. 106–53**

Water Resources Development Act of 1999. (Aug. 17, 1999; 113 Stat. 269)

**S. 606/P.L. 106–54**

For the relief of Global Exploration and Development Corporation, Kerr-McGee Corporation, and Kerr-McGee Chemical, LLC (successor to Kerr-McGee Chemical Corporation), and for other purposes. (Aug. 17, 1999; 113 Stat. 398)

**S. 1546/P.L. 106–55**

To amend the International Religious Freedom Act of 1998 to provide additional administrative authorities to the United States Commission on International Religious Freedom, and to make technical corrections to that Act, and for other purposes. (Aug. 17, 1999; 113 Stat. 401)

**Last List August 18, 1999**

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