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Briefings on How To Use the Federal Register
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- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** Sponsored by the Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
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 3. The important elements of typical Federal Register documents.
 4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

[Two Sessions]

- WHEN:** July 9, 1996 at 9:00 am, and
July 23, 1996 at 9:00 am.
- WHERE:** Office of the Federal Register Conference Room, 800 North Capitol Street, NW., Washington, DC (3 blocks north of Union Station Metro)
- RESERVATIONS:** 202-523-4538



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Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1493

RIN 0551-AA30

Commodity Credit Corporation Supplier Credit Guarantee Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: The Commodity Credit Corporation (CCC) is issuing this interim rule which amends the regulations for the Commodity Credit Corporation's (CCC) Export Credit Guarantee Program (GSM-102) and the Intermediate Export Credit Guarantee Program (GSM-103) by adding a new subpart D, Supplier Credit Guarantee Program (SCGP). The SCGP is designed to assist exporters of U.S. agricultural commodities who wish to provide relatively short term (up to 180 days) credits to their foreign buyers. Under SCGP, CCC will guarantee payment of such credits by the foreign buyer, and the exporter may assign such guarantees to an eligible U.S. financial institution.

This program will be administered by the Office of the General Sales Manager (GSM), U.S. Department of Agriculture, on behalf of CCC.

DATES: The provisions of this interim rule are effective August 30, 1996; comments must be submitted on or before December 30, 1996.

FOR FURTHER INFORMATION CONTACT: L.T. McElvain, Director, CCC Operations Division, Foreign Agricultural Service, U.S. Department of Agriculture (USDA), Ag. Box 1035, Washington, DC 20250-1035; telephone (202) 720-6211; FAX (202) 720-2949. The USDA prohibits discrimination in its programs on the basis of race, color, national origin, sex, religion, age, disability, political beliefs

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SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be economically significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule because CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of rulemaking with respect to the subject matter of this rule.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The paperwork requirements that would be imposed by this interim rule were described in the proposed rule and approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The OMB-assigned number for those requirements is OMB No. 0551-0037. The public reporting burden for these collections is estimated to average 0.18 hours per response, including time for reviewing instructions, searching existing sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRA, Room 404-W, Washington DC 20250; and to the OMB, Paperwork Reduction Project # 0551-0037, Washington, DC 20503.

Executive Order 12778

This interim rule has been reviewed under the Executive Order 12778, Civil Justice Reform. The interim rule would have preemptive effect with respect to any state or local laws, regulations, or policies which conflict with such provisions or which otherwise impede their full implementation. The rule would not have retroactive effect. The interim rule requires that certain administrative remedies be exhausted before suit may be filed.

The USDA is committed to carrying out its statutory and regulatory mandates in a manner that best serves the public interest. Therefore, where legal discretion permits, the Department actively seeks to promulgate regulations that promote economic growth, create jobs, are minimally burdensome and are easy for the public to understand, use or comply with. In short, the Department is committed to issuing regulations that maximize net benefits to society and minimize costs imposed by those regulations.

Background

In the Federal Register of July 19, 1995 (60 FR 37025), CCC issued a proposed rule to amend the regulations for the CCC Export Credit Guarantee Programs (GSM-102/103), codified at 7 CFR part 1493, by adding a new subpart D. Subpart D establishes the terms and conditions for the Supplier Credit Guarantee Program (SCGP). The deadline for comments on the proposed rule was September 18, 1995. Comments were received from six U.S. exporters, one importer, three producer associations, seven agribusiness associations, one U.S. financial institution, and one U.S. Government agency (USDA Office of Inspector General). These nineteen parties made approximately 88 separate and significant comments regarding either the proposed rule, the Preliminary Economic Impact Analysis, or the policy issues involved in administering the SCGP.

Reason for Issuing an Interim Rather Than Final Rule

CCC is issuing this rule on an interim rather than a final basis because, based on comments received on the proposed rule, it has made several significant changes and is providing the public with an additional opportunity for

comment. Specifically, CCC is establishing a condition on its payment of a claim that results from a default under a guaranteed promissory note. CCC will pay claims unless it determines that the guaranteed portion of port value exceeds the prevailing U.S. market value of the agricultural commodity or product exported. The reasons for this change are discussed below under the General Comments section, Other general comments, and under the Section-by-Section Analysis of Subpart D, § 1493.450, Payment guarantee. Also, CCC has modified § 1493.510, Payment for loss, to remove the immunity of assignees from the effects of determinations by CCC not to pay claims based on the new exception. CCC is publishing this interim rule, but will establish a comment period of 120 days from the rule's effective date to permit program participants an opportunity to provide views based, if possible, on actual program experience.

Interim Economic Impact Analysis

Two of the commenters addressed, in part, the Preliminary Economic Impact Analysis (PEIA). One commenter felt that each program option, considered by CCC and briefly discussed in the PEIA, "should be implemented as each addresses a different need." The same commenter also questioned why the SCGP was selected as the preferred option, in that the PEIA did not discuss why the other options were ruled out. CCC concurs that the other program options considered have merit, although the reasons for selecting the SCGP option were given. CCC may, in the future, incorporate features of the other options into, the SCGP (subpart D), the GSM-102/103 programs (subpart B), or additional programs that could be developed.

Another commenter stated that CCC may want to "reassess the estimated \$3.1 million subsidy level" determined for the SCGP. The commenter felt that this estimate may be too low and enclosed a news article discussing difficulties by some U.S. exporters in collecting payments from importers. CCC by itself does not determine the methodology used in estimating the subsidy level for its export credit guarantee programs. The model for estimating the subsidy amount was developed by the Office of Management and Budget (OMB). Country risk ratings which are an important component in determining the subsidy estimate are developed by a U. S. Government interagency group which is chaired by OMB. After assessing the results of the initial phase of operating the SCGP, CCC may propose changes in the subsidy

model, or in the model inputs, to more accurately determine appropriate subsidy levels for the program.

The interim Economic Impact Analysis of the SCGP is available upon request from Mary T. Chambliss, Deputy Administrator, Export Credits, FAS/USDA, Ag. Box 1030, Washington DC 20250-1030; telephone (202) 720-6301; FAX (202) 690-0727.

General Comments

Eighteen commenters commended CCC on its efforts to design a new program to promote the sale of U.S. agricultural products. They generally agreed that the program had potential for reducing export financing costs, allowing importers to enjoy the benefits of CCC credit guarantees more directly than is possible under the GSM-102/103 programs, and increasing the competitiveness of U.S. agricultural products overseas. One commenter neither supported nor opposed the program.

Guarantee Coverage

Eighteen respondents commented on CCC's proposal to inaugurate the program with maximum coverage of 50 percent of principal (defined as port value), with no coverage of interest. One commenter agreed that the structure of the SCGP entails certain financial risks for CCC that justify lower levels of coverage. Another commenter thought the proposed coverage may be a starting point, but adjustments would have to be made if the program is to gain wide acceptance, particularly from the banking sector. Sixteen of the commenters contended that the proposed coverage was too low to provide an incentive to exporters to use the program. One commenter asserted that the proposed coverage would be unattractive to exporters and the assignee bank, and that the added risk would increase the cost of the transaction to the importer. Two commenters suggested that CCC vary its level of coverage based on the past performance of the importer. They also suggested that the exporter be required to furnish information on the importer which, under criteria to be established, could permit a higher level of coverage. Suggestions for the level of coverage of principal ranged from 70 percent to 98 percent, depending on whether or not interest and/or freight would be included in the coverage.

After considering these comments, CCC has determined that during the initial phase of the program, CCC's coverage will normally be limited to 50 percent of principal. This level of coverage will provide an incentive to

U.S. exporters and their assignees to evaluate carefully the credit risks posed by importers while still permitting an expansion of export sales of targeted commodities and products. The suggestion that CCC vary its level of coverage based on the past performance of the importer or other information furnished by the exporter on the importer may have merit. However, CCC will be in a better position to assess this approach after gaining experience operating the program. The amount of guaranteed coverage is not specified in the regulation because CCC wishes to retain the ability to adjust coverage, as necessary, to make the program workable, efficient, and responsive to market conditions.

Freight Coverage

Six comments were received regarding the inclusion of freight costs in the value on which guarantee coverage is based. Five commenters argued that, with freight excluded, coverage would be too low. Two commenters felt that, with freight coverage, exporters would be more likely to use the SCGP. One commenter suggested that when freight costs are more than 20 percent of export value, the level of coverage should be increased.

CCC recognizes the validity of the concerns expressed. In cost and freight (CFR) and cost, insurance and freight (CIF) transactions where freight costs are a high percentage of total export value, CCC coverage of 50% of commodity value would result in overall coverage of substantially less than 50 percent of transaction value. CCC therefore will retain the flexibility through Program Announcements to determine whether, and to what extent, to provide coverage on a free on board (FOB), free alongside ship (FAS), CFR, or CIF basis.

Guarantee Fees

Thirteen respondents commented on CCC's intention to set the guarantee fee "in the midpoint of the range of insurance premiums for good risk countries charged by Eximbank" (recently about 95 cents per \$100.00 of guaranteed coverage). One commenter agreed that the benefits offered by the SCGP entail corresponding financial risks for CCC and, therefore, justify higher fees. Another thought that the proposed fee may be a starting point, but that adjustments would have to be made if the program is to gain wide acceptance. Ten commenters felt the proposed fee was too high given the proposed level of guaranteed coverage. In general, their additional comments

can be summarized as follows: (1) Fees should be at or close to the GSM-102 (subpart B) fee levels; (2) fees should be reasonable because fees add to the overall financial exposure of the exporter; and (3) high fees could be a disincentive for program participation. Two commenters suggested that CCC vary its fees based on the past performance record of the importer. They also suggested that the exporter be required to furnish information on the importer which, under criteria to be established, could permit lower fees.

One commenter stated that the Foreign Credit Insurance Association varies its fees according to where exports are shipped, how shipments occur, the payment history of customer, and the payment collection history experienced by the exporter with the importer.

CCC appreciates these comments. To avoid a possible misconception concerning the proposed fee structure for the SCGP, CCC provides the following clarification: the fee would be assessed only on the value of actual CCC coverage, (e.g., 50 percent of the port value), not on the total port value registered. CCC recognizes that the 95 cents per \$100.00 fee on covered value is high in comparison to the fees charged for credits of up to 180 days duration under the GSM-102 (subpart B) program. However, under subpart B, CCC is insuring risks of eligible foreign banks; under SCGP (subpart D), foreign buyer risk is likely to be higher. Exporters will have a greater incentive to investigate the creditworthiness of an importer if they have a larger degree of financial risk in the export sales transaction. Also, a higher fee may dissuade exporters from entering into speculative transactions because the fee will not normally be refundable if the transaction is not completed. Thus, CCC intends to initiate the SCGP with the fee policy it described in the proposed rule. Adjustments in fee schedules can be made in light of experience in operating the program.

Regarding the comment that CCC reduce its fee on transactions with importers who have a proven performance record, CCC has determined initially to have a single fee for all countries and commodities. However, a sliding fee scale based on the importer's past performance and other factors may have merit and remains an option as CCC gains experience operating the program. The level of the registration fee is not specified in the regulation, giving CCC flexibility in this matter.

Clarification

One respondent questioned what CCC meant by the statement in the background of the proposed rule that CCC does not intend to routinely conduct independent evaluations of the creditworthiness of individual importers.

Although CCC does not at this time intend to make such evaluations routinely, the proposed rule provides that CCC may request that the exporter submit information/documentation on the importer as a condition to CCC's approval of the exporter's application of a payment guarantee. Such instances will, at the outset, be determined on a case-by-case basis and will be related to the degree of experience CCC has with the parties to the transaction, or to other pertinent credit risk-related factors.

Country and Commodity Selection

Four respondents commented on the selection of countries and commodities under the SCGP. One commenter felt that it would be a mistake to direct SCGP primarily towards high value products and that the program should be available for all U.S. agricultural commodities. One commenter felt that the best way to determine where, and for what commodities, the program should be used would be to begin operation of the SCGP. The response of the financial and commodity markets would act as the "best barometer" for the size and scope of the program. Another respondent, an importer, urged CCC to include poultry to the Commonwealth of Independent States under the SCGP. The importer stated that the cost of obtaining a letter of credit in Russia was high and further required payment in full to the bank in 30 days. By using SCGP, the importer could have the certainty of financing and could proceed with plans for building a facility in Russia to process U.S. poultry. One commenter urged that country allocations for GSM-102/103 (subpart B) and the SCGP be made separately.

CCC has given careful consideration to the issues of programming countries and commodities under the SCGP. CCC intends initially to program countries and commodities and/or products which it considers may benefit from the SCGP and may not have benefitted from GSM-102. Commodity and country selections will be made separately from the GSM-102/103 (subpart B) program, but will follow the same criteria specified in 7 CFR 1493.5. CCC will retain the flexibility, through Program Announcements, to revise the SCGP country and commodity allocations, as

necessary, to ensure the most effective use of the program.

Other General Comments

One commenter, a government agency, recommended that the provisions of the Office of Management and Budget (OMB) Circular A-129, "Policies for Federal Credit Programs and Non-Tax Receivables," be applied to the SCGP. The commenter recommended that: (1) Fees should be high enough to cover the cost of making the loan guarantee, including administrative costs, default and other subsidy costs; (2) in view of budget constraints, the maximum fee permitted by law (7 U.S.C. 5641(b)(1)(B)), \$1.00 per \$100, should be charged; (3) lower fees may be justified in instances where borrowers (importers) prepay part of the shipment because the risk of default would be reduced; (4) riskier buyers should be charged more in fees than those who pose less risk; and (5) fees should be set on a sliding scale reflecting country and commercial risk factors. According to this commenter, such factors should include the strength of the country's central bank and whether or not the country subscribes to uniform commercial code agreements that govern international commerce. The commenter further suggested that CCC require exporters to certify and document that they cannot obtain credit from private sources, and that CCC determine whether the applicant is delinquent on any Federal debt, including tax debt, before approving the guarantee. This commenter also suggested that CCC should require exporters to follow due diligence in collecting past due accounts and in using litigation to enforce payment on guaranteed credits. The commenter recommended that CCC require that the export sales contract state that CCC will, in the event of nonpayment, assess interest, penalties, and administrative charges against the importer. The commenter further recommended that all accounts due CCC that are six months or more past due be turned over to a collection contractor unless CCC is involved in litigation.

Although applicable statutes do not require the CCC to apply the provisions of OMB Circular No. A-12, CCC agrees that program rules should operate not only to lower CCC's risk, but also to assure that CCC and exporters are sharing the risk of loan defaults. The proposed rule includes certain provisions, i.e. lower level of coverage and higher fees, that are intended to encourage exporters to evaluate carefully importer creditworthiness. However, the provisions of the proposed

rule may not adequately ensure that (1) the risk sharing objectives outlined in the Background section of the proposed rule (part C, How certain SCGP provision differ from GSM-102) will be achieved, or (2) CCC would be protected from paying excessive claims stemming from export transactions with prices inflated far above prevailing market levels. Therefore, CCC is establishing a condition on its payment of a claim to address these two concerns. This new provision and required related modifications are discussed below under Section-by-Section Analysis of Subpart D, Section 1493.450, Payment guarantee.

The other suggestions of the commenter have also been considered carefully and evaluated in terms of cost-effectiveness and relevance to protecting the financial interests of CCC. Many of the suggestions of the commenter could be implemented as a matter of policy under the rule as proposed. CCC has therefore determined not to incorporate the suggestions into this interim rule, but will continue to review them in light of experience gained in operating the SCGP.

Other commenters addressed issues other than the proposed regulations. CCC has determined not to discuss these unrelated comments. CCC will, however, take these additional views into consideration as they relate to CCC's other commercial export programs.

Section-by-Section Analysis of Subpart D

The numbering system of the interim rule differs somewhat from that of the proposed rule. One section was deleted. For the purposes of this discussion, the numbering system of the interim rule will be used, except where otherwise indicated.

Section 1493.400 General Statement

Two respondents commented on § 1493.400(a), *Overview*. One commenter felt that the proposed 180 day maximum terms are adequate for single transactions. However, this commenter suggested that to better coincide with existing trade practices, CCC should guarantee lines of credit, rather than single transactions. This commenter also thought that annual (or shorter) revolving credit guarantees would reduce administrative costs for the exporter, importer, and CCC without reducing the ability of CCC to manage its risk. The commenter stated that established buyers would have better procurement planning and control under a line of credit. The second commenter felt that because of small

profit margins on cotton, exporters would not find open accounts for up to 180 days a viable business practice. The commenter added that some countries under GSM-102/103 operate with strict central bank guidelines regarding foreign exchange that require letters of credit to make the import purchases. The commenter wondered how the SCGP could be successful in such countries.

CCC recognizes that the SCGP may not work effectively for all commodities in all countries. Exporters who have successfully used the GSM-102 program may continue to rely on that program.

Regarding revolving lines of credit, CCC finds this an interesting concept and will continue to assess its merits. However, at this time the budget allocation and subsidy funding for SCGP are not based on revolving lines of credit. A revolving line of credit would require fundamental changes in CCC accounting and computer database systems. CCC will not be in a position to consider implementing revolving lines of credit guarantees until these and other issues are resolved.

Section 1493.410 Definition of Terms

Although no public comment was received specifically regarding the definition of Importer obligation, found at § 1493.410(n), comments were received on § 1493.470, Importer obligation of the proposed rule (see Section-by-Section Analysis of Subpart D, § 1493.470 Importer Obligation). Based on those comments, CCC revised the definition to read: "A promissory note or notes that conform(s) with the requirements for such note(s) specified in the applicable country or regional Program Announcement(s)." By specifying the provisions of the promissory note(s) in the Program Announcement, CCC will retain flexibility to specify provisions for a particular country or region and, if necessary, to make changes in such provisions in light of changing circumstances. In addition to specifying the form of the promissory note in Program Announcement, CCC will refer to the particular form of promissory note in the special terms and conditions described on the face of the guarantee and attach the required form of the promissory note to the guarantee. This change requires deletion of § 1493.470 Importer Obligation, from the interim rule.

Three respondents made comments regarding § 1493.410(x), the definition of a U.S. agricultural commodity. Two commenters stated that for the SCGP to be effective and increase sales of high value or value added products, changes

would be needed regarding permissible levels of foreign-origin agricultural components in such products. One commenter stated that Congress should better define the term "U.S. origin" or provide a tolerance for foreign components.

The Department of Agriculture agrees with these comments and supports legislation to change the definition of "product of an agricultural commodity" now contained in section 102(7)(B) of the Agricultural Trade Act of 1978, as amended, (7 U.S.C. 5602)(7)(B)). Until such legislative action, the definition contained in the proposed rule must be retained.

Section 1493.420 Information Required for Program Participation

No public comments were received on this section. No changes have been made in this section of the interim rule.

Section 1493.430 Application for Payment Guarantee

Two respondents made comments regarding § 1493.430(a), which requires that a firm export sale exist before an exporter may submit an application for a payment guarantee. Both commenters suggested that this requirement be changed to allow the export sale to be contingent upon approval of the payment guarantee. The commenters advocated that an exporter and importer should agree on the terms of the sale but, if the payment guarantee is not obtained, cancellation of the sale should be allowed. One commenter recommended that CCC require a copy of the sales contract be submitted at the time the payment guarantee is requested. The commenter believed that the list of the 17 requested items could be reduced if the sales contract was provided.

The "firm" sale requirement of § 1493.430(a) does not preclude a sales contract from being contingent on approval by CCC of a payment guarantee. At a minimum, this rule requires that the exporter and importer be in agreement regarding the terms and conditions required to be reported in an application for a payment guarantee.

Regarding the comment that CCC require exporters to submit sales contracts, CCC disagrees that the suggestion would save time. Sales contracts often contain terms and conditions that CCC does not need to review. CCC does not want the burden of reviewing and safeguarding a large quantity of business confidential and sensitive private documents where that is unnecessary. CCC reserves the right to request an exporter's sales contract in reviewing applications from newly

eligible applicants, where questions of program compliance or control arise.

Three comments were received regarding § 1493.430(16). These concerned the statement that CCC would reserve the right to require exporters to submit additional information about the importer. One respondent was concerned about the nature of the information. If CCC requested proprietary information, would CCC protect the information from public disclosure? The respondent felt that exporters may be reluctant to provide importer information unless there are clear protections against its release. Another commenter felt that providing information regarding the importer could be a potential paperwork burden. The third respondent suggested that information be requested for all first-time applicants of the program. This commenter suggested that the information requested should, at a minimum, include credit rating, trade references, and bank references and should be submitted before CCC approves the payment guarantee.

As stated in the background section of the proposed rule (part C(5), Application), CCC will not routinely conduct independent evaluations of the creditworthiness of individual importers, but will reserve the right to require exporters, in the application process, to provide additional information concerning the importer. Such information may include the importer's credit and payment history with the applicant, and any credit analysis the exporter has done regarding the importer. CCC will protect any proprietary information submitted by exporters to the extent permitted by law.

Three comments were received regarding CCC's price review process established under § 1493.430(b). Two commenters asked whether the SCGP would be subject to price review. One commenter stated that elimination of price review would save time and reduce paperwork. The commenter also felt that if price review were included in the SCGP, it would make the program unattractive. Another commenter wondered how prices would be reviewed because for short term credit transactions it is a common commercial practice to build interest into the sales price. One commenter noted that the rule does not contain a detailed discussion of price review and urged CCC to be as flexible as possible in the administration of this function. The respondent noted that for fresh produce, price review must be sensitive to prices which can vary from hour to hour.

To the extent that SCGP transactions may be subject to price review, CCC

may choose to price review different commodities differently or exempt some commodities from price review.

Although CCC does not intend to provide guarantee coverage for interest risk separately, CCC realizes that, under SCGP, exporters may build interest into their sales prices. If CCC were to subject the SCGP to price review, CCC could take this into account.

Four respondents commented on § 1493.430(c), Ineligible Exporter. One commenter felt strongly that no financial or ownership connection should exist between exporter and importer. The commenter indicated that if such a connection existed, defaults would be encouraged and make the program unworkable. Another commenter felt that restrictions on relationships between importers and exporters would dissuade many potential participants. In particular it would restrict many smaller import/export companies because the U.S.-based exporter may be related to the importer. One commenter felt that CCC may be increasing its export risk, in some cases, with its prohibition against within-company and joint venture transactions. This commenter agreed that taxpayers should not finance intra-company sales. However, in some instances, particularly common-owner or joint-venture sales, such restrictions would force export sales to competing foreign suppliers. The commenter requested greater flexibility to allow CCC to choose export transactions benefiting U.S. agriculture.

The "ineligible exporter" provision is intended to avoid the situation in which CCC would receive a claim for loss from an exporter that directly or indirectly owns or controls, or is owned or controlled by, the importer responsible for the default. CCC has determined not to change this provision.

One commenter felt that any exporter who has three defaults under the program in five years should be considered ineligible for further participation. With respect to this comment, CCC does not wish to qualify exporters based upon the performance of importers. However, CCC will continue to evaluate whether program modifications may be needed to provide incentives/disincentives to exporters based on program participation experience.

Section 1493.440 Certification Requirements for a Payment Guarantee

No public comments were received on this section. No changes have been made in this section of the interim rule.

Section 1493.450 Payment Guarantee

To address the risk issues raised by comments from a government agency (see General Comments, Other general comments), CCC has revised the first sentence of § 1493.450(a) to read: "The payment guarantee will provide that CCC agrees to pay the exporter or the exporter's assignee an amount not to exceed the guaranteed value, plus eligible interest, in the event that the importer fails to pay under the importer obligation unless CCC determines, with respect to the particular transaction and claim, that the guaranteed portion of the port value exceeded the prevailing U. S. market value for the same, or same type of, agricultural commodity or product. In making this determination, CCC will adjust the prevailing U.S. market value for estimated freight and/or insurance costs if the export sale was made on a CFR or CIF basis."

CCC recognizes that determining a prevailing U.S. market value may be difficult for some products, particularly for some high value and value added products. CCC will, therefore, utilize information from all available sources including, when appropriate, information furnished by participants to the transaction to support the validity of the claim. Exporters using normal pricing practices, i.e., pricing at or near the market without excessive markups intended to shift to CCC all risk of loss, need not be concerned that the new claim review provision will result in a denial of a claim should a default occur.

In instances where CCC has reviewed the unit price of the commodity in the process of approving an exporter's application for a payment guarantee pursuant to § 1493.430(b), and the price of the commodity reported by the exporter in the evidence of export report has not changed (§ 1493.470(a)(7)), CCC will not conduct another review of the price of the transaction as a condition for paying a claim. Although CCC may conduct some price reviews pursuant to § 1493.430(b) as it deems desirable, it does not intend to do so with respect to all exporter applications. Such price reviews will be done entirely at CCC's discretion, and nothing in the SCGP regulations provides exporters the right to demand or expect that such price reviews take place prior to issuing a payment guarantee.

This new provision is intended to ensure that there will be substantial risk sharing on the part of the exporter, and that CCC will not pay claims inflated by transaction prices far above prevailing market levels. CCC has no intention of avoiding payment of normal claims, nor does it intend to regulate or control

exporters' profit margins. CCC's sole intention is to enhance the integrity of the SCGP. CCC encourages and welcomes any comments regarding this provision.

Section 1493.460 Guarantee Rates and Fees

No public comments were received on this section. No changes have been made in this section of the interim rule.

Section 1493.470 Importer Obligation (as in the Proposed Rule)

As stated in § 1493.410, Definition of Terms, of the Section-by-Section Analysis of Subpart D, CCC has determined to delete § 1493.470. Three comments were received regarding this section. One commenter thought that the terms of the promissory note were too onerous. Another commenter felt that use of a promissory note as evidence of indebtedness was a step in the right direction. However, the commenter was concerned that not enough is known about the legal enforceability of the promissory note in countries whose commercial code is different from ours. Having a foreign bank avar or guarantee would mitigate the risk of possibly having a legally unenforceable document. The commenter also recommended that the optional provision regarding late interest under § 1493.470(d)(1), be made a requirement since it is customary business practice to charge late interest when payments are not made on the due date. The commenter felt that this would also provide CCC with a mechanism to be paid interest on outstanding claims. Another commenter felt the promissory note may need to include a "sound product provision." This commenter suggested that if there were quality problems upon arrival, it may be appropriate to be flexible in adjusting the value of the promissory note.

CCC's decision to retain flexibility in adapting the provisions of the promissory note should partially address the concerns expressed that the note contained in the proposed rule would be too onerous and may not be legally enforceable in some countries. Although CCC continues to believe that the previously proposed promissory note, or one substantially similar to it, will be the basic instrument required by most Program Announcements in the initial implementation of the SCGP, CCC will make adaptations, including adaptations specific to a particular country or region, if they appear necessary to enhance the likelihood of enforceability. Similarly, if experience demonstrates that the terms of the

proposed note are too onerous, modifications will be considered that are consistent with overall program goals and criteria.

CCC's intention to make adaptations, as necessary, in the form of the required promissory note would be compatible with the objectives stated by other commenters. For example, CCC could adopt a note permitting a foreign bank avar or a guarantee. For now, however, CCC has determined not to make this a program requirement because one of the primary intentions of the SCGP is to remove the foreign bank's mandatory involvement in the transaction. Additionally, CCC could choose to incorporate a provision regarding late interest into the importer's promissory note. Regarding a "sound product provision," value adjustments could be agreed to by exporters and importers. In the event the promissory note had already been executed prior to establishing the actual export value, a substitute promissory note might need to be executed. If the exporter had submitted an Evidence of Export (EOE) before the value adjustment is made, the exporter would have to file an amended EOE with CCC. In any event, CCC's principal coverage would be limited to the lower of the value of the export transaction established by the EOE or the principal amount of the promissory note.

Section 1493.470 Evidence of Export

One comment was received regarding § 1493.470(b), Time limit for submission of the EOE (of the interim rule). The respondent suggested that CCC allow a standard 60 days to submit the EOE. The respondent thought exporters would be seeking extensions of the proposed 30-day period in order to obtain a fully executed promissory note from the importer.

Under the proposed rule, EOE's must be filed in 30 days if export is by vessel, and 60 days if export is by truck or rail. Experience under the GSM-102/103 programs has not shown a need to increase the 30 day filing requirement for EOE's on vessels. However, under the proposed rule, an exporter needing additional time to file an EOE may request that the General Sales Manager extend the time limit for filing. CCC has determined not to change the time limit for filing the EOE, but to assess the need for such a change after the SCGP has been in operation. Timely submission of the EOE's will be important to permit CCC to keep accurate program data for release to the public as well as for internal program monitoring and controls.

Section 1493.480 Certification Requirements for Evidence of Export

No public comments were received on this section. No changes have been made in this section of the interim rule.

Section 1493.490 Proof of Entry

One comment was received regarding § 1493.490(b), Records of proof of entry (of the interim rule). From the viewpoint of the commenter, the requirement that exporters obtain written proof that the exported goods entered the country would be particularly problematic for fresh produce exporters. Traditionally, once the product leaves the dock the exporter ceases to have any control or liability for the goods. It is not currently a practice in the produce industry to provide proof the goods actually left the U.S. The commenter requested that CCC seek an alternate approach which will satisfy the requirements of the program, but be practical for fresh produce exporters.

CCC has determined to make no changes in this section. The requirement that exporters maintain records of an official or customary commercial nature, or other documents to verify the arrival in the foreign country of the agricultural commodity exported, is mandated by section 401(a)(1) of the Agricultural Trade Act of 1978, as amended (7 U.S.C. 5661(a)(1)). Furthermore, if a default occurred under a guaranteed transaction in which the commodity was exported by truck or rail, the entry certificate or similar document would be included when filing a claim for loss (see § 1494.500(b)). If traditional forms of entry documentation are unobtainable, § 1494.490(b) permits CCC to consider other types of documents which can be deemed acceptable by the General Sales Manager. CCC believes that these provisions are flexible enough to meet the concerns raised by the commenter.

Section 1493.500 Notice of Default and Claims for Loss

One comment was received regarding § 1493.500, Notice of default and claims for loss (of the interim rule). This commenter suggested that CCC pre-approve documents that are normally submitted in the claim procedure. The respondent stated that there is a need for greater certainty in the approval of documentation in case of a default, and that exporters would be willing to pay a fee to cover the cost of pre-approval.

Partly because of the added administrative burden that pre-approval of documents would place on CCC, this suggestion will not be adopted at this time. However, CCC will continue to consider this issue which is also

relevant to the GSM-102/103 (subpart B) programs.

This same commenter suggested that CCC provide an example of subrogation language in an addendum to its regulations. Since exporters are not banks, they require specific language to fulfill their responsibility in the event of a default. CCC agrees with the comment and will make available an example of language for an Instrument of Subrogation and Assignment.

Section 1493.510 Payment for Loss

Although no comments were received regarding §§ 1493.510 (b) and (e), CCC has revised these provisions to be consistent with the changes made in § 1493.450(a), CCC's obligation.

Section 1493.510(b), Amount of CCC's liability, is revised to read in part: "Subject to a determination by CCC with respect to prevailing U.S. market value pursuant to § 1493.450(a), of this part, CCC's maximum liability for any claims for loss * * *."

Section 1493.510(e), Action against the assignee, is revised to read: "Notwithstanding * * *. CCC will not, except pursuant to a determination under § 1493.450(a) of this part, hold the assignee responsible or take any action or raise any defense against the assignee for any action, omission, or statement by the exporter of which the assignee has no knowledge provided that:"

Section 1493.520 Recovery of Losses

No public comments were received on this section. No changes have been made in this section of the interim rule.

Section 1493.530 Miscellaneous Provisions

One comment was received regarding § 1493.530(a), Assignment (of the interim rule). The commenter suggested that greater flexibility is needed in the assignment of proceeds, including the sub-assignment to more than one party. The commenter felt this would bring the transaction in line with standard practice for similar financial instruments.

CCC has traditionally not allowed assignment of a payment guarantee to more than one party. However the proposed rule permits further assignment if " * * * approved in advance by CCC." Therefore, CCC has determined it is not necessary at this time to change § 1493.530(a).

List of Subjects in 7 CFR Part 1493

Administrative practice and procedures, Agriculture, Agricultural commodities, Credits, Exports,

Guarantees, Reporting and recordkeeping requirements.

PART 1493—[AMENDED]

Accordingly, part 1493 of title 7 is amended by adding and reserving subpart C and adding subpart D reading as follows:

Subpart C—[Reserved]

Subpart D—CCC Supplier Credit Guarantee Program Operations

Sec.

- 1493.400 General statement.
- 1493.410 Definition of terms.
- 1493.420 Information required for program participation.
- 1493.430 Application for a payment guarantee.
- 1493.440 Certification requirements for a payment guarantee.
- 1493.450 Payment guarantee.
- 1493.460 Guarantee rates and fees.
- 1493.470 Evidence of export.
- 1493.480 Certification requirements for the evidence of export.
- 1493.490 Proof of entry.
- 1493.500 Notice of default and claims for loss.
- 1493.510 Payment for loss.
- 1493.520 Recovery of losses.
- 1493.530 Miscellaneous provisions.

Authority: 7 U.S.C. 5602, 5622, 5661, 5662, 5663, 5664, 5676; 15 U.S.C. 714b(d), 714c(f).

Subpart C—[Reserved]

Subpart D—CCC Supplier Credit Guarantee Program Operations

§ 1493.400 General statement.

(a) *Overview.* (1) This subpart contains the regulations governing the operations of the Supplier Credit Guarantee Program (SCGP). The restrictions and criteria set forth at subpart A for the Commodity Credit Corporation (CCC) Export Credit Guarantee Program (GSM-102) and the Intermediate Credit Guarantee Program (GSM-103) will apply to this subpart. The SCGP was developed to expand U.S. agricultural exports by making available payment guarantees to encourage U.S. exporters to extend financing on credit terms of not more than 180 days to importers of U.S. agricultural commodities.

(2) The SCGP operates in cases where credit is necessary to increase or maintain U.S. exports to a foreign market and where private U.S. exporters would be unwilling to provide financing without CCC's guarantee. The program is operated in a manner intended not to interfere with markets for cash sales. The program is targeted toward those countries where the guarantees are necessary to secure financing of the exports but which have sufficient financial strength so that foreign

exchange will be available for scheduled payments. In providing this credit guarantee facility, CCC seeks to expand market opportunities for U.S. agricultural exporters and assist long-term market development for U.S. agricultural commodities.

(3) The credit facility created by this program is the SCGP payment guarantee (payment guarantee). The payment guarantee is an agreement by CCC to pay the exporter, or the U.S. financial institution that may take assignment of the exporter's right to proceeds, specified amounts of principal and, where applicable, interest due from, but not paid by, the importer incurring the obligation in connection with the export sale to which CCC's guarantee coverage pertains. By approving an exporter's application for a payment guarantee, CCC encourages private sector, rather than government, financing and incurs a substantial portion of the risk of default by the importer. CCC assumes this risk, in order to be able to operate the program for the purposes specified in § 1493.2.

(b) *Credit facility mechanism.* (1) For the purpose of the SCGP, CCC will consider applications for payment guarantees only in connection with export sales of U.S. agricultural commodities where the payment for the agricultural commodities will be made under an unconditional and irrevocable importer obligation to a U.S. exporter payable in U.S. dollars, as defined in § 1493.410(n).

(2) The exporter may assign the right to proceeds under the importer obligation to a U.S. bank or other financial institution so that the exporter may realize the proceeds of the sale prior to the deferred payment date(s) as set forth in the importer obligation.

(3) The SCGP payment guarantee is designed to protect the exporter or the exporter's assignee against those losses specified in the payment guarantee resulting from defaults, whether for commercial or noncommercial reasons, by the importer under the importer's obligation.

(c) *Program administration.* The SCGP will be administered pursuant to subpart A and this subpart and any Program Announcements and Notices to Participants issued by CCC pursuant to, and not inconsistent with, this subpart. This program is under the general administrative responsibility of the General Sales Manager (GSM), Foreign Agricultural Service (FAS/USDA). The review and payment of claims for loss will be administered by the Office of the Controller, CCC. Information regarding specific points of contact for the public, including names, addresses, and

telephone and facsimile numbers of particular USDA or CCC offices, will be announced by a public press release (see § 1493.410(c), "Contacts P/R").

(d) *Country allocations and program announcements.* From time to time, CCC will issue a Program Announcement to announce a SCGP allocation for a specific country. The Program Announcement for a country allocation will designate specific allocations for U.S. agricultural commodities or products thereof, will indicate the form of promissory note required by CCC, and will provide other pertinent information. Exporters may negotiate export sales to importers in that country for one of the commodities specified in the Program Announcement and seek payment guarantee coverage within the dollar amounts of specified coverage for that commodity. The Program Announcement will contain a requirement that the exporter's sales contract contain a shipping deadline within the applicable program year. The final date for a contractual shipping deadline will be stated in the Program Announcement. Program Announcements may also contain a specified "undesignated" or "unallocated" dollar amount for the purpose that if dollar amounts specified for a specific commodity for a country become fully used, an additional allocation from the "unallocated" or "undesignated" portion of the total country allocation may then be designated for a specific commodity. Program Announcements that include an "unallocated" or "undesignated" dollar amount will contain further information on the "unallocated" or "undesignated" portion of the country allocation.

§ 1493.410 Definition of terms.

Terms set forth in this subpart and in CCC Program Announcements, Notices to Participants, and any other CCC-originated documents pertaining to the SCGP will have the following meanings:

(a) *Assignee.* A financial institution in the United States which, for adequate consideration given, has obtained the legal rights to receive the payment of proceeds under the payment guarantee.

(b) *CCC.* The Commodity Credit Corporation, an agency and instrumentality of the United States within the Department of Agriculture, authorized pursuant to the Commodity Credit Corporation Charter Act of 1948 (15 U.S.C. 714 et seq.), and subject to the general supervision and direction of the Secretary of Agriculture.

(c) *Contacts P/R.* A notice issued by FAS/USDA by public press release which contains specific names,

addresses, and telephone and facsimile numbers of contacts within FAS/USDA and CCC for use by persons interested in obtaining information concerning the operations of the SCGP. The Contacts P/R also contains details about where to submit information required to qualify for program participation, to apply for payment guarantees, to request amendments of payment guarantees, to submit evidence of export reports, and to give notices of default and file claims for loss.

(d) *Date of export.* One of the following dates, depending upon the method of shipment: the on-board date of an ocean bill of lading or the on-board ocean carrier date of an intermodal bill of lading; the on-board date of an airway bill; or, if exported by rail or truck, the date of entry shown on an entry certificate or similar document issued and signed by an official of the Government of the importing country.

(e) *Date of sale.* The earliest date on which a contractual obligation exists between the exporter, or an intervening purchaser, if applicable, and the importer under which a firm dollar-and-cent price for the sale of agricultural commodities to the importer has been established or a mechanism to establish such price has been agreed upon.

(f) *Discounts and allowances.* Any consideration provided directly or indirectly, by or on behalf of the exporter, or an intervening purchaser, to the importer in connection with a sale of an agricultural commodity, above and beyond the commodity's value, stated on the appropriate FOB, FAS, CFR or CIF basis. Discounts and allowances include, but are not limited to, the provision of additional goods, services or benefits; the promise to provide additional goods, services or benefits in the future; financial rebates; the assumption of any financial or contractual obligations; the whole or partial release of the importer from any financial or contractual obligations; or settlements made in favor of the importer for quality or weight.

(g) *Eligible interest.* The maximum amount of interest, based on the interest rate indicated in CCC's payment guarantee or any amendments to such payment guarantee, which CCC agrees to pay the exporter or the exporter's assignee in the event that CCC pays a claim for loss. The maximum interest rate stated in the payment guarantee, when determined or adjusted by CCC, will not exceed the average investment rate of the most recent Treasury 52-week bill auction in effect at that time.

(h) *Exported value.* (1) Where CCC announces coverage on a FAS or FOB basis and:

(i) Where the commodity is sold on a FAS or FOB basis, the value, FAS or FOB basis, U.S. point of export, of the export sale, reduced by the value of any discounts or allowances granted to the importer in connection with such sale; or

(ii) Where the commodity was sold on a CFR or CIF basis, point of entry, the value of the export sale, FAS or FOB, point of export, is measured by the CFR or CIF value of the agricultural commodity less the cost of ocean freight, as determined at the time of application and, in the case of CIF sales, less the cost of marine and war risk insurance, as determined at the time of application, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity; or

(2) Where CCC announces coverage on a CFR or CIF basis, and where the commodity is sold on a CFR or CIF basis, point of entry, the total value of the export sale, CFR or CIF basis, point of entry, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity.

(3) When a CFR or CIF commodity export sale involves the performance of non-freight services to be performed outside the United States (e.g., services such as bagging bulk cargo) which are not normally included in ocean freight contracts, the value of such services and any related materials not exported from the U.S. with the commodity must also be deducted from the CFR or CIF sales price in determining the exported value.

(i) *Exporter.* A seller of U.S. agricultural commodities or products thereof that has qualified in accordance with the provisions of § 1493.420.

(j) *FAS/USDA.* The Foreign Agricultural Service, U.S. Department of Agriculture.

(k) *GSM.* The General Sales Manager, FAS/USDA, acting in his capacity as Vice President, CCC, or his designee.

(l) *Guaranteed value.* The maximum amount, exclusive of interest, that CCC agrees to pay the exporter or assignee under CCC's payment guarantee, as indicated on the face of the payment guarantee.

(m) *Importer.* A foreign buyer that enters into a contract with an exporter, or with an intervening purchaser, for an export sale of agricultural commodities to be shipped from the U.S. to the foreign buyer.

(n) *Importer obligation.* A promissory note or notes that conform(s) with the requirements for such note(s) specified in the applicable country or regional Program Announcement(s).

(o) *Incoterms*. The following customary terms, as defined by the International Chamber of Commerce, Incoterms © current revision):

- (1) Free Alongside Ship (FAS);
- (2) Free on Board (FOB);
- (3) Cost and Freight (CFR, or alternatively, C&F, C and F, or CNF); and
- (4) Cost Insurance and Freight (CIF).

(p) *Intervening purchaser*. A party that agrees to purchase U.S. agricultural commodities from an exporter and sell the same agricultural commodities to an importer.

(q) *Late interest*. Interest, in addition to the interest due under the payment guarantee, which CCC agrees to pay in connection with a claim for loss, accruing during the period beginning on the first day after receipt of a claim which CCC has determined to be in good order and ending on the day on which payment is made on such claim for loss.

(r) *Notice to participants*. A notice issued by CCC by public press release which serves one or more of the following functions: to remind participants of the requirements of the program; to clarify the program requirements contained in these regulations in a manner which is not inconsistent with the regulations; to instruct exporters to provide additional information in applications for payment guarantees under specific country and/or commodity allocations; and to supplement the provisions of a payment guarantee, in a manner not inconsistent with these regulations, before the exporter's application for such payment guarantee is approved.

(s) *Payment guarantee*. An agreement under which CCC, in consideration of a fee paid, and in reliance upon the statements and declarations of the exporter, subject to the terms set forth in the written guarantee (including the required form of promissory note), this subpart, and any applicable Program Announcements or Notices to Participants, agrees to pay the exporter or the exporter's assignee in the event of a default by an importer under the importer obligation.

(t) *Port value*. (1) Where CCC announces coverage on a FAS or FOB basis and:

(i) Where the commodity is sold on a FAS or FOB basis, U.S. point of export, the value, FAS or FOB basis, U.S. point of export, of the export sale, including the upward tolerance, if any, as provided by the export sales contract, reduced by the value of any discounts or allowances granted to the importer in connection with such sale; or

(ii) Where the commodity was sold on a CFR or CIF basis, point of entry, the value of the export sale, FAS or FOB, point of export, including the upward tolerance, if any, as provided by the export sales contract, is measured by the CFR or CIF value of the agricultural commodity less the value of ocean freight and, in the case of CIF sales, less the value of marine and war risk insurance, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity; or

(2) Where CCC announces coverage on a CFR or CIF basis and where the commodity was sold on CFR or CIF basis, point of entry, the total value of the export sale, CFR or CIF basis, point of entry, including the upward tolerance, if any, as provided by the export sales contract, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity.

(3) When a CFR or CIF commodity export sale involves the performance of non-freight services to be performed outside the United States (e.g., services such as bagging bulk cargo), which are not normally included in ocean freight contracts, the value of such services and any related materials not exported from the U.S. with the commodity must also be deducted from the CFR or CIF sales price in determining the port value.

(u) *Program announcement*. An announcement issued by CCC which provides information on specific country and commodity allocations and may identify eligible agricultural commodities and countries, length of credit periods which may be covered, specify dollar limitations for CCC exposure in particular countries, the form of promissory note required for a particular country or region, and include other information and requirements.

(v) *SCGP*. The Supplier Credit Guarantee Program described by this subpart.

(w) *United States or U.S.* All of the 50 states, the District of Columbia, and the territories and possessions of the United States.

(x) *U.S. agricultural commodity*. (1) With respect to any agricultural commodity other than a product of an agricultural commodity, an agricultural commodity entirely produced in the United States; and

(2) With respect to a product of an agricultural commodity:

- (i) A product all of the agricultural components of which are entirely produced in the United States; or
- (ii) Any other product the Secretary may designate that contains any

agricultural component that is not entirely produced in the United States if:

(A) Such component is an added, de minimis component;

(B) Such component is not commercially produced in the United States; and

(C) There is not acceptable substitute for such component that is commercially produced in the United States (For purposes of this paragraph, fish entirely produced in the United States include fish harvested by a documented fishing vessel as defined in title 46, United States Code, in waters that are not waters [including the territorial sea] of a foreign country).

(y) *USDA*. United States Department of Agriculture.

§ 1493.420 Information required for program participation.

Before CCC will accept an application for a payment guarantee under the SCGP, the applicant must qualify for participation in this program. Based upon the information submitted by the applicant and other publicly available sources, CCC will determine whether the applicant is eligible for participation in the program.

(a) *Submission of documentation*. In order to qualify for participation in the SCGP, an applicant must submit to CCC, at the address specified in the Contacts P/R, the following information:

(1) The address of the applicant's headquarters office and the name and address of an agent in the U.S. for the service of process;

(2) The legal form of doing business of the applicant, e.g., sole proprietorship, partnership, corporation, etc.;

(3) The place of incorporation of the applicant, if the applicant is a corporation;

(4) The name and U.S. address of the office(s) of the applicant, and statement indicating whether the applicant is a U.S. domestic corporation, a foreign corporation or another foreign entity. If the applicant has multiple offices, the address included in the information should be that which is pertinent to the particular export sale contemplated by the applicant under this subpart;

(5) A certified statement describing the applicant's participation, if any, during the past three years in U.S. Government programs, contracts or agreements; and

(6) A certification that: "I certify, to the best of my knowledge and belief, that neither [name of applicant] nor any of its principals has been debarred, suspended, or proposed for debarment from contracting with or participating in

programs administered by any U.S. Government agency. ["Principals," for the purpose of this certification, means officers; directors; owners of five percent or more of stock; partners; and persons having primary management or supervisory responsibility within a business entity (e.g., general manager, plant manager, head of a subsidiary division, or business segment, and similar positions).] I further agree that, should any such debarment, suspension, or notice of proposed debarment occur in the future, [name of applicant] will immediately notify CCC."

(b) *Previous qualification.* Any exporter that is qualified under subpart B, § 1493.30 is qualified under this section to submit applications for a SCGP payment guarantee, and the information provided by the exporter pursuant to § 1493.30 will be deemed to also have been provided under this section. Each application must include the statement required by § 1493.430(a)(17) incorporating the certifications of § 1493.440, including the certification in § 1493.440(e) that the information previously provided pursuant to § 1493.420 has not changed. If the exporter is unable to provide such certification, such exporter must update the information required by paragraph (a) of this section which has changed and certify that the remainder of the information previously provided has not changed.

(c) *Additional submissions.* CCC will promptly notify applicants that have submitted information required by this section whether they have qualified to participate in the program. Any applicant failing to qualify will be given an opportunity to provide additional information for consideration by CCC.

(d) *Ineligibility for program participation.* An applicant may be ineligible to participate in the SCGP if:

- (1) Such applicant is currently debarred, suspended, or proposed for debarment from contracting with or participating in any program administered by a U.S. Government agency; or
- (2) Such applicant is controlled or can be controlled, in whole or in part, by any individuals or entities currently debarred, suspended or proposed for debarment from contracting with or participating in programs administered by any U.S. Government agency.

§ 1493.430 Application for a payment guarantee.

(a) A firm export sale must exist before an exporter may submit an application for a payment guarantee. An application for a payment guarantee

may be submitted in writing or may be made by telephone, but, if made by telephone, it must be confirmed in writing to the office specified in the Contacts P/R. An application must identify the name and address of the exporter and include the following information:

- (1) Name of the destination country;
- (2) Name and address of the importer;
- (3) Name and address of the intervening purchaser, if any, and a statement that the commodity will be shipped directly to the importer in the destination country;
- (4) Date of sale;
- (5) Exporter's sale number;
- (6) Delivery period as agreed between the exporter and the importer;
- (7) A full description of the commodity (including packaging, if any);
- (8) Mean quantity, contract loading tolerance and, if the exporter chooses, a request for CCC to reserve coverage up to the maximum quantity permitted by the contract loading tolerance;
- (9) Unit sales price of the commodity, or a mechanism to establish the price, as agreed between the exporter and the importer. If the commodity was sold on the basis of CFR or CIF, the actual (if known at the time of application) or estimated value of freight and, in the case of sales made on a CIF basis, the actual (if known at the time of application) or estimated value of marine and war risk insurance, must be specified;
- (10) Description and value of discounts and allowances, if any;
- (11) Port value (includes upward loading tolerance, if any);
- (12) Guaranteed value;
- (13) Guarantee fee;
- (14) The term length for the credit being extended and the intervals between principal payments for each shipment to be made under the export sale;
- (15) A statement indicating whether any portion of the export sale for which the exporter is applying for a payment guarantee is also being used as the basis for an application for participation in any of the following CCC or USDA export programs: Export Enhancement Program, Dairy Export Incentive Program, Sunflowerseed Oil Assistance Program, or Cottonseed Oil Assistance Program. The number of the Agreement assigned by USDA under one of these programs should be included, as applicable;
- (16) Other information as requested by CCC or specified in Program Announcements and Notices to Participants, as applicable; and
- (17) The exporter's statement, "ALL SECTION 1493.440 CERTIFICATIONS

ARE BEING MADE IN THIS APPLICATION" which, when included in the application by the exporter, will constitute a certification that it is in compliance with all the requirements set forth in § 1493.440.

(b) An application for a payment guarantee may be approved as submitted, approved with modifications agreed to by the exporter, or rejected by the GSM. In the event that the application is approved, the GSM will cause a payment guarantee to be issued in favor of the exporter. Such payment guarantee will become effective at the time specified in § 1493.450(b). If, based upon a price review, the unit sales price of the commodity does not fall within the prevailing commercial market level ranges, as determined by CCC, the application will not be approved.

(c) *Ineligible exporter.* An exporter will be ineligible to obtain a payment guarantee if such exporter:

- (1) Directly or indirectly owns or controls the importer;
- (2) Is directly or indirectly owned or controlled by the importer; or
- (3) Is directly or indirectly owned or controlled by a person(s) or entity(ies) which also owns or controls the importer.

§ 1493.440 Certification requirements for payment guarantee.

By providing the statement in § 1493.430(a)(17), the exporter is certifying that the information provided in the application is true and correct and, further, that all requirements set forth in this section have been or will be met. The exporter will be required to provide further explanation or documentation with regard to applications that do not include this statement. The exporter, in submitting an application for a payment guarantee and providing the statement set forth in § 1493.430(a)(17), certifies that:

- (a) The agricultural commodity or product to be exported under the payment guarantee is a United States agricultural commodity or a product thereof, as defined in § 1493.410(x);
- (b) There have not been and will not be any corrupt payments or extra sales services or other items extraneous to the transaction provided, financed, or guaranteed in connection with the transaction, and that the transaction complies with applicable United States law;
- (c) If the agricultural commodity is vegetable oil or a vegetable oil product, that none of the agricultural commodity or product has been or will be used as a basis for a claim of a refund, as drawback, pursuant to section 313 of the Tariff Act of 1930, 19 U.S.C. 1313, of

any duty, tax or fee imposed under Federal law on an imported commodity or product;

(d) No person or selling agency has been employed or retained to solicit or secure the payment guarantee, and that there is no agreement or understanding for a commission, percentage, brokerage, or contingent fee, except in the case of bona fide employees or bona fide established commercial or selling agencies maintained by the exporter for the purpose of securing business; and

(e) The information provided pursuant to § 1493.420 has not changed, the exporter still meets all of the qualification requirements of § 1493.420, and the exporter will immediately notify CCC if there is a change of circumstances which would cause it to fail to meet such requirements. If the exporter breaches or violates these certifications with respect to a SCGP payment guarantee, CCC will have the right, notwithstanding any other rights provided under this subpart, to annul guarantee coverage for any commodities not yet exported and/or to proceed against the exporter.

§ 1493.450 Payment guarantee.

(a) *CCC's obligation.* The payment guarantee will provide that CCC agrees to pay the exporter or the exporter's assignee an amount not to exceed the guaranteed value, plus eligible interest, in the event that the importer fails to pay under the importer obligation, unless CCC determines with respect to the particular transaction and claim that the guaranteed portion of the port value exceeded the prevailing U.S. market value for the same, or same type of agricultural commodity or product. In making this determination, CCC will adjust the prevailing U.S. market value for estimated freight and/or insurance costs if the export sale was made on a CFR or CIF basis. Payment by CCC will be in U.S. dollars.

(b) *Period of guarantee coverage.* The payment guarantee will apply to a credit period not exceeding 180 days beginning either on the date(s) of export(s) or from the date when interest begins to accrue whichever is earlier, and will continue during the credit term specified in the payment guarantee or amendments thereto. However, the payment guarantee becomes effective on the date(s) of export(s) of the agricultural commodities or products thereof specified in the exporter's application for a payment guarantee.

(c) *Terms of the CCC payment guarantee.* The terms of CCC's coverage will be set forth in the payment guarantee, as approved by CCC, and will include the provisions of this subpart,

which may be supplemented by any Program Announcements and/or Notices to Participants in effect at the time the payment guarantee is approved by CCC.

(d) *Final date to export.* The final date to export shown on the payment guarantee will be one month, as determined by CCC, after the contractual deadline for shipping.

(e) *Reserve coverage for loading tolerances.* The exporter may apply for a payment guarantee and, if coverage is available, pay the guarantee fee, based at least on, the amount of the lower loading tolerance of the export sales contract; however, the exporter may also request that CCC reserve additional guarantee coverage to accommodate up to the amount of the upward loading tolerance specified in the export sales contract. If such additional guarantee coverage is available at the time of application and CCC determines to make such reservation, it will so indicate to the exporter. In the event that the exporter ships a quantity greater than the amount on which the guarantee fee was paid (i.e., lower loading tolerance), it may obtain the additional coverage from CCC, up to the amount of the upward loading tolerance, by filing for an amendment to the payment guarantee, and by paying the additional amount of fee applicable. If such amendment to the payment guarantee is not filed with CCC by the exporter within 30 days after the date of the last export against the sales contract, CCC may determine not to reserve the coverage originally set aside for the exporter.

(f) *Ineligible exports.* Commodities with a date of export prior to the date of receipt by CCC of the exporter's telephonic or written application for a payment guarantee, or with a date of export made after the final date for export shown on the payment guarantee or any amendments thereof, are ineligible for guarantee coverage under this subpart, except where it is determined by the GSM to be in the best interests of CCC to provide guarantee coverage on such commodities.

(g) *Foreign agricultural component.* CCC may approve payment guarantees under this subpart only in connection with sales of United States agricultural commodities as defined in § 1493.410(x). CCC may not provide guarantee coverage under this subpart on credit extended for the value of any foreign agricultural component.

(h) *Additional requirements.* The payment guarantee may contain such additional terms, conditions, and limitations as deemed necessary or desirable by the GSM. Such additional

terms, conditions or qualifications, as stated in the payment guarantee are binding on the exporter or the exporter's assignee.

(i) *Amendments.* A request for an amendment of a payment guarantee may be submitted only by the exporter (with the concurrence of the assignee, if any). CCC will consider such a request only if the amendment sought is consistent with this subpart and any applicable Program Announcements and Notices to Participants. Amendments may include, but will not be limited to, a change in the credit period and an extension of time to export. Any amendment to the payment guarantee, particularly those that result in an increase in CCC's liability under the payment guarantee, may result in an increase in the guarantee fee. (Technical corrections or corrections of a clerical error which may be submitted by the exporter or the exporter's assignee are not viewed as amendments.)

§ 1493.460 Guarantee rates and fees.

(a) *Guarantee fee rates.* The current payment guarantee fee rate(s) will be available by Program Announcement.

(b) *Calculation of fee.* The guarantee fee will be computed by multiplying the guaranteed value by the guarantee fee rate.

(c) *Payment of fee.* The exporter shall remit, with his written application, the full amount of the guarantee fee. Applications will not be approved until the guarantee fee has been received by CCC. The exporter's check for the guarantee fee shall be made payable to CCC and mailed or delivered by courier to the office specified in the Contacts P/R.

(d) *Refunds of fee.* Guarantee fees paid in connection with approved applications will ordinarily not be refundable. CCC's approval of the application will be final and refund of the guarantee fee will not be made after approval unless the GSM determines that such refund will be in the best interest of CCC. If the application for a payment guarantee is not approved or is approved only for a part of the guarantee coverage requested, a full or pro rata refund of the fee remittance will be made.

§ 1493.470 Evidence of export.

(a) *Report of export.* The exporter is required to provide CCC an evidence of export report for each shipment made under the payment guarantee. This report must include the following:

- (1) Payment guarantee number;
- (2) Date of export;
- (3) Exporter's sale number;
- (4) Exported value;

(5) Quantity;

(6) A full description of the commodity exported;

(7) Unit sales price received for the commodity exported and the basis (e.g., FOB, CFR, CIF). Where the unit sales price at export differs from the unit sales price indicated in the exporter's application for a payment guarantee, the exporter is also required to submit a statement explaining the reason for the difference;

(8) Description and value of discounts and allowances, if any;

(9) Number of the Agreement assigned by USDA under any other program if any portion of the export sale was also approved for participation in any of the following CCC or USDA export program: Export Enhancement Program, Dairy Export Incentive Program, Sunflowerseed Oil Assistance Program, or Cottonseed Oil Assistance Program; and

(10) The exporter's statement, "ALL SECTION 1493.480 CERTIFICATIONS ARE BEING MADE IN THIS EVIDENCE OF EXPORT" which, when included in the evidence of export by the exporter, will constitute a certification that it is in compliance with all the requirements set forth in § 1493.480.

(b) *Time limit for submission of evidence of export.* The exporter must provide a written report to the office specified in the Contacts P/R within 60 calendar days if the export was by rail or truck; or 30 calendar days if the export was by any other carrier. The time period for filing a report of export will commence upon each date of export of the commodity covered under a payment guarantee. If the evidence of export report is not received by CCC within the time period for filing, the payment guarantee will become null and void only if and only to the extent that failure to make timely filing resulted, or would be likely to result, in:

(1) Significant financial harm to CCC;

(2) The undermining of an essential regulatory purpose of the program;

(3) Obstruction of the fair administration of the program; or

(4) A threat to the integrity of the program. The time limit for submission of an evidence of export report may be extended if such extension is determined by the GSM to be in the best interests of CCC.

(c) *Export sales reporting.* Exporters may have a mandatory reporting responsibility under section 602 of the Agricultural Trade Act of 1978, as amended (7 U.S.C. 5712) for exports of wheat and wheat flour, feed grains, oilseeds, cotton, and other agricultural commodities and products thereof.

§ 1493.480 Certification requirements for the evidence of export.

By providing the statement contained in § 1493.470(a)(10), the exporter is certifying that the information provided in the evidence of export report is true and correct and, further, that all requirements set forth in this section have been or will be met. The exporter will be required to provide further explanation or documentation with regard to reports that do not include this statement. If the exporter breaches or violates these certifications with respect to a SCGP payment guarantee, CCC will have the right, notwithstanding any other rights provided under this subpart, to annul guarantee coverage for any commodities not yet exported and/or to proceed against the exporter. The exporter, in submitting the evidence of export and providing the statement set forth in § 1493.470(a)(10), certifies that:

(a) The agricultural commodity or product exported under a payment guarantee is a United States agricultural commodity or product thereof, as defined in § 1493.410(x);

(b) Agricultural commodities of the grade, quality and quantity called for in the exporter's sales contract with the importer have been exported to the country specified in the payment guarantee;

(c) There is an importer obligation as defined in § 1493.410(n) to cover the exported value of the commodity exported;

(d) There have not been and will not be any corrupt payments or extra sales services or other items extraneous to the transaction provided, financed, or guaranteed in connection with the transaction, and that the transaction complies with applicable United States law; and

(e) The information provided pursuant to § 1493.420 has not changed, the exporter still meets all of the qualification requirements of § 1493.420 and the exporter will immediately notify CCC if there is a change of circumstances which would cause it to fail to meet such requirements.

§ 1493.490 Proof of entry.

(a) *Diversión.* The diversion of commodities covered by a SCGP payment guarantee to a country other than that shown on the payment guarantee is prohibited, unless expressly authorized by the GSM.

(b) *Records of proof of entry.* Exporters must obtain and maintain records of an official or customary commercial nature and grant authorized USDA officials access to such documents or records as may be necessary to demonstrate the arrival of

the agricultural commodities exported in connection with the SCGP in the country that was the intended country of destination of such commodities. Records demonstrating proof of entry must be in English or be accompanied by a certified or other translation acceptable to CCC. Records acceptable to meet this requirement include an original certification of entry signed by a duly authorized customs or port official of the importing country, by the importer, by an agent or representative of the vessel or shipline which delivered the agricultural commodity to the importing country, or by a private surveyor in the importing country, or other documentation deemed acceptable by the GSM showing:

(1) That the agricultural commodity entered the importing country;

(2) The identification of the export carrier;

(3) The quantity of the agricultural commodity;

(4) The kind, type, grade and/or class of the agricultural commodity; and

(5) The date(s) and place(s) of unloading of the agricultural commodity in the importing country. (Records of proof of entry need not be submitted with a claim for loss, except as may be provided in § 1493.500(b)(4)(ii).)

§ 1493.500 Notice of default and claims for loss.

(a) *Notice of default.* If the importer fails to make payment pursuant to the terms of the importer obligation, the exporter or the exporter's assignee must submit a notice of default to CCC as soon as possible, but not later than 10 calendar days after the date that payment was due from the importer (the due date). A notice of default must be submitted in writing to the Treasurer, CCC, at the address specified in the Contacts P/R. If the exporter or the exporter's assignee fails to promptly notify CCC of defaults in accordance with this paragraph, CCC may make the payment guarantee null and void with respect to any payment(s) applicable to such default. This time limit may be extended only under extraordinary circumstances and if such extension is determined by the Controller, CCC, to be in the best interests of CCC. The notice of default must include:

(1) Payment guarantee number;

(2) Name of the country;

(3) Name of the defaulting importer;

(4) Due date;

(5) Total amount of the defaulted payment due, indicating separately the amounts for principal and interest;

(6) Date of importer's refusal to pay, if applicable; and

(7) Reason for importer's refusal to pay, if known.

(b) *Filing a claim for loss.* A claim for a loss by the exporter or the exporter's assignee will not be paid if it is made later than six months from the due date of the defaulted payment. A claim for loss must be submitted in writing to the Treasurer, CCC, at the address specified in the Contacts P/R. The claim for loss must include the following information and documents:

- (1) Payment guarantee number;
- (2) A certification that the scheduled payment has not been received;
- (3) A certification of the amount of accrued interest in default, the date interest began to accrue, and the interest rate on the importer obligation applicable to the claim;
- (4) A copy of each of the following documents, with a cover document containing a signed certification by the exporter or the exporter's assignee that each page of each document is a true and correct copy:

- (i) The importer obligation;
- (ii) Depending upon the method of shipment, the negotiable ocean carrier or intermodal bill(s) of lading signed by the shipping company with the onboard ocean carrier date for each shipment, the airway bill, or, if shipped by rail or truck, the entry certificate or similar document signed by an official of the importing country;
- (iii)(A) The exporter's invoice showing, as applicable, the FAS, FOB, CFR or CIF values; or

(B) If there was an intervening purchaser, both the exporter's invoice to the intervening purchaser and the intervening purchaser's invoice to the importer;

(iv) An instrument, in form and substance satisfactory to CCC, subrogating to CCC the respective rights of the exporter and the exporter's assignee, if applicable, to the amount of payment in default under the applicable export sale. The instrument must reference the applicable importer obligation; and

(v) A copy of the report(s) of export previously submitted by the exporter to CCC pursuant to § 1493.470(a).

(c) *Subsequent claims for defaults on installments.* If the initial claim is found in good order, the exporter or an exporter's assignee need only provide all of the required claims documents with the initial claim relating to a covered transaction. For subsequent claims relating to failure of the importer to make scheduled installments on the same export shipment, the exporter or the exporter's assignee need only submit to CCC a notice of such failure containing the information stated in paragraph (b) (1), (2), and (3) of this section; an instrument of subrogation as

per paragraph (b)(4)(iv) of this section, and including the date the original claim was filed with CCC.

§ 1493.510 Payment for loss.

(a) *Determination of CCC's liability.* Upon receipt in good order of the information and documents required under § 1493.500, CCC will determine whether or not a loss has occurred for which CCC is liable under the applicable payment guarantee, this subpart and any applicable supplemental Program Announcements and Notices to Participants. If CCC determines that it is liable to the exporter and/or the exporter's assignee, CCC will pay the exporter or the exporter's assignee in accordance with paragraphs (b) and (c) of this section.

(b) *Amount of CCC's liability.* Subject to a determination by CCC with respect to prevailing U.S. market value pursuant to § 1493.450(a) of this part, CCC's maximum liability for any claims for loss submitted with respect to any payment guarantee, not including any late interest payments due in accordance with paragraph (c) of this section, will be limited to the lesser of:

- (1) The guaranteed value as stated in the payment guarantee, plus eligible interest; or
- (2) The guaranteed percentage (as indicated in the payment guarantee) of the exported value indicated in the evidence of export, plus eligible interest.

(c) *Late interest payment.* If a claim is not paid within one day of receipt of a claim which CCC has determined to be in good order, late interest will accrue in favor of the exporter or the exporter's assignee beginning with the first day after the day of receipt of a claim found by CCC to be in good order and continuing until and including the date that payment is made by CCC. Late interest will be paid on the guaranteed amount, as determined by paragraphs (b)(1) and (2) of this section, and will be calculated based on the average investment rate of the most recent Treasury 91-day bill auction as announced by the Department of Treasury as of the due date.

(d) *Accelerated payments.* CCC will pay claims only for losses on amounts not paid as scheduled. CCC will not pay claims for amounts due under an accelerated payment clause in the export sales contract or the importer obligation unless it is determined to be in the best interests of CCC by the Controller, CCC. Notwithstanding the foregoing, CCC at its option may declare the entire amount of the unpaid balance, plus accrued interest, in default and make payment to the exporter or the

exporter's assignee in addition to such other claimed amount as may be due from CCC.

(e) *Action against the assignee.* Notwithstanding any other provision in this subpart to the contrary, with regard to commodities covered by a payment guarantee, CCC will not, except pursuant to a determination under § 1493.450(a) of this part, hold the assignee responsible or take any action or raise any defense against the assignee for any action, omission, or statement by the exporter of which the assignee has no knowledge, provided that:

(1) The exporter complies with the reporting requirements under §§ 1493.470 and 1493.480, excluding post-export adjustments (i.e., corrections to evidence of export reports); and

(2) The exporter or the exporter's assignee furnishes the statements and documents specified in § 1493.500.

§ 1493.520 Recovery of losses.

(a) *Notification.* Upon payment of loss to the exporter or the exporter's assignee, CCC will notify the importer of CCC's rights under the subrogation agreement to recover all moneys in default.

(b) *Receipt of monies.* (1) In the event that monies for a defaulted payment are recovered by the exporter or the exporter's assignee from the importer or any other source whatsoever, such monies shall be immediately paid to the Treasurer, CCC. If such monies are not received by CCC within 15 business days from the date of recovery by the exporter or the exporter's assignee, the exporter or the exporter's assignee will owe to CCC interest from the date of recovery to the date of receipt by CCC. This interest will be calculated based on the latest average investment rate of the most recent Treasury 91-day bill auction, as announced by the Department of Treasury, in effect on the date of recovery and will accrue from such date to the date of payment by the exporter or the exporter's assignee to CCC. Such interest will be charged only on CCC's share of the recovery.

(2) If CCC recovers monies that should be applied to a payment guarantee for which a claim has been paid by CCC, CCC will pay the holder of the payment guarantee its pro rata share immediately, provided that the required information necessary for determining pro rata distribution has been furnished. If payment is not made by CCC within 15 business days from the date of recovery or 15 business days from receiving the required information for determining pro rata distribution, whichever is later, CCC will pay interest

calculated on the latest average investment rate of the most recent Treasury 91-day bill auction, as announced by the Department of Treasury, in effect on the date of recovery and such interest will accrue from such date to the date of payment by CCC. The interest will apply only to the portion of the recovery payable to the holder of the payment guarantee.

(c) *Allocation of recoveries.*

Recoveries made by CCC from the importer, and recoveries received by CCC from the exporter, the exporter's assignee, or any other source whatsoever, will be allocated by CCC to the exporter or the exporter's assignee and to CCC on a pro rata basis determined by their respective interests in such recoveries. The respective interest of each party will be determined on a pro rata basis, based on the combined amount of principal and interest in default. Once CCC has paid out a particular claim under a payment guarantee, CCC pro rates any collections it receives and shares these collections proportionately with the holder of the guarantee until both CCC and the holder of the guarantee have been reimbursed in full. Appendix A to § 1493.520—Illustration of Pro Rata Allocation of Recoveries—provides an example of the methodology used by CCC in applying this paragraph (c).

(d) *Liabilities to CCC.*

Notwithstanding any other terms of the payment guarantee, the exporter may be liable to CCC for any amounts paid by

CCC under the payment guarantee when and if it is determined by CCC that the exporter has engaged in fraud, or has been or is in material breach of any contractual obligation, certification or warranty made by the exporter for the purpose of obtaining the payment guarantee or for fulfilling obligations under SCGP. Further, the exporter's assignee may be liable to CCC for any amounts paid by CCC under the payment guarantee when and if it is determined by CCC that the exporter's assignee has engaged in fraud or otherwise violated program requirements.

(e) *Good faith.* The violation by an exporter of the certifications in §§ 1493.440(b) and 1493.480(d) or the failure of an exporter to comply with the provisions of §§ 1493.490 or 1493.530(e) will not affect the validity of any payment guarantee with respect to an assignee which had no knowledge of such violation or failure to comply at the time such exporter applied for the payment guarantee or at the time of assignment of the payment guarantee.

(f) *Cooperation in recoveries.* Upon payment by CCC of a claim to the exporter or the exporter's assignee, the exporter or the exporter's assignee will cooperate with CCC to effect recoveries from the importer.

Appendix A to § 1493.520—Illustration of Pro Rata Allocation of Recoveries

The following example illustrates CCC's policy, as set forth in § 1493.520(c), regarding

pro rata sharing of recoveries made for claims filed under the SCGP. A typical case might be as follows:

1. The U.S. exporter enters into a \$200,000, 180 day credit arrangement with the importer calling for two equal payments of principal and two equal payments of interest at a rate of 10 percent per annum and a penalty interest rate of 12 percent per annum (basis 360 days) on overdue amounts until the overdue amount is paid. (Basis for interest calculation may be 360 or 365 days.)

2. The importer fails to make the final principal payment of \$100,000 and an interest payment of \$2,500.00 (10% per annum for 90 days on \$100,000), both due on January 31.

3. On February 10, the U.S. exporter files a claim in good order with CCC.

4. CCC's guarantee states that CCC's maximum liability is limited to 60 percent of the principal amount due (\$60,000) and interest at a rate of 8 percent per annum (basis 365 days) on 60 percent of the principal outstanding (\$1,183.56) (8% per annum for 90 days on \$60,000). (CCC's basis for interest calculation is 365 days.)

5. CCC pays the claim on February 22.

6. The average investment rate of the most recent 91-day Treasury Bill auction average which has been published by the Department of Treasury in effect on the date of nonpayment by CCC (January 31) is 7 percent. (CCC's late interest rate.)

Computation of Obligations

Using the above case, CCC's payment to the holder of the payment guarantee would be computed as follows:

1. CCC's Obligation under the Payment Guarantee:

(a) Principal coverage—(60% \$100,000)	\$60,000.00
(b) Interest coverage—(8% per annum for 90 days on \$60,000, basis 365 days)	1,183.56
(c) Late interest due from CCC (7% per annum for 11 days on \$61,183.56, basis 365 days)	\$61,183.56
	129.07
(d) Amount paid by CCC on February 22	\$61,312.63

2. Importer's obligation under the importer obligation:

(a) Principal due January 31	\$100,000.00
Interest due January 31	
(10% per annum for 90 days on \$100,000, basis 360 days)	2,500.00

Amount owed by importer as of January 31

(b) Penalty interest due (12% per annum for 22 days on \$102,500.00, basis 360 days)

(c) Amount owed by importer as of February 22

3. Amount of importer's obligation not covered by CCC's payment guarantee: \$41,939.04 (\$103,251.67–\$61,312.63).

Computation of Pro Rata Sharing in Recovery of Losses

In establishing each party's respective interest in any recovery of losses, the total amount due under the importer obligation would be determined as of the date the claim is paid by CCC (February 22). Using the above example in which the amount owed by the importer is \$103,251.67, CCC would be entitled to 59.38 percent (\$61,312.63 divided by \$103,251.67) and the holder of the payment guarantee would be entitled to 40.62 percent (\$41,939.04 divided by

\$103,251.67) of any recoveries of losses after settlement of the claim. Since in this example, the losses were recovered after the claim has been paid by CCC, § 1493.520(b) would apply.

§ 1493.530 Miscellaneous provisions.

(a) *Assignment.* (1) The exporter may assign the proceeds which are, or may become, payable by CCC under a payment guarantee or the right to such proceeds only to a financial institution in the U.S. The assignment must cover

all amounts payable under the payment guarantee not already paid, may not be made to more than one party, and may not, unless approved in advance by CCC, be:

- (i) Made to one party acting for two or more parties; or
- (ii) Subject to further assignment.

(2) An original and two copies of the written notice of assignment signed by the parties thereto must be filed by the

assignee with the Treasurer, CCC, at the address specified in the Contacts P/R.

(3) Receipt of the notice of assignment will ordinarily be acknowledged to the exporter and its assignee in writing by an officer of CCC. In cases where a financial institution is determined to be ineligible to receive an assignment, in accordance with paragraph (b) of this section, CCC will provide notice thereof, to the financial institution and to the exporter issued the payment guarantee, in lieu of an acknowledgment of assignment.

(4) The name and address of the assignee must be included on the written notice of assignment.

(b) *Ineligibility of financial institutions to receive an assignment.* A financial institution will be ineligible to receive an assignment of proceeds which may become payable under a payment guarantee if, at the time of assignment, such financial institution:

(1) Is not in sound financial condition, as determined by the Treasurer of CCC;

(2) Owns or controls the entity issuing the importer obligation; or

(3) Is owned or controlled by an entity that owns or controls the entity issuing the importer obligation.

(c) *Ineligibility of financial institutions to receive proceeds.* A financial institution will be ineligible to receive proceeds payable under a payment guarantee approved by CCC if such financial institution:

(1) At the time of assignment of a payment guarantee, is not in sound financial condition, as determined by the Treasurer of CCC;

(2) Owns or controls the entity issuing the importer obligation; or

(3) Is owned or controlled by an entity that owns or controls the entity issuing the importer obligation.

(d) *Alternative satisfaction of payment guarantees.* CCC may, with the agreement of the exporter (or if the right to proceeds payable under the payment guarantee has been assigned, with the agreement of the exporter's assignee), establish procedures, terms and/or conditions for the satisfaction of CCC's obligations under a payment guarantee other than those provided for in this subpart if CCC determines that those alternative procedures, terms, and/or conditions are appropriate in rescheduling the debts arising out of any transaction covered by the payment guarantee and would not result in CCC paying more than the amount of CCC's obligation.

(e) *Maintenance of records and access to premises.* (1) For a period of five years after the date of expiration of the coverage of a payment guarantee, the

exporter or the exporter's assignee, as applicable, must maintain and make available all records pertaining to sales and deliveries of and extension of credit for agricultural commodities exported in connection with a payment guarantee, including those records generated and maintained by agents, intervening purchasers, and related companies involved in special arrangements with the exporter. The Secretary of Agriculture and the Comptroller General of the United States, through their authorized representatives, must be given full and complete access to the premises of the exporter or the exporter's assignee, as applicable, during regular business hours from the effective date of the payment guarantee until the expiration of such five-year period to inspect, examine, audit, and make copies of the exporter's, exporter's assignee's, agent's, intervening purchaser's, or related company's books, records and accounts concerning transactions relating to the payment guarantee, including, but not limited to, financial records and accounts pertaining to sales, inventory, processing, and administrative and incidental costs, both normal and unforeseen. During such period, the exporter or the exporter's assignee may be required to make available to the Secretary of Agriculture or the Comptroller General of the United States, through their authorized representatives, records that pertain to transactions conducted outside the program, if, in the opinion of the GSM, such records would pertain directly to the review of transactions undertaken by the exporter in connection with the payment guarantee.

(2) The exporter must maintain the proof of entry required by § 1493.490(b), and must provide access to such documentation if requested by the Secretary of Agriculture or his authorized representative for the five-year period specified in paragraph (e)(1) of this section.

(f) *Responsibility of program participants.* It is the responsibility of all program participants to review, and fully acquaint themselves with, all regulations, Program Announcements, and Notices to Participants issued pursuant to this subpart. Applicants for payment guarantees are hereby on notice that they will be bound by any terms contained in applicable Program Announcements or Notices to Participants issued prior to the date of approval of a payment guarantee.

(g) *Submission of documents by principal officers.* All required submissions, including certifications, applications, reports, or requests (i.e.,

requests for amendments), by exporters or exporters' assignees under this subpart must be signed by a principal or officer of the exporter or exporter's assignee or their authorized designee(s). In cases where the designee is acting on behalf of the principal or the officer, the signature must be accompanied by: Wording indicating the delegation of authority or, in the alternative, by a certified copy of the delegation of authority; and the name and title of the authorized person or officer. Further, the exporter or exporter's assignee must ensure that all information/reports required under these regulations are submitted within the required time limits. If requested in writing, CCC will acknowledge receipt of a submission by the exporter or the exporter's assignee. If acknowledgment of receipt is requested, the exporter or exporter's assignee must submit an extra copy of each document and a stamped self-addressed envelope for return by U.S. mail. If courier services are desired for the return receipt, the exporter or exporter's assignee must also submit a self-addressed courier service order which includes the recipient's billing code for such service.

(h) *Officials not to benefit.* No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of the payment guarantee or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the payment guarantee if made with a corporation for its general benefit.

(i) *OMB control number assigned pursuant to the Paperwork Reduction Act.* The information requirements contained in this part (7 CFR part 1493, subpart D) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0551-0037.

Signed this 25th day of June 1996 at Washington, DC.

Mary T. Chambliss,
Acting General Sales Manager, Foreign
Agricultural Service and Acting Vice
President, Commodity Credit Corporation.
[FR Doc. 96-16674 Filed 6-28-96; 8:45 am]

BILLING CODE 3410-10-P

Animal and Plant Health Inspection Service**9 CFR Parts 112 and 113****[Docket No. 94-046-2]****Viruses, Serums, Toxins, and Analogous Products; Marek's Disease Vaccines****AGENCY:** Animal and Plant Health Inspection Service, USDA.**ACTION:** Final rule.

SUMMARY: We are amending the standard requirements for Marek's disease vaccines by including vaccines prepared from any of the three Marek's disease virus serotypes, and by defining the identity, safety, and efficacy requirements for vaccines prepared from each serotype or combinations of serotypes. We are also amending the requirements for labeling Marek's disease vaccines. These amendments are necessary based on the evolution of virus serotypes in the field, advances in the development of vaccines that are currently prepared to prevent the disease, and advances in the methods for evaluating such vaccines. The effect of this rule will be to save license applicants time by clarifying and codifying the guidelines developed for licensing these products over the past several years.

EFFECTIVE DATE: July 31, 1996.

FOR FURTHER INFORMATION CONTACT: Dr. David Espeseth, Deputy Director, Veterinary Biologics, BBEP, APHIS, 4700 River Road Unit 148, Riverdale, MD, 20737-1237, (301) 734-8245.

SUPPLEMENTARY INFORMATION:**Background**

Veterinary biologics are regulated under the Virus-Serum-Toxin Act of 1913, as amended by the Food Security Act of 1985 (21 U.S.C. 151-159, hereinafter referred to as the Act). In accordance with the Act, the Animal and Plant Health Inspection Service (APHIS) promulgates standard requirements that establish the purity, safety, potency, and efficacy requirements for these products.

The current standard requirements in § 113.330 (hereinafter referred to as the regulations) for licensing Marek's disease vaccines were promulgated at a time when only Serotype 3 Marek's disease vaccines were prepared. Also, the standard requirements did not include the evaluation of vaccine efficacy. Since that time, vaccines for Serotypes 1 and 2 have been developed, very virulent forms of the field virus have emerged, and other advances in

our understanding of this virus have occurred. In response to these changes, APHIS has developed guidelines over the past several years for licensing these products.

On May 9, 1995, we published in the Federal Register (60 FR 24584-24587, Docket No. 94-046-1) a proposal to amend the standard requirement for Marek's disease vaccines to include Serotypes 1 and 2, and to codify appropriate efficacy standards and guidelines which license applicants have utilized.

We solicited comments concerning our proposal for 60 days ending July 10, 1995. We received two comments by that date. They were from an association of poultry producers and a poultry producer. Both commenters agreed with the need for the establishment of standard requirements for vaccines prepared from any of the three Marek's disease virus serotypes. Both commenters were in favor of the rule as proposed.

In preparing the final rule, APHIS observed that it is necessary to clarify the appropriate use of the group 4 controls in § 113.330, paragraphs (c)(1)(4) and (c)(4), to assess the severity of serotype 1 virus challenge in an immunogenicity test. The proposed rule specified that "at least" (i.e., "greater than or equal to") 20 percent of the birds in group 4 must have lesions for a valid test after serotype 1 virus challenge in birds vaccinated with a serotype 3 vaccine (see § 113.330, paragraph (c)(4)). For a satisfactory serotype 3 vaccine immunogenicity test, the proposed rule specified that 80 percent of vaccinated birds must be free of lesions (see § 113.330, paragraph (c)(5)). Stated another way, 20 percent of the vaccinated birds may have lesions for a satisfactory serotype 3 vaccine immunogenicity test.

When the severity of virulence of the challenge virus for a serotype 1 or 2 vaccine in group 4 controls is equal to that for serotype 3 vaccine, the result would be inconsistent with a claim to aid in the prevention of disease against a very virulent serotype 1 virus (see § 113.330(c)(5)). If the birds in group 4 show 20 percent or fewer lesions, the challenge virus is deemed not sufficiently virulent and the test is declared invalid.

Therefore, proposed § 113.330(c)(4) is amended to read "greater than" (in place of "at least") 20 percent of vaccinated birds in group 4 controls must have lesions for a valid immunogenicity test after challenge with more virulent serotype 1 virus. The amendment to proposed § 113.330(c)(4) should not hold the vaccine producer to

a higher standard than was originally proposed. This is because the proposed rule specified that the group 4 control would not apply to the case of a serotype 3 vaccine challenge virus that requires that 20 per cent of the vaccinated birds have lesions (see § 113.330(c)(1)(iv)). Thus, the amendment to § 113.330(c)(4) is consistent with APHIS' original intent that immunogenicity tests for serotype 1 and 2 vaccines be based on challenge viruses more virulent than that for serotype 3 vaccines.

Therefore, based on the rationale set forth in the proposed rule and this document, we are adopting the provisions of the proposal as a final rule with the change discussed in this document.

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 purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

The amendments to the standard requirements for Marek's disease vaccines codify guidelines developed for licensing these products over the past several years. These amendments affect all (currently a total of eight) manufacturers of Marek's disease vaccines, some of which may be small businesses. By clarifying licensing requirements for Marek's disease vaccines, the rule will save time during the application process and will not cause an adverse economic impact on industry.

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 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures that 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

9 CFR Part 112

Animal biologics, Exports, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

9 CFR Part 113

Animal biologics, Exports, Imports, Reporting and recordkeeping requirements.

Accordingly, 9 CFR parts 112 and 113 are amended as follows:

PART 112—PACKAGING AND LABELING

1. The authority citation for part 112 continues to read as follows:

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

2. Section 112.7 is amended by adding paragraph (m) to read as follows:

§ 112.7 Special additional requirements.

* * * * *

(m) In the case of biological products containing Marek's disease virus, all labels shall specify the Marek's disease virus serotype(s) used in the product.

PART 113—STANDARD REQUIREMENTS

3. 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).

4. Section 113.330 is revised to read as follows:

§ 113.330 Marek's Disease Vaccines.

Marek's disease vaccine shall be prepared from virus-bearing tissue culture cells. Only Master Seed Virus which has been established as pure, safe, and immunogenic shall be used for preparing the production seed virus for vaccine production.

(a) The Master Seed Virus shall meet the applicable requirements prescribed in § 113.300, and the requirements prescribed in this section. The identity test required in § 113.300(c) shall be conducted in a serotype-specific manner by a method acceptable to APHIS. Each lot of Master Seed Virus shall also be tested for pathogens by the chicken embryo inoculation test prescribed in

§ 113.37, except that, if the test is inconclusive because of a vaccine virus override, the chicken inoculation test prescribed in § 113.36 may be conducted and the virus judged accordingly.

(b) *Safety test.* The Master Seed Virus shall be nonpathogenic for chickens as determined by the following procedure:

(1) Specific pathogen free chickens or embryos, negative for Marek's disease virus antibodies, and from the same source, shall be isolated into the following groups:

(i) *Group 1.* At least 50 test subjects shall be inoculated with 10 times as much viable virus as will be contained in one dose of vaccine, by the route recommended for vaccination.

(ii) *Group 2.* At least 50 test subjects shall be injected with a very virulent Marek's disease virus provided or approved by APHIS, at a dosage level that will cause gross lesions of Marek's disease in at least 80 per cent of the chickens within 50 days.

(iii) *Group 3.* Fifty uninoculated controls. For *in ovo* studies, this group should receive a sham inoculation of diluent.

(iv) *Group 4.* For studies evaluating Serotype 1 Master Seed Viruses, a group of 50 uninoculated control chickens shall be housed in contact with the group 1 vaccinated chickens.

(2) At least 40 chickens in each group shall survive to 5 days of age. All chickens that die shall be necropsied and examined for lesions of Marek's disease and cause of death. The test shall be judged according to the following criteria:

(i) At 50 days of age, the remaining chickens in group 2 shall be killed and examined for gross lesions of Marek's disease. If at least 80 percent of this group do not develop Marek's disease, the test is inconclusive and may be repeated.

(ii) At 120 days of age, the remaining chickens in groups 1, 3, and 4 shall be weighed, killed, and necropsied. If less than 30 of the chickens in group 3 survive the 120 day period, or if any of the chickens in group 3 have gross lesions of Marek's disease at necropsy, the test is declared inconclusive. If less than 30 chickens in groups 1 and 4 survive the 120 day period; or if any of the chickens in groups 1 and 4 have gross lesions of Marek's disease at necropsy; or if the average body weight of the chickens in groups 1 or 4 is significantly (statistically) different from the average in group 3 at the end of the 120 days, the lot of Master Seed Virus is unsatisfactory.

(3) For tests involving *in ovo* inoculation, hatchability results shall also be reported for each group.

(c) *Immunogenicity.* Each lot of Master Seed Virus used for vaccine production shall be tested for immunogenicity at the highest passage level allowed for the product, and the virus dose to be used shall be established as follows:

(1) Specific pathogen free chickens or embryos, negative for Marek's disease antibodies, and from the same source, shall be isolated into the following groups:

(i) *Group 1.* A minimum of 35 test subjects shall be inoculated with the vaccine, using the recommended route, at 1 day of age for chicks or 18 days of embryonation for embryos. The dose used shall be established by 5 replicate virus titrations conducted by a cell culture system or other titration method acceptable to APHIS.

(ii) *Group 2.* A minimum of 35 nonvaccinated test subjects shall be held as challenge controls.

(iii) *Group 3.* A minimum of 25 nonvaccinated test subjects shall be held as nonchallenge controls.

(iv) *Group 4.* Except for studies evaluating vaccines which contain only a Serotype 3 virus as the Marek's disease fraction, a minimum of 35 chicks shall be vaccinated at 1 day of age with a licensed Serotype 3 vaccine, in order to document the severity of the very virulent challenge.

(2) At least 30 chickens in groups 1, 2, and 4, and at least 20 chickens in group 3, shall survive to 5 days of age. All chickens in groups 1, 2, and 4 shall be challenged at 5 days of age in the following manner:

(i) For studies evaluating vaccines which contain only a Serotype 3 virus as the Marek's disease fraction, groups 1 and 2 shall be inoculated with a standard virulent challenge virus provided or approved by APHIS.

(ii) For all other Marek's disease vaccines, groups 1, 2, and 4 shall be inoculated with a very virulent challenge virus provided or approved by APHIS.

(3) All chickens shall be observed until 7 weeks of age, necropsied, and examined for grossly observable lesions consistent with Marek's disease. All chickens dying before the end of the 7 week observation period shall be necropsied and evaluated for gross lesions of Marek's disease. Any chickens not so examined shall be scored as positive for Marek's disease.

(4) For a valid test, at least 80 percent of the chickens in group 2 must develop grossly observable lesions, none of the chickens in group 3 shall develop

grossly observable lesions, and (when included) greater than 20 percent of the chickens in group 4 must develop grossly observable lesions.

(5) For a valid test to be considered satisfactory, at least 80 percent of the chickens in group 1 must remain free of grossly observable lesions. The appropriate product claim resulting from a satisfactory test would be to aid in the prevention of Marek's disease, for vaccines containing only a Serotype 3 virus as the Marek's disease fraction, or to aid in the prevention of very virulent Marek's disease, for all other vaccines.

(d) *Test requirements for release.* Each serial and subserial shall meet the applicable requirements prescribed in § 113.300. The identity test required in § 113.300(c) shall be conducted in a serotype-specific manner by a method acceptable to APHIS. Final container samples of completed product shall also meet the requirements in paragraphs (d) (1), (2), and (3) of this section. Any serial or subserial found unsatisfactory by a prescribed test shall not be released.

(1) *Purity test.* The chicken embryo inoculation test prescribed in § 113.37 shall be conducted, except that, if the test is inconclusive because of a vaccine virus override, the chicken inoculation test prescribed in § 113.36 may be conducted and the virus judged accordingly.

(2) *Safety test.* At least 25 one-day-old, specific pathogen free chickens shall be injected, by the subcutaneous route, with the equivalent of 10 chicken doses of virus (vaccine concentrated 10X). The chickens shall be observed each day for 21 days. Chickens dying during the period shall be examined, cause of death determined, and the results recorded.

(i) If at least 20 chickens do not survive the observation period, the test is inconclusive.

(ii) If lesions of any disease or cause of death are directly attributable to the vaccine, the serial is unsatisfactory.

(iii) If less than 20 chicks survive the observation period and there are no deaths or lesions attributable to the vaccine, the test may be repeated one time, *Provided*, that if the test is not repeated, the serial shall be declared unsatisfactory.

(3) *Potency test.* The samples shall be titrated using a cell culture system or other titration method acceptable to APHIS. For vaccines composed of more than one Marek's disease virus serotype, each fraction shall be titrated in a serotype-specific manner.

(i) Samples of desiccated vaccine shall be incubated at 37°C for 3 days before preparation for use in the

potency test. Samples of desiccated or frozen vaccine shall be reconstituted in diluent according to the label recommendations, and held in an ice bath at 0°C to 4°C for 2 hours prior to use in the potency test.

(ii) For a serial or subserial to be eligible for release, each serotype contained in the vaccine shall have a virus titer per dose which is at least 3 times greater than the number of plaque forming units (pfu) used in the immunogenicity test prescribed in paragraph (c) of this section, but not less than 1000 pfu per dose.

(iii) When tested (without the pretest incubation of desiccated products) at any time within the expiration period, each serotype contained in the vaccine shall have a virus titer per dose which is at least 2 times the number of pfu used in the immunogenicity test, but not less than 750 pfu per dose.

Done in Washington, DC, this 25th day of June 1996.

Donald W. Luchsinger,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96-16710 Filed 6-28-96; 8:45 am]

BILLING CODE 3410-34-P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 324

RIN 3067-AB77

Agricultural Loan Loss Amortization

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: As part of the FDIC's systematic review of its regulations and written policies under section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), the FDIC is removing its regulation governing agricultural loan loss amortization. This action is needed to eliminate the regulation when it becomes obsolete on January 1, 1999.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT:

Robert W. Walsh, Manager, Planning and Program Development, (202) 898-6896, Division of Supervision; Susan van den Toorn, Counsel, (202) 898-8707, Legal Division, FDIC, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: The FDIC is conducting a systematic review of its regulations and written policies. Section 303(a) of the CDRI (12 U.S.C. 4803(a)) requires each federal banking agency to streamline and modify its regulations

and written policies in order to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. Section 303(a) also requires each federal banking agency to remove inconsistencies and outmoded and duplicative requirements from its regulations and written policies.

As part of this review, the FDIC is removing 12 CFR part 324. This action is appropriate because the regulation implemented legislation which permitted agricultural banks to amortize qualified agricultural loan losses incurred only between 1984 and 1991 with a resulting amortization period not to exceed seven years. Consequently, this regulation will become obsolete at the end of the permissible amortization period. Therefore, the FDIC is eliminating the rule effective January 1, 1999. The Office of the Comptroller of the Currency (OCC), as part of its Regulation Review Program, has previously reviewed its regulation on Agricultural Loan Loss Amortization, 12 CFR part 35, and determined that the regulation becomes obsolete on January 1, 1999. The OCC issued a proposed rule on February 8, 1995 (60 FR 7467) and a final rule on May 24, 1995 (60 FR 27401) to remove its regulation on January 1, 1999. The Federal Reserve Board (FRB) has under consideration a similar proposal with regard to 12 CFR 208.15.

Title VIII of the Competitive Equality Banking Act of 1987 (Act), Pub. L. 100-86, 101 Stat. 635 (1987), added 12 U.S.C. 1823(j) in an attempt to alleviate some of the financial pressures then facing agricultural banks. In particular, 12 U.S.C. 1823(j) permits an agricultural bank to amortize over a period not to exceed seven years: (1) Any loss on a qualified agricultural loan that the bank would otherwise be required to show on its annual financial statement for any year between December 31, 1983, and January 1, 1992; and (2) any loss resulting from the reappraisal of property that the bank owned or acquired between January 1, 1983, and January 1, 1992, in connection with a qualified agricultural loan. The FDIC implemented this statutory provision by promulgating 12 CFR part 324 with a final rule published on November 2, 1987 (52 FR 41968). Pursuant to section 1823(j)(3) of the Act, the OCC and the FRB issued substantively similar regulations. See, 12 CFR part 35 and 12 CFR 208.15 respectively.

Because the statute requires that a loss occur on or before December 31, 1991, to qualify, and that the amortization period may not exceed seven years, the program becomes obsolete on January 1,

1999. Reflecting this fact, the FDIC's rule requires that loans under the program must be fully amortized by December 31, 1998. 12 CFR 324.3(b).

In light of the statutory termination of the agricultural loan loss amortization program, the FDIC is removing 12 CFR part 324, effective January 1, 1999, to obviate the need for any regulatory action in the future. Prior to that date, an annotation to part 324 in title 12 of the Code of Federal Regulations would indicate the effective date for removal of the part.

Exemption from Public Notice and Comment

The FDIC believes that it is unnecessary to seek public comment on this rule because the agricultural loan loss amortization program becomes obsolete by operation of law on January 1, 1999. Accordingly, the rule is being adopted in final, rather than proposed, form with a protracted effective date that will coincide with cessation of the statutory program.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the FDIC hereby certifies that this regulation will not have a significant economic impact on a substantial number of small entities because only three institutions are affected. Accordingly, a regulatory flexibility analysis is not required. This regulation has no material impact on insured depository institutions and state nonmember banks, regardless of size.

Paperwork Reduction Act

The collection of information contained in 12 CFR 324.7 has been approved by the Office of Management and Budget (OMB) under OMB Control Number 3064-0091. This final rule will remove as unnecessary, for the reasons set forth in the preamble, that collection of information effective January 1, 1999.

List of Subjects in 12 CFR Part 324

Accounting, Agriculture, Banks, Banking, State nonmember banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set out in the preamble, and under the authority of 12 U.S.C. 1823(j), chapter III of title 12 of the Code of Federal Regulations is amended as follows:

PART 324—[REMOVED]

1. Part 324 is removed effective January 1, 1999.

By Order of the Board of Directors.

Dated at Washington, D.C., this 17th day of June, 1996.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 96-16724 Filed 6-28-96; 8:45 am]

BILLING CODE 6714-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96-ANM-004]

Amendment of Class E Airspace; Jackson, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Jackson, Wyoming, Class E airspace by providing additional controlled airspace to accommodate a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to the Jackson Hole Airport. A correction is made herein clarifying that the intent of this rulemaking action is to amend existing Class E airspace rather than establish Class E airspace as was stated in the notice of proposed rulemaking action. A minor correction is also being made to the geographic position coordinates of the Jackson Hole Airport. **EFFECTIVE DATE:** 0901 UTC, October 10, 1996.

FOR FURTHER INFORMATION CONTACT:

James C. Frala, Operations Branch, ANM-532.4, Federal Aviation Administration, Docket No. 96-ANM-004, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone number: (206) 227-2535.

SUPPLEMENTARY INFORMATION:

History

On April 22, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at Jackson, Wyoming, by providing additional controlled airspace to accommodate a new GPS SIAP to the Jackson Hole Airport (61 FR 17606). A correction is made herein clarifying that the intent of this action is to amend existing Class E airspace rather than establish Class E airspace as was stated in the notice of proposed rulemaking action. A minor correction is also being made to the geographical position coordinates of the Jackson Hole Airport.

Interested parties were invited to participate in the rulemaking

proceeding by submitting written comments on the proposal. No comments were received.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of Federal Aviation Regulations amends Class E airspace at Jackson, Wyoming. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the FAA amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM WY E5 Jackson, WY [Revised]
 Jackson Hole Airport, WY
 (lat. 43°36'24"N, long. 110°44'17"W)
 Jackson VOR/DME
 (lat. 43°36'30"N, long. 110°44'05"W)
 Dunoir VOR/DME
 (lat. 43°49'42"N, long. 110°20'08"W)

That airspace extending upward from 700 feet above the surface within a 4.3-mile radius of the Jackson Hole Airport, and within 4.4 miles west and 8.3 miles east of the Jackson VOR/DME 200° radial extending from the VOR/DME to 21.4 miles south of the VOR/DME, and within 2.2 mile each side of the Jackson VOR/DME 020° radial extending from the VOR/DME to 10.5 miles north of the VOR/DME; that airspace extending upward from 1,200 feet above the surface within 7 miles west and 10.5 miles east of the Jackson VOR/DME 020° radial extending from the VOR/DME to 33.5 miles north of the VOR/DME, and within 4.3 miles each side of the Jackson VOR/DME 107° 33.5 radial extending from the VOR/DME to 13.1 miles east of the VOR/DME, and within 5.3 miles north and 7.9 miles south of the Dunoir VOR/DME 102° and 282° radials extending from 7 miles east to 18.2 miles west of the Dunoir VOR/DME, and that airspace south of the Jackson VOR/DME bounded on the east by the southwest edge of V-328, on the south by lat. 42°30'00"N, and on the west by the southeast edge of V-465; excluding the Big Piney, WY, Class E airspace area.

* * * * *

Issued in Seattle, Washington, on June 12, 1996.

Richard E. Prang,
*Acting Assistant Manager, Air Traffic
 Division, Northwest Mountain Region.*
 [FR Doc. 96-16734 Filed 6-28-96; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 96-ANM-008]

Amendment of Class E Airspace; La Grande, Oregon

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the La Grande, Oregon, Class E airspace to accommodate a new Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to the La Grande/Union County Airport. Additionally, this action corrects a typographical error of an airway referenced in the legal description and corrects the spelling of the name of the Class E airspace area that is excluded from this action.

EFFECTIVE DATE: 0901 UTC, October 10, 1996.

FOR FURTHER INFORMATION CONTACT: James C. Frala, Operations Branch, ANM-532.4, Federal Aviation Administration, Docket No. 96-ANM-

008, 1601 Lind Avenue S.W., Renton, Washington 98055-4056; telephone number: (206) 227-2535.

SUPPLEMENTARY INFORMATION:

History

On May 2, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at La Grande, Oregon, to accommodate a new GPS SIAP to the La Grande/Union County Airport (61 FR 19593). In the proposed legal description of the Class E airspace, there was a typographical error to an airway and the name of the Class E airspace area that is excluded from this action was misspelled. Those errors are corrected herein.

Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of Federal Aviation Regulations amends Class E airspace at La Grande, Oregon. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the FAA amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM OR E5 La Grande, OR

La Grande/Union County Airport, OR

(Lat. 45°17'25"N, long. 118°00'26"W)

Walla Walla VOR/DME

(Lat. 46°05'13"N, long. 118°17'33"W)

That airspace extending upward from 700 feet above the surface bounded on the north by a line beginning at lat. 45°38'59"N, long. 118°02'04"W, extending eastwardly to lat. 45°37'00"N, long. 117°44'34"W, on the east by a line extending to lat. 45°15'29"N, long. 117°49'04"W, on the south by a line extending to lat. 45°17'29"N, long. 118°07'04"W, on the west by a line extending to the point of beginning, and within a 4.3-mile radius of the La Grande/Union County Airport; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 45°38'59"N, long. 118°02'04"W, extending northwest along V-357 to the Walla Walla VOR/DME 16.6-mile radius, thence north along the Walla Walla VOR/DME 16.6-mile radius until intercepting lat. 46°00'00"N, thence eastward along lat. 46°00'00"N, to long. 117°02'00"W, thence south along long. 117°02'00"W until intercepting V-298, thence westward along V-298 to lat. 45°23'30"N, long. 117°47'10"W, to lat. 45°37'00"N, long. 117°44'34"W, thence to the point of beginning, and that airspace bounded on the north by the southwest edge of V-298, on the east by the Boise, ID, Enroute Domestic Airspace Area, on the south by the north edge of V-121, on the west by the east edge of V-182-357, excluding that airspace within Federal airways and the Baker City, OR, Class E airspace area.

* * * * *

Issued in Seattle, Washington, on June 19, 1996.

Richard E. Prang,
*Acting Assistant Manager, Air Traffic
 Division, Northwest Mountain Region.*

[FR Doc. 96-16733 Filed 6-28-96; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71**[Airspace Docket No. 96–ACE–4]****Amendment to Class E Airspace;
Abilene, KS, and Independence, KS****AGENCY:** Federal Aviation
Administration [FAA], DOT.**ACTION:** Final rule.

SUMMARY: This amendment modifies the Class E airspace area at Abilene Municipal Airport, Abilene, KS, and Independence Municipal Airport, Independence, KS, to accommodate a new Standard Instrument Approach Procedure (SIAP) at the two airports. This action will provide for additional controlled airspace necessary for aircraft executing the SIAP utilizing the Global Positioning System (GPS) at Abilene Municipal Airport, and for aircraft executing the Instrument Landing System (ILS) procedure at Independence Municipal Airport. This will also correct a minor error in geographical coordinates of the above listed airports.

EFFECTIVE DATE: 0901 UTC August 15, 1996.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Operations Branch, ACE–530C, Federal Aviation Administration, 601 E. 12th St., Kansas City, MO, 64106; telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION:**History**

On April 9, 1996, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by modifying the Class E airspace area at Abilene, KS and Independence, KS. (61 FR 15742). The proposed action would provide additional controlled airspace to accommodate the new SIAP to Abilene KS, and Independence, KS.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraphs 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends the Class E airspace area at Abilene, KS and Independence,

KS, by providing additional controlled airspace for aircraft executing the SIAP's to the airports.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation (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) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation, Incorporation by reference,
Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Abilene, KS

Abilene Municipal Airport, KS.

(Lat. 38°54'15" N., long 97°14'09" W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Abilene Municipal Airport and within 2.6 miles each side of the 180° bearing from the Abilene Municipal Airport extending from the 6.3-mile radius to 7 miles south of the airport.

* * * * *

* * * * *

ACE KS E5 Independence, KS

Independence Municipal Airport, KS

(Lat. 37°09'32" N., long. 95°46'44" W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Independence Municipal Airport.

* * * * *

Issued in Kansas City, MO on June 11, 1996.

Christopher R. Blum,
Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 96–16732 Filed 6–28–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY**Customs Service****19 CFR Parts 10, 12, 102 and 134****[T.D. 96–48]****RIN 1515–AB34****Rules for Determining the Country of
Origin of a Good for Purposes of
Annex 311 of the North American Free
Trade Agreement; Corrections**

AGENCY: U.S. Customs Service,
Department of the Treasury.

ACTION: Final rule; corrections.

SUMMARY: This document makes corrections to the document published in the Federal Register which set forth final amendments to the Customs Regulations regarding the rules for determining when the country of origin of a good is one of the parties to the North American Free Trade Agreement (NAFTA) as required by Annex 311 of the NAFTA.

EFFECTIVE DATE: These corrections are effective August 5, 1996.

FOR FURTHER INFORMATION CONTACT: Sandra L. Gethers, Office of Regulations and Rulings (202–482–6980).

SUPPLEMENTARY INFORMATION:**Background**

On June 6, 1996, Customs published in the Federal Register (61 FR 28932) as T.D. 96–48 a document which adopted as a final rule, with some modifications, interim amendments to the Customs Regulations that established the rules for determining when the country of origin of a good is one of the parties to the North American Free Trade Agreement (NAFTA) as required by Annex 311 of the NAFTA. Those final NAFTA Marking Rules apply only to all goods imported from Canada or Mexico other than textile and apparel products, and do not apply to trade with other countries. The June 6, 1996, notice provided for an August 5, 1996, effective date for the final regulations.

This document corrects some errors published in T.D. 96-48.

Several errors involved the Background discussion under the **SUPPLEMENTARY INFORMATION** portion of the document. In the discussion of the effective date of the final regulations in relation to previously-published final regulations regarding country of origin rules for textile products, reference was inadvertently made to July 1, 1996, thus creating some confusion since the **EFFECTIVE DATE** portion of T.D. 96-48 specified August 5, 1996. In addition, four Harmonized Tariff Schedule of the United States (HTSUS) heading or subheading references were inadvertently omitted from the list of conforming changes made to the regulatory texts to reflect the 1996 version of the HTSUS.

Two errors also appeared in the final regulatory texts in the table under § 102.20 which sets forth the specific rules by tariff classification. First, in the second tariff shift rule for subheading 2836.99, the words "other than to bismuth carbonate" were omitted, with the result that the rule as published overlaps with the first tariff shift rule for that subheading and thus does not properly reflect the changes made in the 1996 HTSUS. Second, the final regulatory texts inadvertently failed to implement a proposal, set forth in a document published in the Federal Register on May 5, 1995 (60 FR 22312), to remove the Note to Section XVI which, as stated in that May 5, 1995, document, would no longer be necessary in view of a proposed change to § 102.17(e) that was adopted in the final regulatory texts.

Corrections of Publication

Accordingly, the document published in the Federal Register as T.D. 96-48 on June 6, 1996 (61 FR 28932) is corrected as set forth below.

Corrections to the Background Section

1. On page 28934, in the first column in the second full paragraph, in the second sentence, the words "will take effect on July 1, 1996, when" are corrected to read "will not take effect before".

2. On page 28934, in the third column under the heading "Changes to Conform to 1996 HTSUS", after the colon in the third sentence, the reference "1517.90," is added after "0901.90,".

3. On page 28935, in the first column, the references "8545.11, 8547.90, 8548," are added at the end of the first line after "8543.40-8543.89,".

Corrections to the Final Regulations

4. On page 28961, in the "Tariff shift and/or other requirements" column opposite the "HTSUS" column listing for 2836.99, in the second tariff shift rule, the words "other than to bismuth carbonate" are added after the words "A change to subheading 2836.99".

5. On page 28971, the Note to Section XVI is removed.

Dated: June 26, 1996.

Stuart P. Seidel,

Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 96-16743 Filed 6-28-96; 8:45 am]

BILLING CODE 4820-02-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 96F-0052]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the additional safe use of dimethyldibenzylidene sorbitol as a clarifying agent for propylene homopolymers and high-propylene copolymer articles intended for contact with food. This action is in response to a petition filed by Milliken & Co.

DATES: Effective July 1, 1996; written objections and requests for a hearing by July 31, 1996.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS-216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3081.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of February 26, 1996 (61 FR 7111), FDA announced that a food additive petition (FAP 6B4495) had been filed by Milliken & Co., c/o Keller and Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposed to amend the food additive regulations in § 178.3295 *Clarifying agents for polymers* (21 CFR 178.3295)

to provide for the additional safe use of dimethyldibenzylidene sorbitol as a clarifying agent for olefin polymers complying with § 177.1520 (21 CFR 177.1520), items 1.1, 3.1, and 3.2, for contact with food under condition of use A, described in Table 2 of § 176.170(c) of this chapter.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the additive is safe, that the additive will have the intended technical effect, and that the regulations in § 178.3295 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before July 31, 1996, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents

shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 178.3295 is amended in the table by revising the entry for "Dimethyldibenzylidene sorbitol" to read as follows:

§ 178.3295 Clarifying agents for polymers.

Substances			Limitations		
*	*	*	*	*	*
Dimethyldibenzylidene sorbitol (CAS Reg. No 135861-56-2).			For use only as a clarifying agent at a level not to exceed 0.4 percent by weight of olefin polymers complying with § 177.1520(c) of this chapter, items 1.1, 3.1, and 3.2, where the copolymers complying with items 3.1 and 3.2 contain not less than 85 weight percent of polymer units derived from polypropylene. The finished polymers shall be used in contact with food under conditions of use A through H described in Table 2 of § 176.170(c) of this chapter.		
*	*	*	*	*	*

Dated: June 12, 1996.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 96-16662 Filed 6-28-96; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Parts 2509, 2520 and 2550

RIN 1210-AA51

Removal of Interpretive Bulletins and Regulations Relating to ERISA

AGENCY: Pension and Welfare Benefits Administration, DOL.

ACTION: Final rule.

SUMMARY: This rule removes from the Code of Federal Regulations certain interpretive bulletins and regulations (or portions thereof) under the Employee Retirement Income Security Act of 1974 (ERISA), that the Department of Labor (the Department) believes are obsolete (collectively, the obsolete regulations). The obsolete regulations generally provided transitional relief for plan sponsors, plan administrators, and others subject to the requirements of title I of ERISA, in coming into compliance with ERISA's requirements in the first several years following ERISA's enactment in 1974. Because the election periods or dates of applicability under these rules have expired, the Department believes that the regulations are no longer needed. In other instances, the obsolete regulations are unnecessary because they merely provide notice of a rescission or withdrawal of prior guidance or regulations, or were rendered ineffective by a subsequent Supreme Court decision.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT:

Katherine D. Lewis, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Rm. N-5669, 200 Constitution Avenue, N.W., Washington, D.C. 20210 (telephone (202) 219-7461), or Vicki Shteir-Dunn, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Rm. N-4611, 200 Constitution Ave., N.W., Washington, D.C. 20210 (telephone (202) 219-8610).

SUPPLEMENTARY INFORMATION: In accordance with the President's Executive Order No. 12866 of September 1993, "Regulatory Planning and Review," and the President's directive of March 4, 1995, "Regulatory Reinvention Initiative," the Department has undertaken to identify and eliminate regulations which are no longer needed. Pursuant to a review of regulations under the Employee Retirement Income Security Act of 1974 (ERISA), the Department identified 28

interpretive bulletins and regulations (or portions thereof) which it believes to be obsolete. Nearly all of these interpretive bulletins and regulations were issued over fifteen years ago. This rule removes these interpretive bulletins, regulations and paragraphs of regulations from the Code of Federal Regulations, and makes conforming amendments where necessary to accommodate the removal of identified provisions. In order to ensure that members of the public had the opportunity to comment, the Department initially published this rule in the Federal Register (61 FR 14690, April 3, 1996) as a notice of proposed rulemaking. The Department received one public comment, which was fully supportive of the proposal.

The rule removes the obsolete regulations prospectively, as of the date of publication of this final rule, and has no effect on their legal effectiveness prior to that date. Following is a brief description of each of the obsolete interpretive bulletins and regulations (or portions thereof) removed by the Department. All of these items were in title 29 of the Code of Federal Regulations.

I. Part 2509—Interpretive Bulletins Relating to the Employee Retirement Income Security Act of 1974

This rule removes interpretive bulletins 75-1, 75-7, 76-2 and 76-3 from subchapter A, part 2509 of the Code of Federal Regulations (29 CFR §§ 2509.75-1, 2509.75-7, 2509.76-2 and 2509.76-3). In addition, the rule removes paragraph (b) of interpretive bulletin 75-2 (29 CFR 2509.75-2).

Interpretive bulletin 75-1 outlined and clarified section 414(c)(4) of ERISA, which provided that sections 406 and 407(a) of ERISA (relating to prohibited transactions) are not applicable to the provision of certain services between a plan and a party in interest before June 30, 1977, if certain conditions described in that section are met. Interpretive bulletin 75-7 supplemented interpretive bulletin 75-1 and provided examples of its application. Interpretive bulletins 76-2 and 76-3 merely gave notice of the rescission or withdrawal of earlier guidance relating to the definition of "seasonal industries," a matter now under the jurisdiction of the Internal Revenue Service pursuant to Reorganization Plan No. 4 of 1978. Paragraph (b) of interpretive bulletin 75-2 took the position that consideration paid for a contract or policy of insurance issued to a plan would not be considered plan assets if placed in the general account of the issuing insurance company, and therefore could not give rise to

prohibited transactions. This interpretation may no longer be relied on as a result of the December 13, 1993 Supreme Court decision in *John Hancock Mutual Life Insurance Co. v. Harris Trust & Savings Bank*, 114 S. Ct. 517 (1993), and therefore, has no force or effect.

II. Part 2520—Rules and Regulations for Reporting and Disclosure

The rule removes ten regulations and provisions of two other regulations from subchapter C, part 2520 of the Code of Federal Regulations (29 CFR Part 2520), pertaining to reporting and disclosure under ERISA.

From subpart C of Part 2520, the rule removes § 103–6(b)(1)(ii), which defined the current value of plan assets for purposes of schedules of reportable transactions for plan years beginning in 1975. The remainder of § 103–6(b)(1) is revised to eliminate the reference to § 103–6(b)(1)(ii), and to otherwise conform to this change. The rule also removes § 103–7. This regulation, which provided special accounting rules for plans filing the annual report for plan years beginning in 1975, applied only with respect to plan years beginning in 1975 and not to any subsequent plan years.

The rule removes the following seven regulations from subpart D of part 2520. The Department's regulation at § 104–2 postponed the effective date of annual reporting requirements for non-calendar year plans and extended the reporting requirements under prior legislation for such plans until the end of the first plan year beginning after January 1, 1975. The Department's regulation at § 104–3 deferred certain reporting and disclosure requirements for welfare plans, and provided an alternative method of compliance for pension plans, until May 30, 1976. The Department's regulation at § 104–5 deferred, until no later than November 16, 1977, the application of certain reporting and disclosure requirements relating to the summary plan description for welfare plans. The Department's regulation at § 104–6 provided an alternative method of compliance for pension plans which elected to defer the summary plan description reporting and disclosure requirements. The availability of the deferral expired on November 16, 1977. The Department's regulation at § 104–28 provided an extension of time for filing and disclosure of the initial summary plan description for certain employee benefit plans that became subject to part 1 of title I of ERISA on or before July 17, 1977. The Department's regulation at § 104–45 provided a temporary

exemption and alternative method of compliance with respect to the requirement to report insurance fees and commissions for insured plans with fewer than 100 participants. The regulation applied only to annual reports required to be filed for the plan years beginning in 1975 and 1976.

From subpart F of part 2520, the rule removes and reserves certain paragraphs of § 104b–2 and § 104b–4, and removes §§ 104b–5 and 104b–12.

With respect to § 104b–2, the rule revises paragraphs (b)(1) and (b)(2), and removes and reserves paragraphs (c), (d), (e), (f) and (h). Paragraphs (b)(1) and (b)(2) establish the periods within which updated summary plan descriptions must be furnished to participants and beneficiaries receiving benefits under the plan (which differ depending on whether there have been amendments to the plan). In both cases, the periods for providing an updated summary plan description are no later than 210 days after the end of the plan year within which occurs the later of a date certain (November 16, 1983 or November 16, 1987) or a period of years after the last date a change in the information required to be disclosed by section 102 of ERISA or § 102–3 would have been reflected in the most recently distributed summary plan description. The rule revises paragraphs (b)(1) and (b)(2) to eliminate the references to the dates certain.

Paragraph (c) of § 104b–2 pertained to plans making elections under §§ 2520.104–5 and 2520.104–6, for which the election periods expired in 1977. Paragraph (d) of the regulation provided an alternative method of compliance for plans using a Form EBS–1 with a print date of April 1975 as the summary plan description. The Form EBS–1 was eliminated in 1976. Paragraph (e) of the regulation provided an alternative method of compliance with ERISA's summary plan description requirements for plans which filed and disclosed an initial summary plan description on or before May 30, 1976, in reliance upon earlier guidance of the Department. The availability of the alternative method of compliance was conditioned on the disclosure by such plans, prior to November 16, 1977, of a statement of ERISA rights which complied with § 2520.102–3(t). Paragraph (f) of the regulation provided an alternative method of compliance for plans which were not described in paragraphs (d) or (e) and which met certain requirements. The alternative method of compliance under paragraph (f) expired on November 16, 1977. Paragraph (h) of the regulation merely referred to §§ 2520.104–5 and 2520.104–

6, both of which authorized alternative methods of compliance which expired on November 16, 1977.

With respect to § 104b–4, the rule removes paragraph (d). This paragraph required certain plans to furnish information to certain classes of participants or beneficiaries by November 16, 1977.

The rule also removes § 104b–5 and § 104b–12. The Department's regulation at § 104b–5 created a new disclosure document, the "ERISA Notice", for use as an interim disclosure document by welfare and pension benefit plans electing to use the deferral until November 16, 1977 provided under §§ 2520.104–5 and 2520.104–6. The Department's regulation at § 104b–12 provided multiemployer plans lacking records of covered participants with optional methods of distributing the first summary annual report to participants covered under the plan. The regulation generally applied to reports distributed before February 15, 1977.

III. Part 2550—Rules and Regulations for Fiduciary Responsibility

The rule removes eight regulations from subchapter F, part 2550 of title 29 of the Code of Federal Regulations, pertaining to fiduciary responsibility under ERISA. These include §§ 407a–3, 407a–4, 407c–3, 414b–1, 414c–1, 414c–2, 414c–3 and 414c–4, all of which provided transitional relief for the first several years following ERISA's enactment.

The Department's regulation at § 407a–3 provided plan administrators with prospective guidance clarifying the meaning of section 407(a)(3)(B) of ERISA. This guidance assisted plan administrators in determining whether their plans held qualifying employer securities and/or qualifying employer real property the fair market value of which, on any date between January 1, 1975 and December 31, 1984, did not exceed ten percent of the fair market value of the plan's assets, and thus would not be subject to the ten percent holding limitation contained in section 407(a)(3)(A) of ERISA. The period for which plan administrators needed such prospective guidance was from January 1, 1975 until December 31, 1984. Accordingly, the need for such guidance no longer exists.

The Department's regulation at § 407a–4 clarified the requirements of section 407(a)(4) of ERISA, which required that plans divest, by December 31, 1979, 50 percent of the qualifying employer securities and qualifying real property which they would be required to divest before January 1, 1985, under

section 407(a)(3) or 407(c) of ERISA. Accordingly, the transactions addressed by the regulation were transactions that were required to occur on or before December 31, 1979.

The Department's regulation at § 407c-3 described an election plans could make, prior to January 1, 1976, to utilize an alternate method of calculating the value of employer securities for purposes of satisfying the limitations of section 407(a)(3) of ERISA on the holding of such securities or real property. The regulation also provided that after making such an election, and before January 1, 1985, the plan could not acquire any real property.

The Department's regulation at § 414b-1 provided guidance to plans applying to the Department of Labor, in accordance with section 414(b)(1) of ERISA, for postponement, until no later than January 1, 1976, of the effective date of certain provisions of ERISA. Applications for such postponement generally had to be submitted to the Department on or before December 31, 1974.

The Department's regulations at §§ 414c-1, 414c-2, and 414c-3 provided guidance concerning transitional rules relating to certain types of transactions prior to June 30, 1984, after which the rules became inapplicable. Specifically, § 414c-1 related to certain loans or other extensions of credit prior to June 30, 1984; § 414c-2 related to certain leases or joint uses of property prior to June 30, 1984; and § 414c-3 related to certain sales, exchanges, or other dispositions of property prior to June 30, 1984. The Department's regulation at § 414c-4 provided guidance regarding a transitional rule relating to the provision of certain services until June 30, 1977, after which the rule became inapplicable.

Executive Order 12866

The Department has determined that this regulatory action is not a "significant rule" within the meaning of Executive Order 12866 concerning Federal regulations, because it is not likely to result in: (1) An annual effect on the economy of \$100 million or more, or an adverse and material effect on a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) the creation of a serious inconsistency or interference with an action taken or planned by another agency; (3) a material alteration in the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) the raising of novel legal

or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 et. seq., requires each Federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a significant economic impact on a substantial number of small entities. Small entities include small businesses, organizations, and governmental jurisdictions; under ERISA, a "small plan" is one with less than 100 participants. ERISA section 104(a)(2), 29 U.S.C. 1024(a)(2).

The Assistant Secretary of the Pension and Welfare Benefits Administration certifies that the modifications set forth in this rule will not have a significant economic impact on a substantial number of small entities. The reasons for this certification are as follows:

- (1) The rule merely removes obsolete or unnecessary interpretive bulletins and regulations (or portions thereof) from the Code of Federal Regulations, and, where appropriate, makes conforming amendments to accommodate such removal; and
- (2) The rule does not impose any new requirements on any entity.

Paperwork Reduction Act

This rule is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) because it contains no "collection of information" as defined in 44 U.S.C. 3502(3).

List of Subjects

29 CFR Part 2509

Employee benefit plans, Pensions.

29 CFR Part 2520

Employee benefit plans, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 2550

Employee benefit plans, Pensions, Prohibited transactions.

Authority

For the reasons described in the preamble, parts 2509, 2520, and 2550 of chapter XXV of title 29 of the Code of Federal Regulations, are amended as set forth below:

PART 2509—INTERPRETIVE BULLETINS RELATING TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

1. The authority citation for part 2509 is revised to read as follows:

Authority: 29 U.S.C. 1135. Sections 2509.75-10 and 2509.75-2 issued under 29 U.S.C. 1052, 1053, 1054. Secretary of Labor's Order No. 1-87 (52 FR 13139).

§ 2509.75-1 [Removed]

2. Section 2509.75-1 is removed.

§ 2509.75-2 [Amended]

3. Section 2509.75-2 is amended by removing and reserving paragraph (b).

§§ 2509.75-7, 2509.76-2, 2509.76-3 [Removed]

4. Sections 2509.75-7, 2509.76-2 and 2509.76-3 are removed.

PART 2520—RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

5. The authority citation for part 2520 continues to read as follows:

Authority: Secs. 101, 102, 103, 104, 105, 109, 110, 111(b)(2), 111(c), and 505, Pub. L. 93-406, 88 Stat. 840-52 and 894 (29 U.S.C. 1021-25, 1029-31, and 1135); Secretary of Labor's Order No. 27-74, 13-76, 1-87, and Labor Management Services Administration Order No. 2-6.

Subpart C—[Amended]

6. Section 2520.103-6 is amended by revising paragraph (b)(1) to read as follows:

§ 2520.103-6 Definition of reportable transaction for Annual Return/Report.

* * * * *

(b) *Definitions.* (1) Except as provided in paragraphs (c)(2) and (d)(1)(vi) of this section (relating to assets acquired or disposed of during the plan year), "current value" shall mean the current value, as defined in section 3(26) of the Act, of plan assets as of the beginning of the plan year, or the end of the previous plan year.

* * * * *

§ 2520.103-7 [Removed]

7. Section 2520.103-7 is removed.

Subpart D—[Amended]

§§ 2520.104-2, 2520.104-3, 2520.104-5, 2520.104-6, 2520.104-28, 2520.104-45 [Removed and Reserved]

8. Sections 2520.104-2, 2520.104-3, 2520.104-5, 2520.104-6, 2520.104-28, and 2520.104-45 are removed and reserved.

Subpart F—[Amended]

9. Section 2520.104b-2 is amended by revising paragraph (b) to read as follows:

§ 2520.104b-2 Summary plan description.

* * * * *

(b) *Periods for furnishing updated summary plan description.* (1) For

purposes of the requirement to furnish the updated summary plan description to each participant and each beneficiary receiving benefits under the plan (other than beneficiaries receiving benefits under a welfare plan) required by section 104(b)(1) of the Act, the administrator of an employee benefit plan shall furnish such updated summary plan description no later than 210 days following the end of the plan year which occurs five years after the last date a change in the information required to be disclosed by section 102 or 29 CFR 2520.102-3 would have been reflected in the most recently distributed summary plan description (or updated summary plan description) as described in section 102 of the Act.

(2) In the case of a plan to which no amendments have been made between the end of the time period covered by the last distributed summary plan description (or updated summary plan description), described in section 102 of the Act, and the next occurring applicable date described in paragraph (b)(1) of this section, for purposes of the requirement to furnish the updated summary plan description to each participant, and to each beneficiary receiving benefits under the plan (other than beneficiaries receiving benefits under a welfare plan), required by section 104(b)(1) of the Act, the administrator of an employee benefit plan shall furnish such updated summary plan description no later than 210 days following the end of the plan year which occurs ten years after the last date a change in the information required to be disclosed by section 102 or 29 CFR 2520.102-3 would have been reflected in the most recently distributed summary plan description (or updated summary plan description), as described in section 102 of the Act.

* * * * *

§ 2520.104b-2 [Amended]

10. Paragraphs (c), (d), (e), (f) and (h) of § 2520.104b-2 are removed and reserved.

§ 2520.104b-4 [Amended]

11. Paragraph (d) of § 2520.104b-4 is removed.

§§ 2520.104b-5—2520.104b-12 [Removed]

12. Sections 2520.104b-5 and 2520.104b-12 are removed.

PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

13. The authority citation for part 2550 is revised to read as follows:

Authority: 29 U.S.C. 1135. Section 2550.401b-1 also issued under sec. 102,

Reorganization Plan No. 4 of 1978 (43 FR 47713, Oct. 17, 1978), effective December 31, 1978 (44 FR 1065, Jan. 3, 1979), 3 CFR, 1978 Comp., p. 332. Section 2550.404c-1 also issued under 29 U.S.C. 1104. Section 2550.407c-3 also issued under 29 U.S.C. 1107. Section 2550.408b-1 also issued under sec. 102, Reorganization Plan No. 4 of 1978 (43 FR 47713, Oct. 17, 1978), effective December 31, 1978 (44 FR 1065, Jan. 3, 1979), 3 CFR, 1978 Comp., p. 332, and 29 U.S.C. 1108(b)(1). Section 2550.412-1 also issued under 29 U.S.C. 1112. Secretary of Labor's Order No. 1-87 (52 FR 13139).

§§ 2550.407a-3, 2550.407a-4, 2550.407c-3, 2550.414b-1, 2550.414c-1, 2550.414c-2, 2550.414c-3, 2550.414c-4 [Removed]

14. Sections 2550.407a-3, 2550.407a-4, 2550.407c-3, 2550.414b-1, 2550.414c-1, 2550.414c-2, 2550.414c-3, 2550.414c-4 are removed.

Signed at Washington, D.C., this 25th day of June, 1996.

Olena Berg,

Assistant Secretary for Pension and Welfare Benefits, U.S. Department of Labor.

[FR Doc. 96-16594 Filed 6-28-96; 8:45 am]

BILLING CODE 4510-29-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900-AI32

Reestablishing Rulemaking Procedures; Public Participation in Regulatory Development

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: In a document published in the Federal Register on March 20, 1996 (61 FR 11309), the Department of Veterans Affairs (VA) amended 38 CFR Part 1 by promulgating a final rule that included the elimination of § 1.12. The provisions of § 1.12 set forth a policy statement concerning prior notice-and-comment for rulemaking. Judicial review of VA's action eliminating § 1.12 has been sought on the basis that such action did not comply with notice-and-comment provisions. While we believe such a position is not legally correct, we are by this document reestablishing § 1.12, and, in a companion document published in the Proposed Rules section of this issue of the Federal Register, proposing to eliminate § 1.12. This will provide interested parties an opportunity to provide comments concerning this matter, thus mooting the pending litigation.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas O. Gessel, Director, Office of

Regulations Management (02D), Office of General Counsel, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273-8605.

SUPPLEMENTARY INFORMATION: This final rule merely concerns VA policy. Accordingly, in accordance with the provisions of 5 U.S.C. 553, it is promulgated without notice-and-comment and without a delayed effective date.

No notice of proposed rulemaking was required in connection with this rulemaking action. Accordingly, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601-612). Nevertheless, the Secretary of Veterans Affairs certifies that this rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. This rule will not have a direct effect on small entities.

There is no Catalog of Federal Domestic Assistance program number.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Archives and records, Cemeteries, Claims, Courts, Flags, Freedom of information, Government contracts, Government employees, Government property, Infants and children, Inventions and patents, Investigations, Parking, Penalties, Postal Service, Privacy, Reporting and recordkeeping requirements, Seals and insignia, Security measures, Wages.

Approved: June 21, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 1 is amended as set forth below:

PART 1—GENERAL PROVISIONS

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

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. An undesignated center heading and section 1.12 are added to read as follows:

Public Participation

§ 1.12 Public participation in regulatory development.

It is the policy of the Department of Veterans Affairs to afford the public general notice, published in the Federal Register, of proposed regulatory development, and an opportunity to participate in the regulatory development in accordance with the provisions of the Administrative

Procedure Act (APA). All written comments received will be available for public inspection. Exceptions to the policy of permitting public participation in the regulatory development may be authorized by the Secretary or one of the Secretary's deputies if adequately justified and concurred in by the General Counsel. Such exceptions, unless public comment is required by statute, may be recommended when:

(a) The proposed regulations consist of interpretative rules, general statements of policy, or rules of Department of Veterans Affairs organization, procedure, or practice, or

(b) When the Department of Veterans Affairs for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(Authority: 38 U.S.C. 501)

[FR Doc. 96-16642 Filed 6-28-96; 8:45 am]

BILLING CODE 8320-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 9

[OPPTS-00191; FRL-5379-8]

Technical Amendments to OMB Approval Numbers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending the list of OMB control numbers which are issued under the Paperwork Reduction Act for regulations with information collection requirements. This is a technical amendment which only updates the table to include any approvals that have published in the Federal Register since July 1, 1995, or to delete any approval that have been terminated since that date.

DATES: The effective date of this rule is July 1, 1996.

FOR FURTHER INFORMATION CONTACT:

Susan H. Hazen, Director, Environmental Assistance Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551, e-mail address: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This document will consolidate the OMB control numbers for various regulations issued under the Toxic Substances Control Act and section 313 of the

Emergency Planning and Community Right-to-Know Act that have published since July 1, 1995.

The information collection requests and the OMB control numbers included in this technical amendment were previously subject to public notice and comment prior to OMB approval. As such, EPA finds that there is "good cause" under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 533) to issue this technical amendment without prior notice and comment.

List of Subjects in 40 CFR Part 9

Environmental protection, Information collection request, Reporting and recordkeeping requirements.

Dated: June 27, 1996.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR chapter I, part 9 is amended as follows:

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 et seq., 136-136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601-2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 et seq., 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-1, 300j-2, 300j-3, 300j-4, 300j-9, 1857 et seq., 6901-6992k, 7401-7671q, 7542, 9601-9657, 11023, 11048.

§ 9.1 [Amended]

2. In § 9.1 the table is amended as follows:

a. By adding the following entries in ascending section number order, under the headings "Toxic Chemical Release Reporting: Community Right-to-Know," and "Significant New Uses of Chemical Substances," and adding an entry for part 745 under a new heading "Lead-Based Paint Poisoning Prevention in Certain Residential Structures" to read as follows:

40 CFR citation	OMB control No.
Toxic Chemical Release Reporting: Community Right-to-Know	
* * * * *	
part 372, subpart A	2070-0093 and 2070-0143
372.22	2070-0093 and 2070-0143
372.25	2070-0093
Significant New Uses of Chemical Substances	
* * * * *	
721.562	2070-0012
721.639	2070-0012
721.1193	2070-0012
721.1643	2070-0012
721.2089	2070-0012
721.2815	2070-0012
721.3152	2070-0012
721.3486	2070-0012
721.3760	2070-0012
721.4463	2070-0012
721.4466	2070-0012
721.4473	2070-0012
721.5192	2070-0012
721.5278	2070-0012
721.5282	2070-0012
721.5763	2070-0012
721.5769	2070-0012
721.5867	2070-0012
721.6110	2070-0012

40 CFR citation	OMB control No.
372.27	2070-0143
372.30	2070-0093 and 2070-0143
372.38	2070-0093 and 2070-0143
part 372, subpart C	2070-0093 and 2070-0143
part 372, subpart D	2070-0093 and 2070-0143
372.85	2070-0093
372.95	2070-0143

40 CFR citation	OMB control No.
* * * *	*
721.7046	2070-0012
* * * *	*
721.8090	2070-0012
* * * *	*
721.9526	2070-0012
* * * *	*
721.9656	2070-0012
721.9658	2070-0012
* * * *	*
721.9892	2070-0012

Lead-Based Paint Poisoning Prevention in Certain Residential Structures
part 745, subpart F 2070-0151

* * * *

b. Under the heading "Reporting and Recordkeeping Requirements" by removing the entire entry for "704.30." [FR Doc. 96-16818 Filed 6-28-96; 8:45 am]
BILLING CODE 6560-50-F

**FEDERAL EMERGENCY
MANAGEMENT AGENCY**

44 CFR Part 65

**Changes in Flood Elevation
Determinations**

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard

Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646-2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Acting Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are

made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. The tables published under the authority of § 65.4 are amended as follows:

§ 65.4 [Amended]

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Maricopa (FEMA Docket No. 7147).	City of Scottsdale	June 1, 1995, June 8, 1995, <i>Scottsdale Progress</i> .	The Honorable Herbert Drinkwater, Mayor, City of Scottsdale, P.O. Box 1000, Scottsdale, Arizona 85252-1000.	May 5, 1995	045012
Arkansas: Benton (FEMA Docket No. 7171).	Unincorporated areas.	Dec. 1, 1995, Dec. 8, 1995, <i>Benton County Daily Record</i> .	The Honorable Bruce Rutherford, Benton County Judge, P.O. Box 278, Bentonville, Arkansas 72712.	Nov. 3, 1995	050419
Benton (FEMA Docket No. 7171).	City of Rogers	Dec. 1, 1995, Dec. 8, 1995, <i>Benton County Daily Record</i> .	The Honorable John W. Sampier, Jr., Mayor, City of Rogers, 300 West Poplar, Rogers, Arkansas 72756.	Nov. 3, 1995	050013
Colorado: Boulder (FEMA Docket No. 7167).	Unincorporated areas	Nov. 23, 1995, Nov. 30, 1995, <i>Daily Camera</i> .	The Honorable Ronald K. Stewart, Chairperson, Boulder County Board of Supervisors, P.O. Box 471, Boulder, Colorado 80306.	Nov. 1, 1995	080023
Boulder (FEMA Docket No. 7167).	City of Boulder	Nov. 23, 1995, Nov. 30, 1995, <i>Daily Camera</i> .	The Honorable Leslie Durgin, Mayor, City of Boulder, P.O. Box 791, Boulder, Colorado 80306.	Nov. 1, 1995	080024
Hawaii: Honolulu (FEMA Docket No. 7171).	City and county of Honolulu.	Dec. 7, 1995, Dec. 14, 1995, <i>Honolulu Advertiser</i> .	The Honorable Jeremy Harris, Mayor, City and County of Honolulu, 530 South King Street, Room 300, Honolulu, Hawaii 96813.	Nov. 13, 1995	150001
Idaho: Bannock (FEMA Docket No. 7167).	City of Pocatello	Nov. 23, 1995, Nov. 30, 1995, <i>Idaho State Journal</i> .	The Honorable Peter Angstadt, Mayor, City of Pocatello, P.O. Box 4169, Pocatello, Idaho 83205.	Oct. 12, 1995	160012
Oklahoma: Oklahoma (FEMA Docket No. 7167).	City of Oklahoma City	Nov. 23, 1995, Nov. 30, 1995, <i>Journal Record</i> .	The Honorable Ronald J. Norick, Mayor, City of Oklahoma City, 200 North Walker Avenue, Oklahoma City, Oklahoma 73102.	Oct. 19, 1995	405378
Texas: Tarrant (FEMA Docket No. 7171).	City of Arlington	Dec. 1, 1995, Dec. 8, 1995, <i>Fort Worth Telegram</i> .	The Honorable Richard Greene, Mayor, City of Arlington, P.O. Box 231, Arlington, Texas 76004-0231.	Nov. 10, 1995	485454
Dallas (FEMA Docket No. 7171).	City of Coppell	Dec. 1, 1995, Dec. 8, 1995, <i>Citizen's Advocate</i> .	The Honorable Tom Morton, Mayor, City of Coppell, P.O. Box 478, Coppell, Texas 75019.	Nov. 10, 1995	480170
Harris (FEMA Docket No. 7171).	Unincorporated areas.	Dec. 6, 1995, Dec. 13, 1995, <i>Houston Chronicle</i> .	The Honorable Jon Lindsay, Harris County Judge, 1001 Preston Street, Houston, Texas 77002.	Nov. 8, 1995	480287
Dallas (FEMA Docket No. 7171).	City of Irving	Dec. 1, 1995, Dec. 8, 1995, <i>Citizen's Advocate</i> .	The Honorable Bobby Joe Raper, Mayor, City of Irving, P.O. Box 152288, Irving, Texas 75015-2288.	Nov. 10, 1995	480180

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Collin (FEMA Docket No. 7171).	City of Murphy	Dec. 20, 1995, Dec. 27, 1995, <i>Wylie News</i> .	The Honorable Greg Singleton, Mayor, City of Murphy, 205 North Murphy Road, Murphy, Texas 75094.	Nov. 30, 1995	480137
Collin (FEMA Docket No. 7162).	City of Plano	Nov. 23, 1995, Nov. 30, 1995, <i>Plano Star Courier</i> .	The Honorable James N. Muns, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086-0358.	Oct. 27, 1995	480140
Collin (FEMA Docket No. 7171).	City of Plano	Dec. 20, 1995, Dec. 27, 1995, <i>Plano Star Courier</i> .	The Honorable James N. Muns, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086-0358.	Nov. 30, 1995	480140

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: June 25, 1996.

Richard W. Krimm,

Acting Associate Director for Mitigation.

[FR Doc. 96-16701 Filed 6-28-96; 8:45 am]

BILLING CODE 6718-04-P

44 CFR Part 65

[Docket No. FEMA-7185]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim final rule.

SUMMARY: This interim final rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Acting Associate Director, Mitigation Directorate, reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each

community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT:

Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate 500 C Street SW, Washington, DC 20472, (202) 646-2756.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact

stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Maricopa	City of Glendale	Apr. 4, 1996, Apr. 11, 1996, <i>Arizona Republic</i> .	The Honorable Elaine Scruggs, Mayor, City of Glendale, 5850 West Glendale Avenue, Glendale, Arizona 85301.	Feb. 26, 1996	040045
Maricopa	City of Phoenix	Apr. 4, 1996, Apr. 11, 1996, <i>Arizona Republic</i> .	The Honorable Skip Rimsza, Mayor, City of Phoenix, 200 West Washington Street, Phoenix, Arizona 85003-1611.	Feb. 26, 1996	040051
California: Orange	City of Orange	Apr. 4, 1996, Apr. 11, 1996, <i>Orange County Register</i> .	The Honorable Joanne Coontz, Mayor, City of Orange, P.O. Box 449, Orange, California 92666-1591.	Mar. 7, 1996	060228
Colorado:					
Denver	City and county of Denver.	Apr. 4, 1996, Apr. 11, 1996, <i>Daily Journal</i> .	The Honorable Wellington E. Webb, Mayor, City and County of Denver, 2000 West Third Avenue, Denver, Colorado 80223.	Mar. 7, 1996	080046
Jefferson	Unincorporated areas	Apr. 19, 1996, April 26, 1996, <i>Golden Transcript</i> .	The Honorable Gary D. Laura, Chairperson, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Golden, Colorado 80419.	Mar. 19, 1996	080087
Arapahoe and Douglas.	City of Littleton	Apr. 11, 1996, Apr. 18, 1996, <i>Littleton Independent</i> .	The Honorable Dennis Reynolds, Mayor, City of Littleton, 2255 West Berry Avenue, Littleton, Colorado 80165.	Mar. 11, 1996	080017
Boulder	City of Louisville	Apr. 10, 1996, Apr. 17, 1996, <i>Louisville Times</i> .	The Honorable Tom Davidson, Mayor, City of Louisville, 749 Main Street, Louisville, Colorado 80027.	Mar. 19, 1996	085076
Iowa: Polk	City of Des Moines	Apr. 11, 1996, Apr. 18, 1996, <i>Des Moines Register</i> .	The Honorable Arthur Davis, Mayor, City of Des Moines, 400 East First Street, Des Moines, Iowa 50309-1891.	Mar. 19, 1996	190227
Oklahoma: Cleveland	City of Norman	Apr. 12, 1996, Apr. 19, 1996, <i>Norman Transcript</i> .	The Honorable William Nations, Mayor, City of Norman, 201 West Gray, Norman, Oklahoma 73070.	Mar. 27, 1996	400046
Texas:					
Collin	City of Frisco	Apr. 19, 1996, Apr. 26, 1996, <i>Frisco Enterprise</i> .	The Honorable Robert Warren, Mayor, City of Frisco, P.O. Drawer 1100, Frisco, Texas 75034.	Mar. 27, 1996	480134

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Lubbock	City of Lubbock	Apr. 18, 1996, Apr. 25, 1996, <i>Lubbock Avalanche Journal</i> .	The Honorable David R. Langston, Mayor, City of Lubbock, P.O. Box 2000, Lubbock, Texas 79457.	Apr. 1, 1996	480452
Montgomery	Unincorporated areas	Apr. 12, 1996, Apr. 19, 1996. <i>Conroe Courier</i> .	The Honorable Alan B. Sadler, Montgomery County Judge, 301 North Thompson, Suite 210, Conroe, Texas 77301.	Mar. 27, 1996	480483
Collin	City of Plano	Apr. 17, 1996, Apr. 24, 1996, <i>Plano Star Courier</i> .	The Honorable James N. Muns, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086-0358.	Mar. 27, 1996	480140

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: June 25, 1996.

Richard W. Krimm,
Acting Associate Director for Mitigation.
[FR Doc. 96-16700 Filed 6-28-96; 8:45 am]

BILLING CODE 6718-04-P

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation

Directorate, 500 C Street SW., Washington, DC 20472, (202) 646-2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the Federal Register.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Associate Director for Mitigation certifies that this rule is

exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ARIZONA					
Camp Verde (town), Yavapai County (FEMA Docket No. 7166)		Approximately 2,350 feet downstream of U.S. Route 89		At confluence with Green Wash	*4,394
<i>Verde River:</i>		Approximately 1,300 feet downstream of U.S. Route 89	*4,463	At U.S. Highway 89	*4,404
Just downstream of State Route 260	*3,074	Approximately 300 feet downstream of U.S. Route 89	*4,468	Approximately 0.88 mile upstream of confluence with Green Wash	*4,434
Just upstream of State Route 260	*3,075	Approximately 600 feet upstream of U.S. Route 89	*4,473	<i>Telephone Tank Wash Breakout:</i>	
Just upstream of Montezuma Castle Highway	*3,094	Approximately 1,250 feet upstream of U.S. Route 89	*4,478	At confluence with Green Wash	*4,388
Approximately 1,000 feet upstream of Interstate Highway 17	*3,107	Approximately 2,250 feet upstream of U.S. Route 89	*4,483	At confluence of Robert Wash	*4,394
Approximately 2.62 miles upstream of Interstate Highway 17	*3,132	Approximately 3,100 feet upstream of U.S. Route 89	*4,488	At divergence from Telephone Tank Wash	*4,430
<i>Cherry Creek:</i>		Approximately 3,800 feet upstream of U.S. Route 89	*4,493	<i>J.W. Draw:</i>	
At confluence with Verde River	*3,164	Approximately 4,350 feet upstream of U.S. Route 89	*4,498	At confluence with Green Wash	*4,394
At State Route 279	*3,252	Approximately 4,900 feet upstream of U.S. Route 89	*4,503	At Bayberry Drive	*4,412
At corporate limits (approximately 3,400 feet upstream of State Route 279)	*3,314	Approximately 5,600 feet upstream of U.S. Route 89	*4,508	At Naples Street	*4,462
<i>Lucky Canyon Wash:</i>		Approximately 6,400 feet upstream of U.S. Route 89	*4,513	Approximately 0.41 mile upstream of Naples Street	*4,488
At confluence with Verde River	*3,060	At corporate limits (upstream of City of Prescott)	*4,519	<i>Green Wash:</i>	
At Salt Mine Road	*3,100	At Idylwild Drive	*5,478	At confluence with Big Chino Wash	*4,364
Approximately 930 feet upstream of Salt Mine Road	*3,126	At Pine Drive	*5,517	At Big Chino Road	*4,388
<i>Copper Canyon Wash:</i>		Approximately 2,500 feet upstream of Pine Drive (at limit of detailed study)	*5,612	Just upstream of Grand Canyon Road	*4,398
At confluence with Verde River	*3,063	<i>Cherry Creek:</i>		At Apsen Drive	*4,460
At Salt Mine Road	*3,142	At corporate limits	*3,314	Approximately 0.36 mile upstream of Enid Drive	*4,504
Approximately 980 feet upstream of Salt Mine Road	*3,164	Approximately 200 feet upstream of corporate limits (at limit of detailed study)	*3,318	<i>Dry Well Wash:</i>	
Maps are available for inspection at Town Hall, 473 South Main Street, Camp Verde, Arizona.		<i>Texas Gulch Main Stem:</i>		At confluence with Clayton Canyon Wash	*4,420
Yavapai County (unincorporated areas) (FEMA Docket No. 7166)		At confluence with Aqua Fria River	*4,490	At Patricia Road	*4,502
<i>Verde River:</i>		At Quarter Horse Lane	*4,536	At Barbara Road	*4,598
Just upstream of State Route 260	*3,074	At confluence of Texas Gulch West Branch	*4,568	Approximately 500 feet upstream of Barbara Road	*4,608
Just upstream of Montezuma Castle Highway	*3,094	<i>Texas Gulch West Branch:</i>		<i>Clayton Canyon Wash:</i>	
Just upstream of Interstate Highway 17	*3,107	At confluence with Texas Gulch Main Stem	*4,568	Approximately 0.08 mile upstream of confluence with Big Chino Wash	*4,376
Just downstream of Middle Verde Indian Reservation	*3,132	Approximately 0.5 mile upstream of confluence with Texas Gulch Main Stem	*4,600	Just downstream of Clayton Canyon Dam	*4,480
<i>Chino Valley Stream—East:</i>		Approximately 1.20 miles upstream of confluence with Texas Gulch Main Stem	*4,660	Just upstream of Clayton Canyon Dam	*4,500
At confluence with Chino Valley Stream	*4,732	Approximately 1.58 miles upstream of confluence with Texas Gulch Main Stem	*4,700	At Barbara Road	*4,520
At Center Street	*4,760	<i>Zalesky Wash Main Stem:</i>		Approximately 320 feet upstream of Barbara Road	*4,525
Approximately 1.55 miles upstream of confluence with Chino Valley Stream	*4,796	Approximately 0.04 mile upstream of confluence with Verde River	*3,259	<i>Timon Wash:</i>	
Approximately 1.79 miles upstream of confluence with Chino Valley Stream	*4,808	Approximately 0.86 mile upstream of confluence with Verde River	*3,293	Approximately 0.50 mile upstream of confluence with Big Chino Wash	*4,395
Approximately 3.69 miles upstream of confluence with Chino Valley Stream	*4,906	<i>Robert Wash:</i>		At Ahonen Road	*4,438
<i>Miller Creek:</i>		At U.S. Route 89	*4,394	At Barbara Road	*4,524
Approximately 3,400 feet downstream of U.S. Route 89	*4,458	Approximate 0.25 mile upstream of U.S. Route 89	*4,398	Approximately 320 feet upstream of Barbara Road	*4,528
		<i>Telephone Tank Wash:</i>		<i>Model Creek:</i>	
				Just upstream of U.S. Route 89	*4,460
				Approximately 1,000 feet upstream of U.S. Route 89	*4,461
				Approximately 2,000 feet upstream of U.S. Route 89	*4,464
				Approximately 3,000 feet upstream of U.S. Route 89	*4,467
				Approximately 4,000 feet upstream of U.S. Route 89	*4,473
				Approximately 4,400 feet upstream of U.S. Route 89	*4,476
				<i>West Fork Miller Creek:</i>	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 500 feet upstream of confluence with Model Creek	*4,460	Approximately 1,000 feet downstream of Interstate 25	*4,902	Approximately 240 feet downstream of 94th Street	*5,120
Approximately 1,500 feet upstream of confluence with Model Creek	*4,463	Approximately 3,000 feet upstream of Interstate 25	*4,906	Approximately 1,050 feet upstream of 94th Street (limit of detailed study)	*5,140
Approximately 2,500 feet upstream of confluence with Model Creek	*4,465	At confluence with South Diversion Channel	*4,924	Shallow flooding between Unser Boulevard and Abeyta Road	#1
Approximately 3,500 feet upstream of confluence with Model Creek	*4,470	<i>Rio Grande East Overbank:</i>		<i>Ponding Area 18:</i>	*5,009
Approximately 4,500 feet upstream of confluence with Model Creek	*4,474	Approximately 1,300 feet downstream of Interstate 25	*4,900	<i>Ponding Area:</i>	
Approximately 4,800 feet upstream of confluence with Model Creek	*4,475	Just downstream of Interstate 25	*4,903	Along Trujillo Road approximately 500 feet east of Bataan Drive	*5,009
Maps are available for inspection at the Yavapai County Flood Control District, 500 South Marina Street, Prescott, Arizona.		Approximately 3,500 feet upstream of Interstate 25	*4,905	<i>Ponding Area:</i>	
		Approximately 20,400 feet upstream of Interstate 25	*4,922	Along Dennison Road approximately 500 feet east of Bataan Drive	*5,009
		<i>Arroyo A-B:</i>		<i>Ponding Area:</i>	
		Approximately 150 feet north of Amalia Road	*4,970	North of Eucariz Avenue approximately 500 feet east of Bataan Drive	*5,008
		Approximately 550 feet north of Amalia Road	*4,980	<i>Ponding Area:</i>	
		Just upstream of Sage Road ...	*4,995	Along Yerba Road south of Eucariz Avenue	*5,002
		Ponding area west of Arenal Canal	*4,951	<i>Ponding Area:</i>	
		Ponding area northwest of intersection of Sage Road and Coors Boulevard	*5,001	Between Coors Boulevard and Corona Drive and between Redlands Road and Pheasant Avenue	*5,100
		Ponding area north of Tower Road and west of Coors Boulevard	*5,029	Maps are available for inspection at the City of Albuquerque Planning Department, One Civic Plaza Northwest, Albuquerque, New Mexico.	
		<i>Arroyo A-C:</i>		WYOMING	
		Approximately 1,140 feet downstream of Gonzales Road	*5,006	Laramie (city), Albany County (FEMA Docket No. 7170)	
	*268	Just upstream of Gonzales Road	*5,008	<i>Laramie River:</i>	
	*271	Approximately 630 feet upstream of intersection of Forsythe Road and Corregidor Place	*5,012	Approximately 2,260 feet downstream of Curtis Street	*7,129
	*279	Ponding area just upstream of Old Coors Road	*5,012	Just upstream of Curtis Street	*7,132
<i>East Sand Slough:</i>		<i>Arroyo B-A:</i>		Just downstream of new Wyoming Highway	*7,137
Just upstream of Gilmore Ranch Road extended, at corporate limits	*267	Approximately 100 feet upstream of Unser Boulevard	*5,087	Just upstream of Interstate Highway 80	*7,141
Approximately 150 feet downstream of Antelope Boulevard	*269	Just upstream of 86th Street ...	*5,115	Approximately 1,000 feet upstream of Interstate Highway 80	*7,143
Approximately 550 feet upstream of Antelope Boulevard	*271	Approximately 1,000 feet upstream of 86th Street (limit of detailed study)	*5,133	Maps are available for inspection at the City of Laramie, City Engineer's Office, City Hall, 406 Iverson Street, Laramie, Wyoming.	
<i>Brewery Creek Tributary:</i>		Ponding area west of 94th Street and south of Central Avenue	*5,169		
Approximately 750 feet downstream of Monroe Avenue ...	*274	<i>Arroyo B-B:</i>			
Approximately 130 feet downstream of Monroe Avenue ...	*280	Approximately 650 feet downstream of Unser Boulevard	*5,081		
Just upstream of Monroe Avenue	*291	Just upstream of 86th Street ...	*5,105		
Maps are available for inspection at the Community Development Department, City of Red Bluff, City Hall, 555 Washington Street, Red Bluff, California.		Approximately 400 feet upstream of 90th Street	*5,135		
		Approximately 1,900 feet upstream of 90th Street (limit of detailed study)	*5,171		
		Shallow flooding between Stinson Street and 300 feet upstream of 75th Street	*5,080		
CALIFORNIA		<i>Arroyo B-C:</i>			
		Just upstream of Unser Boulevard	*5,079		
		Approximately 80 feet downstream of 86th Street	*5,093		
				(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")	

Dated: June 25, 1996.
Richard W. Krimm,
Acting Associate Director for Mitigation.
[FR Doc. 96-16699 Filed 6-28-96; 8:45 am]
BILLING CODE 6718-04-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 20 and 24

[WT Docket No. 96-59; GN Docket No. 90-314; FCC 96-278]

Broadband Personal Communications Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Report and Order amends the Commission's broadband Personal Communications Services ("PCS") rules. The Commission concludes that the present record is insufficient to support the race-based F block rules under the strict scrutiny standard of judicial review required by the Supreme Court's decision in *Adarand Constructors, Inc. v. Peña*, or to support the gender-based rules under the intermediate scrutiny standard that currently applies to those rules. Taking account of the need to award the remaining broadband PCS licenses expeditiously and to promote the rapid deployment of new services to the public, as well as the statutory objective of disseminating licenses among a wide variety of applicants, the Commission makes the F block rules race- and gender-neutral to avoid the delay that would likely result from legal challenges to the special provisions for minority- and women-owned businesses. The Commission also amends its D, E, and F block rules and broadband PCS rules generally to streamline procedures, reduce administrative burdens, and minimize the possibility of insincere bidding and bidder default. Finally, the Commission, in response to *Cincinnati Bell Telephone Co. v. FCC*, eliminates the cellular/PCS cross-ownership rule and the PCS spectrum cap in favor of the 45 MHz cap on Commercial Mobile Radio Services spectrum.

EFFECTIVE DATE: July 31, 1996.

FOR FURTHER INFORMATION CONTACT: Mark Bollinger, Wireless Telecommunications Bureau, (202) 418-0660.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in WT Docket No. 96-59; GN Docket No. 90-314; FCC 96-278,

adopted June 21, 1996, and released June 24, 1996. The complete text is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, DC. The complete text may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 2100 M Street, N.W., Washington, DC 20037.

Synopsis of the Report and Order

I. Introduction

1. In this Report and Order, the Commission modifies the competitive bidding and ownership rules for broadband Personal Communications Services ("PCS"). Many of the rule modifications concern the treatment of "designated entities," i.e., small businesses, rural telephone companies, and businesses owned by members of minority groups and women, under the broadband PCS F block rules. The Commission also amends the D, E, and F block rules and other broadband PCS rules in order to encourage sincere bidding, streamline the auction process, and lessen administrative burdens. In addition, in response to the remand from the U.S. Court of Appeals for the Sixth Circuit in *Cincinnati Bell Telephone Co. v. FCC*, 69 F.3d 752 (6th Cir. 1995), the Commission modifies the rules governing cellular licensees' ownership of broadband PCS licenses in all frequency blocks.

II. Rules Affecting Designated Entities

A. Meeting the *Adarand* Standard

2. In *Adarand Constructors, Inc. v. Peña*, 115 S. Ct. 2097 (1995), the Supreme Court held that all racial classifications, whether imposed at the federal, state or local government level, must be analyzed by a reviewing court under strict scrutiny, which requires such classifications to be narrowly tailored to further a compelling governmental interest. An intermediate scrutiny standard of review (under which a provision is constitutional if it serves an important governmental objective and is substantially related to achievement of that objective) applies to gender-based measures. Having evaluated the record before it, the Commission concludes that this record is insufficient to support the race- and gender-based F block provisions and revises the F block rules in this Report and Order to make them race- and gender-neutral. Overall, the commenters agree that this approach will best serve the goal of rapidly conducting the F block auction with the least risk of judicial delay. Moreover, this type of

approach was upheld by the D.C. Circuit Court of Appeals, which held in *Omnipoint v. FCC*, 78 F.3d 620 (D.C. Cir. 1996), that the Commission acted reasonably in concluding that, in light of the additional time it would take to develop a record to support the race- and gender-based provisions of the C block rules, it should revise these rules by providing the most favorable terms to all small businesses. The Commission concludes that making the F block rules race- and gender-neutral will serve the public interest by enabling it to auction the remaining broadband PCS licenses as expeditiously as possible. Because many minority- and women-owned entities are small businesses and will therefore qualify for the same special provisions that would have applied to them under the previous rules, the Commission also believes that the amended rules will continue to fulfill the mandate under Section 309(j) of the Communications Act, as amended, 47 U.S.C. 309(j)(3), to provide opportunities for minority- and women-owned businesses to become providers of spectrum-based services.

1. Control Group Equity Structures

3. The F block auction is limited to applicants that, together with their affiliates and persons or entities that hold interests in them, have gross revenues of less than \$125 million in each of the last two years and total assets of less than \$500 million. As part of its decision to make the F block rules race- and gender-neutral, the Commission concludes that the 50.1/49.9 percent equity option, previously available to minority- and women-owned applicants only, should be available to all small businesses and entrepreneurs. Applicants may use this control group equity structure to establish eligibility to participate in the F block auction. It requires the control group to own at least 50.1 percent of the applicant's total equity; of that 50.1 percent equity, at least 30 percent must be held by qualifying investors. If these and certain other requirements are met, the remaining 49.9 percent of the applicant's equity may be held by non-controlling investors, and the gross revenues and total assets of any such investor will not be attributed.

4. The Commission adopts this rule modification because it reduces the likelihood of legal challenges to the F block rules and enhances the opportunities for a wide variety of applicants to obtain licenses and rapidly deploy broadband PCS; and because it believes that making the same equity structures available to both C and F block applicants is necessary so that C

block participants will not be required to structure themselves differently in order to participate in the F block auction. Moreover, this rule amendment will benefit other entities that did not participate in the C block auction because it continues equity structures that are familiar to the industry and the financial community.

5. The Commission declines to make adjustments to the financial eligibility thresholds in the F block rules. The Commission believes that retaining the same thresholds as those used for the C block auction will allow for participation by entities that used the C block rules as guidelines for determining their structure in preparation for the F block auction. Moreover, these thresholds were used by C block bidders, many of whom will be interested in participating in the F block auction. The Commission declines to further restrict participation in the F block (or any of the other 10 MHz blocks) to small businesses and rural telephone companies. It believes that setting aside the F block for both entrepreneurs and small businesses will be sufficient to achieve the objectives of providing opportunities for small businesses to obtain 10 MHz licenses and ensuring broad dissemination of 10 MHz licenses.

6. In addition, the Commission declines to treat C block licenses as assets that could potentially preclude C block winners from F block eligibility. It believes it would be unfair to disqualify C block winners on the basis of their success in acquiring capital to participate in that auction, primarily because the Commission has indicated previously that the C and F blocks are linked. The Commission believes that treating C block winners' licenses as an asset for purposes of eligibility for the F block auction could frustrate business plans and auction strategies made in reliance on its previous statements. Applicants should be aware that other licenses (such as Specialized Mobile Radio ("SMR"), cellular, narrowband PCS, and broadband PCS A and B block licenses) should be included in their total asset calculations for F block eligibility.

2. Affiliation Rules

7. The affiliation rules applicable to the F block identify all individuals and entities whose gross revenues and assets must be aggregated with those of the applicant to determine whether the applicant exceeds the financial caps for the entrepreneurs' blocks or for small business size status. There are two exceptions to these rules. Under the first exception, Indian tribes and Alaska

Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.*, are not considered affiliates of an applicant owned and controlled by such tribes and corporations. Under the second exception, the gross revenues and assets of affiliates controlled by minority investors who are members of the applicant's control group are not attributed to the applicant.

8. The Commission will eliminate the exception to the affiliation rules pertaining to minority investors for purposes of the F block auction. To retain this exception in its present state poses legal risks that, as discussed above, could delay the award of F block licenses. Furthermore, the Commission declines to adopt the modification of this rule that it utilized for the C block, which allowed all small business applicants to exclude any affiliates who would otherwise qualify as entrepreneurs by having gross revenues of \$125 million or less and total assets of \$500 million or less and whose total assets and gross revenues, when considered on a cumulative basis and aggregated with each other, do not exceed these amounts. The Commission adopted the modified exception for the C block at a time when a number of minority-owned applicants had relied on the rule and had structured their business arrangements accordingly. However, the Commission is not convinced that the C block exception is needed under current circumstances, and it acknowledges the argument made by certain commenters that the exception may qualify too many larger entities as small businesses. For applicants that participated in the C block auction and relied on the affiliation exception in structuring themselves, the Commission will consider requests to waive the rules to allow them to be eligible to participate in the F block auction. Finally, the Commission will retain the exception to the affiliation rules for Indian tribes and Alaska Regional or Village Corporations. The Commission notes that certain comments support its tentative conclusion in the Notice of Proposed Rule Making that the Indian Commerce Clause of the U.S. Constitution provides a basis for this exception which is not implicated by *Adarand*.

3. Installment Payments

9. The Commission amends its F block rules concerning installment payments to provide for three rather than five installment payment plans and to make all small businesses, rather than only those owned by minorities and women, eligible for the most favorable

installment plan. The Commission concludes that extending the most favorable payment plan to all small businesses will give minority- and women-owned businesses an opportunity to participate in the provision of spectrum-based services. The Commission also concludes, however, that it should shorten the period during which F block auction winners eligible for this plan may make interest-only payments. Thus, the most favorable plan will have a two-year interest-only payment period, rather than a six-year interest-only period. The plan will provide for installments at a rate equal to ten-year U.S. Treasury obligations applicable on the date the license is granted, with payments of principal and interest amortized over the remaining eight years of the license term. Principal will be repaid as part of equal quarterly payments of interest and principal (as with a standard mortgage amortization schedule).

10. The Commission believes that these terms will provide small businesses with the appropriate level of U.S. government assisted financing to overcome the difficulties they face in accessing capital to compete in the PCS marketplace. It further believes that reducing the interest-only period to two years will deter speculation; encourage bidding, business, and financial strategies based upon market forces rather than the financial terms of installment payment plans; and still provide small businesses with the ability to obtain the necessary funds for construction and initial operation of their systems. Finally, shortening the interest-only period to two years will not foreclose opportunities for small businesses to compete in PCS. The terms that the Commission is offering are extremely attractive compared to other terms small businesses may be able to obtain.

11. Entrepreneurs that are not small businesses will be eligible for installment payments as provided in Sections 24.716(b)(1) and 24.716(b)(2) of the rules. These rules provide for installments at a rate equal to ten-year U.S. Treasury obligations applicable on the date the license is granted plus 3.5 percent, with payments of principal and interest amortized over the license term for eligible licensees with gross revenues exceeding \$75 million in each of the two preceding years. Eligible licensees with gross revenues not exceeding \$75 million in each of the two preceding years may make installment payments at a rate equal to ten-year U.S. Treasury obligations applicable on the date the license is granted plus 2.5 percent, with interest-

only payments for the first year and payments of interest and principal amortized over the remaining nine years of the license term.

12. The Commission also concludes that it should amend the terms of the installment payment plans to provide for late payment fees. Therefore, when licensees are more than fifteen days late in their scheduled installment payments, the Commission will charge a late payment fee equal to 5 percent of the amount of the past due payment. Without this late payment fee, licensees may not have adequate financial incentives to make installment payments on time. The 5 percent payment adopted here is an approximation of late payment fees applied in typical commercial lending transactions. Payments will be applied in the following order: late charges, interest charges, principal payments.

4. Bidding Credits

13. Consistent with its concerns about avoiding litigation based on *Adarand*, the Commission will eliminate the race- and gender-based aspects of the F block bidding credits. In place of these provisions, the Commission adopts a two-tiered bidding credit for small businesses. It believes that this approach will promote dissemination of licenses to a broader variety of applicants than a 25 percent bidding credit for all small businesses and will encourage smaller businesses, possibly businesses that are very well suited to provide 10 MHz niche services, to participate in the F block auction.

14. The Commission modifies its rules to provide that entities with average gross revenues greater than \$15 million but not more than \$40 million for the past three years are eligible for a 15 percent bidding credit; entities with average gross revenues of not more than \$15 million for the past three years are eligible for a 25 percent bidding credit. The Commission believes that the timing of the modification here allows it to take a different approach than it took for the C block. Entities interested in bidding on F block licenses have not had expectations similar to those of entities that were interested in bidding on the C block licenses and that formulated business strategies in reliance on the tiered bidding credits originally adopted.

5. Information Collection

15. The Commission will request information regarding minority- and women-owned status in the F block short-form applications. The Commission believes that continuing to collect such information will assist it in

analyzing applicant pools and auction results to determine whether it has promoted substantial participation in auctions by minorities and women, as directed by Congress, through the special provisions it makes available to small businesses.

B. Definitions

1. Small Business

16. Under the current F block rules, a "small business" is defined as an entity that, together with its affiliates and persons or entities that hold interests in such entity and their affiliates, has average gross revenues of not more than \$40 million for the preceding three years. The Commission will continue to define small businesses in this way. Maintaining the \$40 million definition of small businesses avoids disruption to the business plans of potential bidders, particularly participants in the C block auction. Additionally, however, the Commission defines a second tier of small businesses, which it will refer to as "very small businesses," as entities that, together with their affiliates and persons or entities that hold interests in such entities and their affiliates, have average gross revenues of not more than \$15 million for the preceding three years. Creation of this subcategory of small businesses enables the Commission to tailor its benefits to better meet the needs of bidders likely to participate in the F block auction. Smaller license size may mean that smaller businesses are likely to participate in the F block auction. Thus, as discussed above, the Commission's goals can best be served by offering varying bidding credits depending on the applicant's size.

17. The Commission declines to make special provisions for small business winners of C block licenses as requested by some commenters. As a practical matter, C block small business winners will likely not have accrued substantial gross revenues by the time the Commission auctions the D, E, and F blocks. Therefore, most of these winners should continue to qualify as small businesses. On the other hand, if they have grown in size beyond the established financial cap, or if they can no longer avail themselves of the exception to the affiliation rules, they may no longer qualify as a small business.

2. Rural Telephone Company

18. The Telecommunications Act of 1996 ("1996 Act") defines 'rural telephone company' to include a larger number of local exchange carriers than the Commission's F block rules, which

define a rural telephone company as "a local exchange carrier having 100,000 or fewer access lines, including all affiliates." The Commission adopts the definition of rural telephone company contained in the 1996 Act. It finds compelling the argument that this definition will increase the number of entities eligible for partitioning and expedite the delivery of advanced services to rural areas. Although this decision may result in larger rural telephone companies being eligible to partition licenses, the Commission recognizes that the number of accesslines—including those provided by rural telephone companies—continues to grow rapidly as the uses of telecommunications services expand. Thus, most rural telephone companies will benefit from a definition that accounts for their growth. Adopting the 1996 Act definition for purposes of Section 309(j) will also promote uniformity of regulations and is therefore consistent with the mandate of this legislation of easing regulatory burdens and eliminating unnecessary regulation.

19. The Commission agrees with commenters who assert that the definition is one of general applicability and it therefore elects not to adopt the definition of rural telephone company contained in Section 251(f)(2) of the 1996 Act, as proposed by one commenter. This definition applies to rural telephone companies only in the context of suspensions or modifications of the application of certain statutory requirements to rural carriers. Absent a specific definition of rural telephone company for purposes of Section 309(j), and reading the statute as a whole, the Commission is constrained to adopt the more generalized definition.

C. Extending Small Business Provisions to the D and E Blocks

20. The Commission declines to extend installment payment plans or any other special provisions to small businesses bidding on the D and E blocks, believing that the special provisions for small businesses in the F block rules sufficiently further the objective of encouraging wide dissemination of broadband PCS licenses. Since the F block is an entrepreneurs' block, it guarantees that one third of the 10 MHz broadband PCS licenses will be assigned to entrepreneurs and small businesses. The Commission believes that it would undermine the justification for the F block as an entrepreneurs' block if it were to open the D and E blocks to special provisions for small businesses, and that departing from the original

plan to establish two contiguous blocks of broadband PCS spectrum for the exclusive use of entrepreneurs and small businesses is not warranted.

D. Adjusting Payment Provisions for 10 MHz Licenses

21. The Commission modifies the upfront payment requirement for the F block to raise it to the same level as the D and E block requirement and eliminate the discount previously provided to entrepreneurs. The Commission originally discounted upfront payments for entrepreneurs because their down payment requirement was low (5 percent) and it was concerned that if it required them to pay upfront payments larger than the required down payment it might discourage their participation. The Commission's experience to date, however, indicates that it has underestimated the value of spectrum and that upfront payments have not created a barrier to entrepreneur participation in auctions. The Commission is also concerned, based on defaults in the C block auction, that there is a need to obtain a higher payment up front to guard against default. The Commission also agrees that requiring a uniform upfront payment (per bidding unit) of all bidders for D, E, and F block licenses will greatly simplify the auction process for bidders interested in bidding on two or more of the blocks. The Commission also believes that if it conducts a single simultaneous multiple round auction of the D, E, and F block licenses, it is necessary for operational reasons to have the same upfront payment and activity requirements across all three blocks.

22. Further, because the Commission wants the payment terms to more accurately reflect the value of the licenses, it will raise the upfront payment requirement for all three blocks. It believes that this action is consistent with the policy reason for requiring upfront payments—to deter insincere and speculative bidding and to ensure that bidders have the financial capability to build out their systems. The formula for calculating upfront payments was intended to approximate 5 percent of the estimated license value. Based on the license values established in the completed PCS auctions, however, the formula of \$0.02 per MHz-pop underestimates actual value. The Commission adopts an upfront payment of \$.06 per MHz-pop for the D, E, and F blocks. Based on its analysis of the prices paid in the C block auction, the Commission believes that such an upfront payment is sufficient to ensure

sincere bidding and guard against defaults. The Commission also delegates authority to the Wireless Telecommunications Bureau to modify the upfront payment requirement for any C block licenses that are reaucted in the future. The Commission notes that it also favors the suggested approach that would require applicants to supplement their upfront payments during the auction to ensure that their payment is a certain percentage of their bids. Operationally the Commission cannot implement this proposal at this time, but it will look for ways to implement it in future auctions.

23. For similar reasons, the Commission also modifies the rule governing down payments for the F block. It finds that a 20 percent down payment, the same down payment that is required of D and E block auction winners, should be required of F block winners. Under this approach, F block entrepreneurs and small businesses will be required to supplement their upfront payments to bring their total payment to 10 percent of their winning bid within 5 business days of the close of the auction. Prior to licensing, they will be required to pay an additional 10 percent. The government will then finance the remaining 80 percent of the purchase price. The Commission believes an increased down payment will provide it with strong assurance against default and sufficient funds to cover default payments in the unlikely event of default. Increasing the amount of the bidder's funds at risk in the event of default discourages insincere bidding and therefore increases the likelihood that licenses are awarded to parties who are best able to serve the public.

E. Rules Regarding the Holding of Licenses

24. The Commission amends the holding requirement for F block licensees and extends this change to the C block rules. The Commission amends 47 CFR § 24.839 to permit the transfer of entrepreneurs' block licenses in the first five years to any entity that either holds other entrepreneurs' block licenses (and thus at the time of auction satisfied the entrepreneurs' block criteria) or that satisfies the criteria at the time of transfer. There will be no restrictions on transfers after the fifth year. The Commission notes, however, that the unjust enrichment provisions will continue to apply as before. The Commission further amends the holding rule to exempt *pro forma* transfers and assignments because trafficking concerns do not exist under such circumstances. The Commission concludes that allowing transfers and

assignments in the first five years—but only to entrepreneurs—provides a sufficient safeguard. It also has the experience of the C block auction behind it, and understands that strict holding requirements may actually be hampering the ability of entrepreneurs to attract the capital necessary to construct and operate their systems. In particular, lenders and investors have expressed concern about the need for more flexibility in the event of financial distress and default. Because the Commission does not want investors to shy away from financing C and F block winners due to such concerns, it modifies the holding rule in a manner that continues to promote small and entrepreneurial ownership in broadband PCS licenses. The Commission believes that by not eliminating the transfer restriction entirely, it continues to have a useful safeguard to ensure that small businesses and entrepreneurs retain the opportunity to build out and operate broadband PCS licenses. At the same time, by allowing entrepreneurs to transfer their licenses to other entrepreneurs, the Commission believes that it allows market transactions to occur that balance the objectives of ensuring that entrepreneurs have an opportunity to participate in PCS and putting spectrum in the hands of those who value it most in the event the auction fails to accomplish this objective. In addition, the Commission believes that its amendment to the holding requirement serves the public interest by helping to ensure rapid and uninterrupted service to the public. Market-oriented solutions in the event of financial distress will help avoid PCS license defaults to the Commission and the accompanying investor and/or service disruption that such defaults engender.

III. The Cincinnati Bell Remand

A. The Cellular/PCS Cross-ownership Rule

25. In light of the Sixth Circuit's ruling in *Cincinnati Bell Telephone Co. v. FCC*, remanding the Commission's rule limiting cellular operators' eligibility for PCS licenses, the Commission will maintain the 45 MHz Commercial Mobile Radio Services ("CMRS") spectrum cap set forth in 47 CFR 20.6 and eliminate the PCS and cellular/PCS spectrum cap contained in Sections 24.229 and 24.204, respectively. The Commission finds that a spectrum cap is necessary to avoid excessive concentration of licenses and promote and preserve competition in the CMRS marketplace and therefore declines to eliminate all limitations on

the amount of CMRS spectrum a single entity (or affiliated entities) may acquire.

26. The Commission adopted the 45 MHz CMRS spectrum cap to discourage anticompetitive behavior while at the same time maintaining incentives for innovation and efficiency. The Commission was concerned that excessive aggregation of spectrum by any one of several CMRS licensees could reduce competition by precluding entry by other service providers and might thus confer excessive market power on incumbents. The continuation of the 45 MHz spectrum cap will promote competition and prevent anticompetitive horizontal concentration in the CMRS business.

27. For determining when concentration reduces competition to an undesirable level, one accepted tool is the Herfindahl-Hirschman Index ("HHI"), which is used in the Department of Justice and Federal Trade Commission Horizontal Merger Guidelines ("DOJ/ FTC Guidelines") to measure market concentration. In addition to considering the arguments presented by commenters in this proceeding and in response to the Sixth Circuit's concern about the lack of economic support for the cellular/PCS spectrum cap, the Commission's competitive analysis staff performed an HHI analysis for various possible structures of a hypothetical market for mobile two-way voice communications service in the same geographic area. The Commission staff's HHI analysis indicates that the 45 MHz CMRS spectrum cap is needed to prevent undue market concentration and the noncompetitive conditions in local markets that result from such concentration.

28. The 45 MHz spectrum cap is also needed specifically to prevent cellular licensees from gaining too great a competitive advantage over new entrants to the wireless telephony market. Cellular companies already hold licenses for 25 MHz of clear spectrum, and they already have technical expertise, customer bases, marketing operations, and antenna and transmitter sites. In short, cellular operators have a competitive position that is superior to that of any new market entrant. By limiting current cellular licensees to an additional 20 MHz of spectrum (i.e., two of the three 10 MHz broadband PCS licenses), the 45 MHz cap will help to level the playing field for all new entrants, while ensuring that incumbent providers are not placed at any disadvantage.

29. The 45 MHz spectrum cap also furthers the goal of diversity of

ownership that the Commission is mandated to promote under Section 309(j). Section 309(j) directs the Commission, in specifying eligibility for licenses and permits, to avoid excessive concentration of licenses and disseminate licenses among a wide variety of applicants. The statute further states that in prescribing regulations, the Commission must, *inter alia*, prescribe area designations and bandwidth assignments that promote economic opportunity for a wide variety of applicants. A spectrum cap is one of the most effective mechanisms the Commission could employ to achieve these goals.

30. The court in the *Cincinnati Bell* decision was concerned that the cellular/PCS spectrum cap would "have a profound impact on businesses in an industry enmeshed in this country's telecommunications culture." It stated that "[t]he continued existence of some wireless communications businesses rests on their ability to bid on Personal Communications Service licenses" and that "Cellular providers foreclosed from obtaining Personal Communications Service licenses may ultimately be left holding the remnants of an obsolete technology." *Cincinnati Bell*, 69 F.3d at 764. The Commission's amendment of its rules provides cellular licensees additional flexibility to expand into or migrate to PCS technology. Under the old rule, they were limited to one 10 MHz channel until the year 2000. The shift to a single 45 MHz spectrum cap will allow incumbent cellular operators to acquire up to two of the 10 MHz broadband PCS licenses (20 MHz) in the upcoming auction for the D, E, and F blocks. As many commenters point out, an additional 20 MHz of spectrum will be sufficient to develop and provide new digital services. The Commission also notes that cellular carriers have been rapidly implementing digital and other new technologies with their current 25 MHz of spectrum.

31. While the Commission's analysis of the CMRS market under the DOJ/FTC Guidelines indicates that the 45 MHz spectrum cap is needed to ensure competition, it also shows that this cap adequately addresses the Commission's concerns about anticompetitive behavior. Indeed, the Commission's HHI analysis indicates that the concentration levels under the single 45 MHz spectrum cap would not be higher than the level that would be possible under all three of the existing caps. Thus, the Commission concludes that the PCS and cellular/PCS spectrum caps are unnecessary.

32. The Commission also believes that elimination of the cellular/PCS cross-

ownership rule and the PCS spectrum cap in favor of the single 45 MHz CMRS spectrum cap has important advantages. Applying the single 45 MHz CMRS cap will give both cellular and PCS providers more flexibility to participate in a more competitive marketplace. The elimination of the cellular/PCS and PCS limits will give PCS providers greater flexibility to own interests in other providers and provide additional services and, hence, enhanced opportunities to compete. In addition, PCS providers will no longer be restricted to less than a 5 percent ownership interest in cellular and other PCS licensees in order to avoid attribution. Instead, they will be subject to the more liberal 20 percent attribution level for all CMRS.

33. The Commission also notes that the 1996 Act requires it to determine in every even-numbered year (beginning with 1998) "whether any regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service" and to modify or repeal such regulation. 47 CFR 161(a)(2). In an effort to streamline regulations consistent with the spirit of the 1996 Act, and in light of the findings set forth above, the Commission believes that simplifying the rules to include a single 45 MHz CMRS cap in place of the three separate spectrum caps is warranted. In addition, at the next biennial review of the Commission's regulations under the 1996 Act and in annual reports on the state of competition in the CMRS market, the Commission will continue to evaluate the need for the 45 MHz spectrum cap in its present form.

34. The Commission declines to alter the 10 percent overlap restriction for the CMRS cap as some commenters suggest. It continues to believe that an overlap of less than 10 percent of the population is sufficiently small that the potential for exercise of undue market power by the cellular operator is slight. Given its decision to eliminate the cellular/PCS and PCS ownership limitations, the Commission is concerned that greater overlap might lead to anticompetitive practices. It will, however, expand the post-auction divestiture provisions of 47 CFR § 20.6 to conform with the divestiture provisions that previously applied in the cellular/PCS cross-ownership rule, including the relaxed rule applicable to situations where the overlap exceeds 10 percent, but is less than 20 percent. Thus, any party holding an attributable ownership interest in a CMRS licensee may be a party to a broadband PCS application if it certifies that, if necessary, it will come

into compliance with the CMRS spectrum cap through post-auction divestiture procedures.

B. The 20 Percent Attribution Standard

35. The Commission's decision to eliminate the 35 MHz cellular/PCS spectrum cap renders the issue of whether to modify the attribution standard of 47 CFR 24.204(d) moot. The Commission reaffirms, however, the 20 percent attribution standard for the purpose of determining whether an entity is subject to the 45 MHz CMRS spectrum aggregation limit. The Commission also concludes that the attribution standard for the 45 MHz spectrum cap should be made race- and gender-neutral such that a 40 percent attribution standard applies to all small businesses and rural telephone companies. The Commission believes that extending the 40 percent threshold to noncontrolling investors in small businesses as it did for the C block licenses will promote additional investment in small business applicants and ensure broad participation in PCS by designated entities.

36. The Commission believes that a 20 percent interest held by a single entity would create a possibility of *de facto* control. Such an interest (whether 20 percent or less) that conveys to its holder actual working control (including investor control) is already attributable under the rules. The Commission believes generally, however, that even an entity that does not have *de facto* or *de jure* control but owns a 20 percent or more interest in a licensee would have sufficient influence to reduce competition and should be subject to the CMRS spectrum aggregation limit. The Commission notes that attribution rules for other services typically apply much lower ownership benchmarks of 5 to 10 percent. Both cable and broadcast use a 5 to 10 percent attribution level. The Commission further notes, as do some commenters, that the 1996 Act defines "affiliate" as a "person that * * * owns or controls, is owned or controlled by, or is under common ownership or control with, another person * * *." [The] term 'own' means to own an equity interest (or the equivalent thereof) of more than 10 percent." 47 U.S.C. 153 (1).

37. The Commission continues to believe that a higher benchmark of 20 percent should apply for purposes of the CMRS spectrum cap to encourage capital investment and business opportunities in CMRS. Given the changing technology and the variety of competing services that will be subject to this limitation, it believes that

increased flexibility in the rules will enable CMRS providers to adapt their services to meet customer demand. Furthermore, the Commission originally adopted a 20 percent attribution level in the cellular/PCS cross-ownership rules to allow partial owners of cellular licensees to participate in PCS, in light of several partial and often passive ownership interests that may have resulted from early settlements during the initial phase of cellular licensing. The Commission believes that maintaining a 20 percent attribution level for the CMRS cap will allow a wide variety of players (*i.e.*, PCS, cellular and SMR providers) to enter the marketplace while still preventing anticompetitive practices that would have harmful effects on consumers.

38. The Commission disagrees with suggestions that only controlling interests should be attributable. Establishing a control test would require the Commission to conduct frequent case-by-case determinations of control, which are time-consuming, fact specific, and subjective. The bright line 20 percent attribution rule avoids these problems. Also, for the reasons discussed below, a single majority shareholder exception to the rule is not appropriate for all situations involving CMRS licensees and their owners, and so adoption of such an exception is not a suitable bright line substitute for 20 percent attribution. However, the Commission adopts a less restrictive alternative and allows licensees with non-controlling minority investors with potentially conflicting CMRS ownership interests to seek waivers of the spectrum cap rule where the licensee is controlled by a single majority shareholder or controlling general partner.

39. The Commission rejects a control-based attribution test because significant, but non-controlling, investments have sufficient potential to affect the level of competition in the CMRS market. The CMRS spectrum cap ownership attribution rule, just as all other ownership attribution rules and similar statutory provisions, must take such interests into account. Economic theory predicts that where a CMRS licensee owns a substantial portion of one of its competitors, neither company has as strong an incentive to compete vigorously against its partner as it does with respect to an unrelated competitor. Theoretical analysis has demonstrated that partial ownership interests can create the very non-competitive markets that the Commission wants to avoid. Indeed, as noted above, Congress was also apparently concerned about competitive incentives when it defined ownership in the 1996 Act to mean an

interest of ten percent. The Communications Act also limits foreign ownership interests in CMRS licenses to 20 percent. Although these statutory ownership attribution criteria do not directly apply to the CMRS ownership attribution rules, they indicate that Congress believed that even non-controlling, minority ownership interests can convey significant influence to their holders.

40. The Commission recognizes that small businesses and rural telephone companies, as well as non-controlling investors in small businesses, may have non-attributable ownership of up to 40 percent under the rules. But these relaxed attribution rules present a situation entirely different from the 20 percent attribution rule. The Commission has been charged expressly by Congress to ensure that small businesses, including businesses owned by women and minorities, and rural telephone companies are given meaningful opportunities to participate in the provision of wireless services. The rules must also promote the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas. One of the most formidable barriers to such participation is the difficulty such businesses face in raising sufficient capital to compete in the highly capital-intensive wireless communications businesses. By increasing the attribution threshold for such designated entities and their investors, the Commission's goal was to make capital more readily available by reducing the number of investors such businesses must seek out. The Commission also concluded that smaller entities that have some interests in cellular operations may be especially effective PCS competitors because of their cellular experience. This will help ensure that service is brought quickly to underserved areas and that designated entities become viable competitors. In particular, rural telephone companies and some small cellular companies, due to their existing infrastructure, are uniquely positioned rapidly to introduce PCS services into their service areas or adjacent areas.

41. However, the Commission did not exempt small businesses and rural telephone companies entirely from the cellular eligibility rules because such an exemption could foreclose competition from a new PCS entrant. In maintaining the 45 MHz spectrum cap, the Commission remains concerned that there is potential for some of these parties to compete less vigorously in the nascent PCS industry. While it recognizes that its relaxation of the rules

for the CMRS spectrum cap presents a risk of lower than optimal competition, the Commission must balance competing public policies and believes that this is the proper balance to fulfill the various statutory mandates under Section 309(j) of the Communications Act.

42. Further, the Commission declines to adopt a single majority shareholder exception for the CMRS spectrum cap rule. As discussed above, economic theory indicates that an entity holding less than a majority interest may influence the CMRS market in an anticompetitive manner. In those circumstances, it makes no difference whether there is another shareholder that exercises control since significant minority ownership that does not convey control still poses a serious danger of hindering competition in a concentrated market such as CMRS. In addition, the Commission notes that, although the single majority shareholder exception currently applies in the broadcast context, it believes that the broadcast and CMRS markets are sufficiently different to warrant different treatment (and even in the broadcast arena the Commission has recently sought comment on whether to restrict the single majority shareholder rule). Mass media entities subject to the broadcast ownership rules with the single majority shareholder exception—including AM and FM radio licensees, UHF and VHF television licensees, cable television operators and newspaper publishers—offer the audience with numerous competing “voices” from which to choose. There are as many as 30 or more broadcast stations in some areas. In contrast, as the Commission envisions CMRS (particularly in the short term), consumers will be able to choose from only about 5 or 6 competing service providers at most—as noted above, a fairly concentrated market. The concerns the Commission has expressed above about the potential of common ownership to influence the entire market may be far less serious in a less concentrated market such as that for mass media services. That is because the participants in a non-oligopoly market are less likely to act jointly in order to preserve high prices. In addition, the type of “product” on which competition in broadcasting is based is different from the product offered by CMRS providers. Broadcasters compete for advertising dollars (by attracting audience share) on the basis of non-quantifiable programming choices, while CMRS providers are expected to offer commodity-type services that

compete in terms of prices charged directly to consumers. The Commission believes that it is more important to preserve vigorous competition in a commodity-based market than in a market like broadcasting. CMRS prices will be lowered only where competitors must vie to survive, whereas it is not so clear that programming will improve or become more diverse as the result of competition in free over-the-air television and radio. Indeed, some economists suggest that less competitive markets may actually offer more diverse programming. Thus, even if the single majority shareholder rule is appropriate for the mass media industry, that sector is sufficiently different from the CMRS market to justify somewhat different regulation.

43. Hence, the Commission believes that, as a general matter, minority stock interests and limited partnership interests should be deemed attributable CMRS ownership interests even if a single holder (or group of affiliated holders) that owns more than 50 percent of the outstanding stock or partnership equity or has voting control of the CMRS licensee. Nevertheless, the Commission believes that there may be limited circumstances where the existence of a single majority shareholder (or a single, controlling general partner) may mitigate the competitive impact of common ownership and the ability of the non-controlling interest holder to influence the licensee. Accordingly, the Commission will implement two less restrictive measures as an alternative to attributing ownership in such cases.

44. First, as was previously done with the cellular/PCS cross-ownership rule, the Commission will allow parties with non-controlling, attributable interests in CMRS licensees to have an attributable (or controlling) interest in another CMRS application that would exceed the 45 MHz cap so long as certain post-licensing divestiture procedures are followed. A “non-controlling attributable interest” is one where the holder has less than a 50 percent voting interest and there is an unaffiliated single holder of a 50 percent or greater voting interest. This will allow interest holders in licensees with a single majority shareholder to obtain another CMRS license (or attributable interest therein) through an auction or other means, subject to the interest holder coming into compliance with the divestiture provisions within 90 days of grant of the conflicting license.

45. Second, the Commission will consider requests for waivers of the CMRS spectrum cap that make an affirmative showing that an otherwise

attributable ownership interest should not be attributed to its holder because: the interest holder has less than a 50 percent voting interest and there is an unaffiliated single holder of a 50 percent or greater voting interest; the interest holder is not likely to affect the local market in an anticompetitive manner because the market is highly competitive; the interest holder is not involved in operations of the licensee and does not have the ability to influence the licensee on a regular basis; and grant of a waiver is in the public interest because the benefits of such common ownership to the public outweigh any potential for anticompetitive harm to the market.

46. Finally, the Commission believes that retroactive application of any cross-ownership or spectrum cap rule changes would be contrary to the public interest. PCS licensees that participated in the A, B, and C block auctions have already incurred enormous expenses to, *inter alia*, design their systems, relocate incumbent users of the spectrum, acquire cell sites, and establish marketing plans. Retroactive application of the rules would disrupt this burgeoning industry and delay service to the public. Furthermore, entities that may have been precluded from participating in past auctions for CMRS spectrum based on the prior rules may now acquire additional spectrum through future auctions, assignments of licenses, transfers of control or investments. Thus, the Commission concludes that any changes to the spectrum cap and cross-ownership rules will apply prospectively.

IV. Ownership Disclosure Provisions

47. The Commission amends Section 24.813(a)(1) and Section 24.813(a)(2) of the rules, 47 CFR §§ 24.813 (a)(1) and (a)(2), to limit the information disclosure requirement with respect to outside ownership interests of applicants' attributable stockholders, and will require only the disclosure of attributable stockholders' direct, attributable ownership in other businesses holding or applying for CMRS or PMRS licenses. The Commission believes that the more extensive ownership disclosure requirements are burdensome and difficult to administer, and that the more limited requirements will continue to ensure participation of only eligible bidders. The Commission also amends 47 CFR 24.813(a)(4) to delete the requirement that partnerships file a signed and dated copy of their partnership agreement with their short-form and long-form applications. The Commission has found this requirement

to be overly burdensome and is concerned that confidential or strategic bidding information could be unnecessarily disclosed through submissions of such agreements.

48. The Commission also amends Sections 24.720(f) and 24.720(g) of the rules, to allow each applicant that does not otherwise use audited financial statements to provide a certification from its chief financial officer that the gross revenue and total asset figures indicated in its short-form and long-form applications are true, full, and accurate and, that it does not have the audited financial statements that are otherwise required under the rules. The Commission believes the requirement of using audited financial statements to be unnecessarily burdensome, especially for small businesses that do not normally rely on such statements.

49. Finally, the Commission amends its rules to require that an applicant's determination of average gross revenues be based on the three most recently completed fiscal or calendar years. With regard to concerns about inadvertent release of confidential data, the Commission will require that confidential data be filed separately on paper. Similarly, any requests that information be treated as confidential will not be accepted electronically and must otherwise comply with the rules governing confidential treatment of documents.

V. Auction Schedule

50. The Commission concludes that it should auction the D, E, and F blocks at the same time. It also intends to auction the D, E, and F blocks in a single auction. The Commission believes that auctioning the three blocks in one simultaneous multiple round auction will benefit bidders by reducing administrative inefficiencies and by providing maximum flexibility for bidders to choose between similar licenses. The Commission believes that if it uses uniform upfront payments, which it adopts for the three blocks in this *Report and Order*, it will reduce the complexity of a single auction. The Commission also believes that this method will expedite service to the public. Although the Commission believes that a single auction is the best option, it delegates authority to the Wireless Telecommunications Bureau to conduct one auction for the D and E blocks and one for the F block concurrently if such an approach is operationally necessary or otherwise furthers the public interest.

VI. Other Issues

A. Limit on Licenses Acquired at Auction

51. Several commenters suggested modifying the limitation on the number of licenses that a single entity may acquire at auction to ensure wide distribution of entrepreneurs' block licenses. Commission rules provide that a single entity may win no more than 10 percent of the licenses available in the entrepreneurs' blocks; these licenses may be all C block licenses or F block licenses or some combination of the two. Several commenters proposed that the Commission change this limitation to one based on population rather than on the number of licenses. The Commission declines to modify the rule as requested. First, C block licenses were disseminated to a large number of auction winners. Second, bidding strategies in the C block auction and the business plans of many firms may have been formulated in reliance on this rule. The Commission finds no basis for modifying it here.

B. Partitioning and Disaggregation

52. Numerous commenters argue that the Commission's geographic partitioning provisions, which currently apply only to rural telephone companies, should be expanded to include broadband PCS licensees and spectrum disaggregation should be permitted in the near term. Under the current rules, broadband PCS licensees may disaggregate licensed broadband PCS spectrum after January 1, 2000, if they have met the five-year construction requirement. Because the issues of partitioning and disaggregation exceed the scope of this proceeding, the Commission will consider these issues in a separate proceeding.

C. Bid Withdrawal

53. One commenter suggested that the bid submission software should be enhanced to warn bidders whenever a bid is entered that exceeds the minimum bid by more than 10 bid increments. For the D, E, and F block auction, the Wireless Telecommunications Bureau will employ a procedure in addition to those in place that will warn bidders of the possibility of a mistaken bid.

54. The same commenter also states that since the Commission cannot distinguish honest mistakes from strategic mistakes, it should impose a penalty for mistaken bids. The rules provide for a bid withdrawal payment that is equal to the difference between the withdrawn bid amount and the subsequent winning bid, if the

subsequent winning bid is lower. No withdrawal payment is assessed if the subsequent winning bid exceeds the withdrawn bid.

55. For the D, E, and F block auction, the Commission adopts the approach of *Atlanta Trunking*, where it held that in cases of erroneous bids, some relief from the bid withdrawal payment requirement appears necessary. (*Atlanta Trunking Associates, Inc. and MAP Wireless L.L.C. Requests to Waive Bid Withdrawal Payment Provisions*, Order, FCC 96-203, 61 FR 25807 (May 23, 1996)). In *Atlanta Trunking*, the Commission fashioned the following guidelines to be followed when addressing individual requests for waiver of withdrawal payments: If a mistaken bid is withdrawn in the round immediately following the round in which it was submitted, and the auction is in Stage I or Stage II, the withdrawal payment should be the greater of (a) two times the minimum bid increment during the round in which the mistaken bid was submitted or (b) the standard withdrawal payment calculated as if the bidder had made a bid at one bid increment above the minimum accepted bid. If the mistaken bid is withdrawn two or more rounds following the round in which it was submitted, the bidder should not be eligible for any reduction in the bid withdrawal payment. Similarly, during Stage III of an auction, if a mistaken bid is not withdrawn during the round in which it was submitted, the bidder should not be eligible for any reduction in the bid withdrawal payment. The Commission believes that under this approach, the required bid withdrawal payment would be substantial enough to discourage strategic placement of erroneous bids without being so severe as to impose an untenable burden on bidders.

VII. Conclusion

In this *Order*, the Commission concludes that making the F block rules race- and gender-neutral will avoid the uncertainty and delay that could result from legal challenges to the special provisions for minority- and women-owned businesses in the broadband PCS F block rules. The Commission also takes steps to streamline procedures and minimize the possibility of insincere bidding and bidder default. The Commission also responds to the *Cincinnati Bell* remand issues. Finally, to expedite the delivery of broadband PCS services to the public, the Commission plans to offer the D, E, and F block licenses together in one simultaneous multiple round auction and delegates authority to the Wireless

Telecommunications Bureau to conduct two concurrent auctions if circumstances warrant.

VIII. Procedural Matters and Ordering Clauses

57. The Final Regulatory Flexibility Analysis, as required by Section 604 of the Regulatory Flexibility Act, is set forth in Appendix C of the Report and Order. Public Law No. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

58. *It is ordered*, That the rule changes specified below *are adopted* and are *effective* July 31, 1996.

59. This action is taken pursuant to Sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 309(j).

List of Subjects in 47 CFR Parts 20 and 24

Commercial Mobile Radio Service,
Personal Communications Services.
Federal Communications Commission.
William F. Caton,
Acting Secretary.

Rule Changes

Parts 20 and 24 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 20—COMMERCIAL MOBILE RADIO SERVICES

1. The authority citation for Part 20 continues to read as follows:

Authority: Secs. 4, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, and 332, unless otherwise noted.

2. Section 20.6 is amended by revising paragraphs (d)(2), (e), and Note 1 to § 20.6 to read as follows:

§ 20.6 CMRS spectrum aggregation limit.

* * * * *

(d) * * *

(2) Partnership and other ownership interests and any stock interest amounting to 20 percent or more of the equity, or outstanding stock, or outstanding voting stock of a broadband PCS, cellular or SMR licensee shall be attributed, except that ownership will not be attributed unless the partnership and other ownership interests and any stock interest amount to at least 40 percent of the equity, or outstanding stock, or outstanding voting stock of a broadband PCS, cellular or SMR licensee if the ownership interest is held by a small business or a rural telephone company, as these terms are defined in § 1.2110 of this chapter or other related provisions of the Commission's rules, or if the ownership interest is held by an entity with a non-controlling equity

interest in a broadband PCS licensee or applicant that is a small business.

* * * * *

(e) Divestiture. (1) Any party holding controlling or attributable ownership interests in broadband PCS, cellular, and/or SMR licensees regulated as CMRS providers that would exceed the spectrum aggregation limitation defined in paragraph (a) of this section, if granted additional licenses, may be a party to a broadband PCS, cellular, or SMR application (i.e., have a controlling or attributable interest in the applicant), and such applicant will be eligible for licenses amounting to more than 45 MHz of broadband PCS, cellular, and/or SMR spectrum regulated as CMRS in a geographical area, pursuant to the divestiture procedures set forth in paragraphs (e)(2) through (e)(4) of this section; provided, however, that in the case of parties holding controlling or attributable ownership interests in broadband PCS, cellular, and/or SMR licensees, these divestiture procedures shall be available only to:

(i) Parties with controlling or attributable ownership interests in broadband PCS, cellular, and/or SMR licenses where the geographic license areas cover 20 percent or less of the applicant's service area population;

(ii) Parties with attributable interests in broadband PCS, cellular, and/or SMR licenses solely due to management agreements or joint marketing agreements; and

(iii) Parties with non-controlling attributable interests in broadband PCS, cellular, and/or SMR licenses, regardless of the degree to which the geographic license areas cover the applicant's service area population. For purposes of this paragraph, a "non-controlling attributable interest" is one in which the holder has less than a fifty (50) percent voting interest and there is an unaffiliated single holder of a fifty (50) percent or greater voting interest.

(2) The applicant for a license that, if granted, would exceed the 45 MHz limitation shall certify on its application that it and all parties to the application will come into compliance with this limitation.

(3) If such an applicant is a successful bidder in an auction, it must submit with its long-form application a signed statement describing its efforts to date and future plans to come into compliance with the 45 MHz spectrum limitation. A similar statement must also be included with any application for assignment of licenses or transfer of control that, if granted, would exceed the spectrum aggregation limit.

(4) If such an applicant is otherwise qualified, its application will be granted

subject to a condition that the licensee shall come into compliance with the 45 MHz spectrum limitation within ninety (90) days of final grant.

(i) Parties holding controlling interests in broadband PCS, cellular, and/or SMR licensees that conflict with the attribution threshold or geographic overlap limitations set forth in this section will be considered to have come into compliance if they have submitted to the Commission an application for assignment of license or transfer of control of the conflicting licensee (see §§ 24.839 of this chapter (PCS), 22.39 of this chapter (cellular), 90.158 of this chapter (SMR)) by which, if granted, such parties no longer would have an attributable interest in the conflicting license. If no such assignment or transfer application is tendered to the Commission within ninety (90) days of final grant of the initial license, the Commission may consider the certification and the divestiture statement to be material, bad faith misrepresentations and shall invoke the condition on the initial license or the assignment or transfer, cancelling or rescinding it automatically, shall retain all monies paid to the Commission, and, based on the facts presented, shall take any other action it may deem appropriate. Divestiture may be to an interim trustee if a buyer has not been secured in the required period of time, as long as the applicant has no interest in or control of the trustee, and the trustee may dispose of the license as it sees fit.

(ii) Where parties to broadband PCS, cellular, or SMR applications hold less than controlling (but still attributable) interests in broadband PCS, cellular, or SMR licensee(s), they shall submit, within ninety (90) days of final grant, a certification that the applicant and all parties to the application have come into compliance with the limitations on spectrum aggregation set forth in this section.

Note 1 to § 20.6: Waivers of § 20.6(d) may be granted upon an affirmative showing:

(1) That the interest holder has less than a 50 percent voting interest in the licensee and there is an unaffiliated single holder of a 50 percent or greater voting interest;

(2) That the interest holder is not likely to affect the local market in an anticompetitive manner;

(3) That the interest holder is not involved in the operations of the licensee and does not have the ability to influence the licensee on a regular basis; and

(4) That grant of a waiver is in the public interest because the benefits to the public of common ownership outweigh any potential anticompetitive harm to the market.

* * * * *

PART 24—PERSONAL COMMUNICATIONS SERVICES

3. The authority citation for Part 24 continues to read as follows:

Authority: Secs. 4, 301, 302, 303, 309 and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 301, 302, 303, 309 and 332, unless otherwise noted.

§ 24.204 [Removed]

4. Section 24.204 is removed.

5. Section 24.229 is amended by removing paragraph (c) and redesignating paragraph (d) as paragraph (c) and revising it to read as follows:

§ 24.229 Frequencies.

* * * * *

(c) After January 1, 2000, licensees that have met the 5-year construction requirement may assign portions of licensed PCS spectrum.

6. Section 24.704 is amended by adding paragraph (a)(3) to read as follows:

§ 24.704 Withdrawal, default and disqualification penalties.

(a) * * *

(3) *Erroneous Bids*. If at any point during an auction an erroneous bid is withdrawn in the same round in which it was submitted, the bid withdrawal payment will be the greater of

(i) The minimum bid increment for that license and round; and

(ii) The standard bid withdrawal payment, as defined in paragraph (a)(1) of this section, calculated as if the bidder had made the minimum accepted bid. If an erroneous bid is withdrawn in the round immediately following the round in which it was submitted, and the auction is in Stage I or Stage II, the withdrawal payment will be the greater of

(A) Two times the minimum bid increment during the round in which the erroneous bid was submitted, and

(B) The standard withdrawal payment, as defined in paragraph (a)(1) of this section, calculated as if the bidder had made a bid one bid increment above the minimum accepted bid. If an erroneous bid is withdrawn two or more rounds following the round in which it was submitted, the bidder will not be eligible for any reduction in the bid withdrawal payment as defined in paragraph (a)(1) of this section.

During Stage III of an auction, if an erroneous bid is not withdrawn during the round in which it was submitted, the bidder will not be eligible for any reduction in the bid withdrawal payment as defined in paragraph (a)(1) of this section.

* * * * *

7. Section 24.706 is revised to read as follows:

§ 24.706 Submission of upfront payments and down payments.

(a) Where the Commission uses simultaneous multiple round auctions or oral sequential auctions, bidders will be required to submit an upfront payment in accordance with § 1.2106 of this chapter, paragraph (c) of this section, and §§ 24.711(a)(1) and 24.716(a)(1).

(b) Winning bidders in an auction must submit a down payment to the Commission in accordance with § 1.2107(b) of this chapter and §§ 24.711(a)(2) and 24.716(a)(2).

(c) Each eligible bidder for licenses on frequency Blocks D and E subject to auction shall pay an upfront payment of \$0.06 per MHz per pop for the maximum number of licenses (in terms of MHz-pops) on which it intends to bid pursuant to § 1.2106 of this chapter and procedures specified by Public Notice.

8. Section 24.709 is amended by revising the section heading, paragraphs (a)(1), (a)(2), (c)(1) introductory text, (c)(2) introductory text, and (c)(2)(ii) to read as follows:

§ 24.709 Eligibility for licenses for frequency Blocks C and F.

(a) * * *

(1) No application is acceptable for filing and no license shall be granted for frequency block C or frequency block F, unless the applicant, together with its *affiliates* and persons or entities that hold interests in the applicant and their *affiliates*, have *gross revenues* of less than \$125 million in each of the last two years and *total assets* of less than \$500 million at the time the applicant's short-form application (Form 175) is filed.

(2) The *gross revenues* and *total assets* of the applicant (or licensee), and its *affiliates*, and (except as provided in paragraph (b) of this section) of persons or entities that hold interests in the applicant (or licensee), and their *affiliates*, shall be attributed to the applicant and considered on a cumulative basis and aggregated for purposes of determining whether the applicant (or licensee) is eligible for a license for frequency block C or frequency block F under this section.

* * * * *

(c) * * *

(1) *Short-form Application*. In addition to certifications and disclosures required by Part 1, subpart Q of this chapter and § 24.813, each applicant for a license for frequency block C or frequency block F shall certify on its short-form application (Form 175) that it is eligible to bid on

and obtain such license(s), and (if applicable) that it is eligible for designated entity status pursuant to this section and § 24.720, and shall append the following information as an exhibit to its Form 175:

* * * * *

(2) *Long-form Application*. In addition to the requirements in subpart I of this part and other applicable rules (e.g., §§ 20.6(e) and 20.9(b) of this chapter), each applicant submitting a long-form application for a license(s) for frequency block C or frequency block F shall, in an exhibit to its long-form application:

* * * * *

(ii) List and summarize all agreements or other instruments (with appropriate references to specific provisions in the text of such agreements and instruments) that support the applicant's eligibility for a license(s) for frequency block C or frequency block F and its eligibility under §§ 24.711, 24.712, 24.714 and 24.720, including the establishment of *de facto* and *de jure* control; such agreements and instruments include articles of incorporation and bylaws, shareholder agreements, voting or other trust agreements, partnership agreements, management agreements, joint marketing agreements, franchise agreements, and any other relevant agreements (including letters of intent), oral or written; and

* * * * *

§ 24.715 [Removed]

9. Section 24.715 is removed.

10. Section 24.716 is amended by revising paragraphs (a)(1), (a)(2), (b), redesignating paragraph (c) as paragraph (d); revising newly-redesignated paragraph (d)(2); and adding a new paragraph (c) to read as follows:

§ 24.716 Upfront payments, down payments, and installment payments for licenses for frequency Block F.

(a) * * *

(1) Each eligible bidder for licenses on frequency Block F subject to auction shall pay an upfront payment of \$0.06 per MHz per pop for the maximum number of licenses (in terms of MHz-pops) on which it intends to bid pursuant to § 1.2106 of this chapter and procedures specified by Public Notice;

(2) Each winning bidder shall make a down payment equal to 20 percent of its winning bid (less applicable bidding credits); a winning bidder shall bring its total amount on deposit with the Commission (including upfront payment) to 10 percent of its net winning bid within five business days after the auction closes, and the remainder of the down payment (10

percent) shall be paid within five business days after the application required by § 24.809(b) is granted; and

(b) *Installment Payments.* Each eligible licensee of frequency Block F may pay the remaining 80 percent of the net auction price for the license in installment payments pursuant to § 1.2110(e) of this chapter and under the following terms:

(1) For an eligible licensee with *gross revenues* exceeding \$75 million (calculated in accordance with § 24.709 (a)(2) and (b)) in each of the two preceding years (calculated in accordance with § 24.720(f)), interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted, plus 3.5 percent; payments shall include both principal and interest amortized over the term of the license;

(2) For an eligible licensee with *gross revenues* not exceeding \$75 million (calculated in accordance with § 24.709 (a)(2) and (b)) in each of the two preceding years (calculated in accordance with § 24.720(f)), interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted, plus 2.5 percent; payments shall include interest only for the first year and payments of interest and principal amortized over the remaining nine years of the license term; or

(3) For an eligible licensee that qualifies as a small business or as a consortium of small businesses, interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted; payments shall include interest only for the first two years and payments of interest and principal amortized over the remaining eight years of the license term.

(c) *Late Installment Payments.* Any licensee that submits a scheduled installment payment more than 15 days late will be charged a late payment fee equal to 5 percent of the amount of the past due payment. Payments will be applied in the following order: late charges, interest charges, principal payments.

(d) * * *

(2) If a licensee that utilizes installment financing under this section seeks to make any change in ownership structure that would result in the licensee losing eligibility for installment payments, the licensee shall first seek Commission approval and must make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of such change as a condition of approval. A licensee's (or other attributable entity's) increased

gross revenues or increased total assets due to nonattributable equity investments (i.e., from sources whose gross revenues and total assets are not considered under § 24.709(b)), debt financing, revenue from operations or other investments, business development or expanded service shall not be considered to result in the licensee losing eligibility for installment payments.

* * * * *

11. Section 24.717 is amended by revising paragraphs (a) and (b), removing paragraph (c), and redesignating paragraph (d) as paragraph (c) to read as follows:

§ 24.717 Bidding credits for licenses for frequency Block F.

(a) A winning bidder that qualifies as a *small business* or a *consortium of small businesses* may use a bidding credit of 15 percent to lower the cost of its winning bid.

(b) A winning bidder that qualifies as a *very small business* or a *consortium of very small businesses* may use a bidding credit of 25 percent to lower the cost of its winning bid.

* * * * *

12. Section 24.720 is amended by revising the heading of paragraph (b) redesignating paragraphs (b)(2) and (b)(3) as paragraphs (b)(3) and (b)(4) and revising them; adding new paragraphs (b)(2) and (b)(5); and revising paragraphs (c)(2), (e), (f), (g), (j)(2), (l)(1)(i), (n)(1), (n)(3) and (n)(4) to read as follows:

§ 24.720 Definitions.

* * * * *

(b) *Small business; very small business; consortia.* * * *

(2) A *very small business* is an entity that, together with its *affiliates* and persons or entities that hold interests in such entity and their *affiliates*, has average annual *gross revenues* that are not more than \$15 million for the preceding three years.

(3) For purposes of determining whether an entity meets the \$40 million average annual *gross revenues* size standard set forth in paragraph (b)(1) of this section or the \$15 million average annual *gross revenues* size standard set forth in paragraph (b)(2) of this section, the *gross revenues* of the entity, its *affiliates*, persons or entities holding interests in the entity and their *affiliates* shall be considered on a cumulative basis and aggregated subject to the exceptions set forth in § 24.709(b).

(4) A *small business consortium* is a conglomerate organization formed as a joint venture between or among mutually independent business firms,

each of which individually satisfies the definition of a *small business* in paragraphs (b)(1) and (b)(3) of this section.

(5) A *very small business consortium* is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition of a *very small business* in paragraphs (b)(2) and (b)(3) of this section.

(c) * * *

(2) That complies with the requirements of § 24.709(b)(3) and (b)(5) or § 24.709(b)(4) and (b)(6).

* * * * *

(e) *Rural Telephone Company.* A *rural telephone company* is a local exchange carrier operating entity to the extent that such entity:

(1) Provides common carrier service to any local exchange carrier study area that does not include either;

(i) Any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or

(ii) Any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

(2) Provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(3) Provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(4) Has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996.

(f) *Gross Revenues.* *Gross revenues* shall mean all income received by an entity, whether earned or passive, before any deductions are made for costs of doing business (e.g., cost of goods sold), as evidenced by audited financial statements for the relevant number of most recently completed calendar years, or, if audited financial statements were not prepared on a calendar-year basis, for the most recently completed fiscal years preceding the filing of the applicant's short-form application (Form 175). If an entity was not in existence for all or part of the relevant period, gross revenues shall be evidenced by the audited financial statements of the entity's predecessor-in-interest or, if there is no identifiable predecessor-in-interest, unaudited financial statements certified by the applicant as accurate. When an applicant does not otherwise use

audited financial statements, its gross revenues may be certified by its chief financial officer or its equivalent.

(g) *Total Assets.* *Total assets* shall mean the book value (except where generally accepted accounting principles (GAAP) require market valuation) of all property owned by an entity, whether real or personal, tangible or intangible, as evidenced by the most recent audited financial statements or certified by the applicant's chief financial officer or its equivalent if the applicant does not otherwise use audited financial statements.

* * * * *

(j) * * *

(2) For purposes of assessing compliance with the equity limits in § 24.709 (b)(3)(i) and (b)(4)(i), where such interests are not held directly in the applicant, the total equity held by a person or entity shall be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain.

* * * * *

(l) * * *

(11) * * *

(i) For purposes of §§ 24.709(a)(2) and paragraphs (b)(2) and (d) of this section, Indian tribes or Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), or entities owned and controlled by such tribes or corporations, are not considered affiliates of an applicant (or licensee) that is owned and controlled by such tribes, corporations or entities, and that otherwise complies with the requirements of § 24.709 (b)(3) and (b)(5) or § 24.709 (b)(4) and (b)(6), except that gross revenues derived from gaming activities conducted by affiliated entities pursuant to the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) will be counted in determining such applicant's (or licensee's) compliance with the financial requirements of § 24.709(a) and paragraphs (b) and (d) of this section, unless such applicant establishes that it will not receive a substantial unfair competitive advantage because significant legal constraints restrict the applicant's ability to access such gross revenues.

* * * * *

(n) * * *

(1) A qualifying investor is a person who is (or holds an interest in) a member of the applicant's (or licensee's) control group and whose gross revenues and total assets, when aggregated with those of all other attributable investors and affiliates, do not exceed the gross revenues and total assets limits specified in § 24.709(a), or, in the case

of an applicant (or licensee) that is a small business, do not exceed the gross revenues limit specified in paragraph (b) of this section.

* * * * *

(3) For purposes of assessing compliance with the minimum equity requirements of § 24.709(b) (5) and (6), where such equity interests are not held directly in the applicant, interests held by qualifying investors or qualifying minority and/or woman investors shall be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain.

(4) For purposes of § 24.709 (b)(5)(i)(C) and (b)(6)(i)(C), a qualifying investor is a person who is (or holds an interest in) a member of the applicant's (or licensee's) control group and whose gross revenues and total assets do not exceed the gross revenues and total assets limits specified in § 24.709(a).

* * * * *

13. Section 24.813 is amended by revising paragraphs (a)(1), (a)(2) and (a)(4) to read as follows:

§ 24.813 General application requirements.

(a) * * *

(1) A list of any business, holding or applying for CMRS or PMRS licenses, five percent or more of whose stock, warrants, options or debt securities are owned by the applicant or an officer, director, attributable stockholder or key management personnel of the applicant. This list must include a description of each such business' principal business and a description of each such business' relationship to the applicant.

(2) A list of any party which holds a five percent or more interest (or a ten percent or more interest for institutional investors as defined in § 24.720(h)) in the applicant, or any entity holding or applying for CMRS or PMRS licenses in which a five percent or more interest (or a ten percent or more interest for institutional investors as defined in § 24.720(h)) is held by another party which holds a five percent or more interest (or a ten percent or more interest for institutional investors as defined in § 24.720(h)) in the applicant (e.g. If Company A owns 5% of Company B (the applicant) and 5% of Company C, a company holding or applying for CMRS or PMRS licenses, then Companies A and C must be listed on Company B's applications.)

* * * * *

(4) In the case of partnerships, the name and address of each partner, each partner's citizenship and the share or interest participation in the partnership. This information must be provided for

all partners, regardless of their respective ownership interest in the partnership.

* * * * *

14. Section 24.839 is amended by revising paragraphs (a), (d)(1), and (d)(2) and adding paragraphs (d)(3), (d)(4), and (d)(5) to read as follows:

§ 24.839 Transfer of control or assignment of license.

(a) Approval required. Authorization shall be transferred or assigned to another party, voluntarily (for example, by contract) or involuntarily (for example, by death, bankruptcy or legal disability), directly or indirectly or by transfer of control of any corporation holding such authorization, only upon application and approval by the Commission. A transfer of control or assignment of station authorization in the broadband Personal Communications Service is also subject to §§ 24.711(e), 24.712(d), 24.713(b), 24.717(c) (unjust enrichment) and 1.2111(a) (reporting requirement).

* * * * *

(d) * * *

(1) The application for assignment or transfer of control is filed after five years from the date of the initial license grant; or

(2) The proposed assignee or transferee meets the eligibility criteria set forth in § 24.709 at the time the application for assignment or transfer of control is filed, or the proposed assignee or transferee holds other license(s) for frequency blocks C and F and, at the time of receipt of such license(s), met the eligibility criteria set forth in § 24.709;

(3) The application is for partial assignment of a partitioned service area to a rural telephone company pursuant to § 24.714 and the proposed assignee meets the eligibility criteria set forth in § 24.709;

(4) The application is for an involuntary assignment or transfer of control to a bankruptcy trustee appointed under involuntary bankruptcy, an independent receiver appointed by a court of competent jurisdiction in a foreclosure action, or, in the event of death or disability, to a person or entity legally qualified to succeed the deceased or disabled person under the laws of the place having jurisdiction over the estate involved; provided that, the applicant requests a waiver pursuant to this paragraph; or

(5) The assignment or transfer of control is *pro forma*.

* * * * *

[FR Doc. 96-16665 Filed 6-28-96; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION**Federal Railroad Administration****49 CFR Parts 233, 235 and 236****[FRA Docket No. RSSI-1 ; Notice No. 1]****RIN 2130—AB06; 2130—AB05****Signal and Train Control;
Miscellaneous Amendments****AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).**ACTION:** Interim final rule.

SUMMARY: In accord with President Clinton's Regulatory Reinvention Initiative, FRA is amending FRA's signal system reporting requirements to reduce signal system reporting burdens on the rail industry. FRA is also amending its regulations governing applications for approval of discontinuance or material modification of a signal system and is consolidating certain pneumatic valve cleaning and testing intervals to eliminate overlapping and unnecessary test schedules.

DATES: This interim final rule is effective August 30, 1996. Written comments concerning this rule must be filed no later than July 31, 1996.

FOR FURTHER INFORMATION CONTACT: William Goodman, Staff Director, Signal and Train Control, Office of Safety, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202-366-2231), or Mark Tessler, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202-366-0628).

SUPPLEMENTARY INFORMATION:**Background**

On September 30, 1993, President Clinton issued Executive Order No. 12866, "Regulatory Planning and Review". This Executive Order was based on the recognition that government must govern in a focused, tailored, and sensible way. In order to reaffirm and implement the principles of Executive Order No. 12866, President Clinton, in March of 1995, announced a Regulatory Reinvention Initiative in which federal agencies were directed to conduct a review of agency regulations with a view toward eliminating or revising those outdated or otherwise in need of reform. This proceeding is part of that effort.

FRA has not provided prior notice and request for public comment prior to making the amendments contained in this rule. FRA has concluded that such notice and comment are impracticable,

unnecessary and contrary to the public interest under 5 U.S.C 553 since FRA is making only minor changes in reporting requirements, administrative procedures, and is clarifying contradictory regulatory provisions. However, FRA is soliciting comments on this rule and will consider those comments in determining whether there is a need to take further action to improve these regulations. For this reason, FRA has issued this as an interim final rule so that it can take effect while any comments are being considered. If comments persuade FRA that amendments are necessary, it will address them in a subsequent notice. As noted above, comments must be submitted no later than July 31, 1996.

Section-by-Section Analysis**49 CFR Part 233.9 "Signal System Reporting Requirements"**

The Signal Systems Annual Report has historically been used to monitor changes in the types of signal systems installed on the nation's railroads. Based on its regulatory review, FRA has concluded that the signal system information base can be maintained while at the same time the reporting burden imposed on railroads can be reduced. FRA has concluded that the information provided by this report does not need to be updated annually. Using the information base already in existence, FRA can monitor incremental changes in railroad signal systems through reports of agency field personnel. Additionally, because railroads must file an application with FRA to discontinue or materially modify a signal system under 49 CFR Part 235, FRA will be well informed regarding incremental changes in signal systems. FRA is amending this section to provide for filing of signal system reports every five years rather than on an annual basis, as is required presently. This more realistic time frame will reduce the reporting burden to the industry while maintaining an adequate information base. FRA is also revising the information to be reported in order to reflect technological changes in the industry and in accord with information needs of FRA. FRA will submit the report form to the Office of Management and Budget (OMB) for approval. The new reporting requirements contained in this section are not mandatory until approval has been obtained from OMB. Section 233.9 is thus being revised to require that not later than April 1, 1997 and every 5 years thereafter, each carrier shall file with FRA a Signal System Five-year Report on a form to be provided by FRA and in accordance

with instructions provided on the report.

49 CFR Part 235.7 "Changes not Requiring Filing of Application"

Section 235.7 currently specifies those modifications to signal systems that can be made by a railroad without the necessity of filing an application for FRA approval. Those listed modifications are of a type that increase either the safety of a signal system or which do not affect the existing level of safety. FRA is adding a provision which permits the installation, removal or relocation of intermediate or automatic signals in conjunction with the elimination of signal system pole lines when replaced with electronic track circuits. Improving a signal system with electronic track circuits provides a railroad with the benefit of a signal system not adversely affected by ice, snow storms, and floods. Installation of electronic track circuits and the elimination of open pole lines often results in the extension and equalization of block limits and relieves the railroads from maintaining and replacing many poles and cross arms and eliminates signal problems created by wire crosses and grounds on the open wire signal circuits. Section 235.7(c)(24) provides that it is not necessary to file an application for approval for the installation, relocation, or removal of signals, interlocked switches, derails, movable-point frogs, or electric locks in an existing system directly associated with the installation of new track; the elimination of existing track other than a second main track; the extension or shortening of a passing siding; elimination of second main track in certain stated circumstances or a line relocation. FRA is adding to this list conversion of pole line circuits to electronic (coded) track circuits provided that the railroad gives notice and a profile plan of the change to the FRA regional office having jurisdiction over that territory at least 60 days in advance of the change. In addition, the railroad must provide at the same time a copy of the notice and profile plan to representatives of employees responsible for maintenance, inspection and testing of the signal system under 49 CFR Part 236. The signal system modification will be deemed acceptable, unless within 60 days, the Regional Administrator stays action by written notice to the railroad and refers the issue to the Railroad Safety Board for decision. The proposed change will enable railroads to better manage the timing and budgeting for signal system upgrades while at the same time

maintaining protection and safety of train movements.

49 CFR 236.590 "Pneumatic Apparatus"

This section presently requires that automatic train stop ("ATS"), automatic train control ("ATC"), or automatic cab signal ("ACS") pneumatic apparatus be inspected and cleaned at least once every 736 days. This section also requires that the pneumatic apparatus be stenciled, tagged or otherwise marked to indicate the last cleaning date. Locomotive safety standard regulations at 49 CFR 229.29 require that valves, valve portions, MU locomotive brake cylinders and electric pneumatic master controllers in the air brake system be cleaned, repaired, and tested at least once every 736 days. The section also requires that the date and place of the cleaning, repairing and testing be recorded on a specified form. A record of the parts of the air brake system that are cleaned, repaired, and tested are required to be kept in the railroad's files or in the cab of the locomotive.

FRA intends that the inspection and cleaning time interval requirements for pneumatic apparatus (ATS, ATC, and ACS) be governed by the air brake testing intervals established in 229.29. In that way, railroads will not be faced with conflicting testing schedules. Maintenance schedules will be simplified and locomotive down-time will be reduced as a result. Although both section 229.29 and 236.590 require a 736-day test interval, due to existing waivers, the testing and cleaning intervals for air brake systems and pneumatic systems on many locomotives do not coincide. In 1985, FRA granted a waiver of compliance with § 229.29 (see 50 FR 3910, January 29, 1985) to allow locomotives equipped with 26L airbrake equipment to operate for periods not to exceed three years before receiving the detailed inspections required by § 229.29. Under the terms of this waiver, which extended an earlier test waiver (see 46 FR 33401, June 29, 1981), "train control pneumatic valves (suppression and timing valves)" were included within the waiver. Thus railroads have been able to perform periodic testing and maintenance of air brake and train control pneumatic valves on locomotive 26L brake equipment at the same time. It has come to our attention that many railroads were not aware of the extent of the waiver issued in 1985 and thus may not have been taking advantage of the scheduling advantages this waiver provided. By conforming the requirements of § 236.590 to those of

§ 229.29, any changes in inspection and testing intervals or recordkeeping requirements made to air brake systems will automatically apply to pneumatic train control valves on similar types of locomotives. Since pneumatic train control valves utilize the same air supply system, a decision as to safe testing intervals for one component would apply to the other component as well. In addition to the above changes, FRA is providing "out of service" credit that is applied to air brake systems under § 229.33 to train control systems under § 236.590. This will further conform the two sets of testing and maintenance requirements.

FRA is thus amending § 236.590 to provide that automatic train stop, train control, or cab signal pneumatic apparatus shall be inspected, cleaned, and the results of such inspection recorded as provided by § 229.29(a). When a locomotive with automatic train stop, train control, or cab signal pneumatic apparatus receives out-of-use credit pursuant to § 229.33, the automatic train stop, train control, or cab signal apparatus shall be tested in accordance with § 236.588 prior to the locomotive being placed in service.

E.O. 12866 and DOT Regulatory Policies and Procedures

These amendments have been evaluated in accordance with existing policies and procedures and because they are primarily technically oriented and generally reduce the regulatory burden on railroads, FRA has concluded that the revisions do not constitute significant rule under either Executive Order 12866 or DOT's regulatory policies and procedures.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. FRA certifies that this rule will not have a significant impact on a substantial number of small entities. There are no substantial economic impacts for small units of government, businesses, or other organizations.

Paperwork Reduction Act

These amendments reduce information collection requirements and therefore reduce reporting burdens imposed on railroads.

Environmental Impact

FRA has evaluated these regulations in accordance with its procedure for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act and related

directives. FRA has determined that the revision of Parts 233, 235 and 236 of Title 49 of the CFR does not constitute a major FRA action requiring an environmental assessment.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, "Federalism," and it has been determined that these amendments do not have federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

49 CFR Part 233

Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 235

Railroad safety, Administrative practice and procedure.

49 CFR Part 236

Railroad safety.

The Rule

In consideration of the foregoing, FRA amends Parts 233, 235, and 236 of Title 49 of the Code of Federal Regulations as set forth below:

PART 233—[AMENDED]

1. The authority citation for Part 233 continues to read as follows:

Authority: 49 App. U.S.C. 26, as amended; 49 App. U.S.C. 1655(e), as amended; 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100-342; and 49 CFR 1.49 (f), (g), and (m).

2. Section 233.9 is revised to read as follows:

§ 233.9 Reports.

Not later than April 1, 1997 and every 5 years thereafter, each carrier shall file with FRA a signal system status report "Signal System Five-year Report" on a form to be provided by FRA in accordance with instructions and definitions provided on the report.

PART 235—[AMENDED]

3. The authority citation for Part 235 continues to read as follows:

Authority: 49 App. U.S.C. 26, as amended; 49 App. U.S.C. 1655(e), as amended; 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100-342; and 49 CFR 1.49 (f), (g), and (m).

4. Paragraph (c)(24) of § 235.7 is amended by adding at the end thereof a new paragraph (c)(24) (vi) to read as follows:

§ 235.7 Changes not requiring filing of application.

* * * * *

(c) * * *

(24) * * *

(vi) The conversion of pole line circuits to electronic (coded) track circuits provided that the railroad gives notice and a profile plan of the change to the FRA regional office having jurisdiction over that territory at least 60 days in advance of the change. The railroad must also at the same time provide a copy of the notice and profile plan to representatives of employees responsible for maintenance, inspection and testing of the signal system under 49 CFR Part 236. The signal system modification will be deemed acceptable, unless within 60 days, the Regional Administrator stays action by written

notice to the railroad and refers the issue to the Railroad Safety Board for decision.

PART 236—[AMENDED]

5. The authority citation for Part 236 continues to read as follows:

Authority: 49 App. U.S.C. 26, as amended; 49 App. U.S.C. 1655(e), as amended; 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100-342; and 49 CFR 1.49 (f), (g), and (m).

6. Section 236.590 is revised to read as follows:

§ 236.590 Pneumatic apparatus

Automatic train stop, train control, or cab signal pneumatic apparatus shall be

inspected, cleaned, and the results of such inspection recorded as provided by § 229.29(a). When a locomotive with automatic train stop, train control, or cab signal pneumatic apparatus receives out-of-use credit pursuant to § 229.33, the automatic train stop, train control, or cab signal apparatus shall be tested in accordance with § 236.588 prior to the locomotive being placed in service.

Issued in Washington, D.C. on May 30, 1996.

Donald M. Itzkoff,

Deputy Administrator.

[FR Doc. 96-15298 Filed 6-28-96; 8:45 am]

BILLING CODE 4910-06-P

Proposed Rules

Federal Register

Vol. 61, No. 127

Monday, July 1, 1996

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.

FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220, and 221

[Regulations G, T, and U; Docket No. R-0923]

Securities Credit Transactions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Board is extending the comment period on its proposal to amend its margin regulations, Regulations G, T, and U, to give the public additional time to comment on the proposal. The Secretary of the Board, acting pursuant to delegated authority, has extended the comment period from July 1, 1996 to August 2, 1996, to give the public additional time to provide comments.

DATES: Comments should be received on or before August 2, 1996.

ADDRESSES: Comments should refer to Docket R-0923, and may be mailed to William Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments addressed to Mr. Wiles also may be delivered to Room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street NW (between Constitution Avenue and C Street NW) at any time. Comments received will be available for inspection in Room MP-500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.9 of the Board's Rules Regarding the Availability of Information.

FOR FURTHER INFORMATION CONTACT: Scott Holz, Senior Attorney or Angela Desmond, Senior Counsel, Division of Banking Supervision and Regulation (202) 452-2781; Oliver Ireland, Associate General Counsel (202) 452-3625 or Gregory Baer, Managing Senior Counsel (202) 452-3236, Legal Division;

for the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202) 452-3544.

SUPPLEMENTARY INFORMATION: On May 6, 1996, the Board requested comment on amendments to its margin regulations, Regulations G, T, and U (61 FR 20399).

By order of the Secretary of the Board, acting pursuant to delegated authority for the Board of Governors of the Federal Reserve System, June 25, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96-16647 Filed 6-28-96; 8:45 am]

BILLING CODE 6210-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96-NM-10-AD]

RIN 2120-AA64

Airworthiness Directives; Airbus Model A300-600 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 Airbus Model A300-600 series airplanes. This proposal would require inspections to detect cracking of the upper radius of the forward fitting of frame 47, and repair, if necessary. This proposal is prompted by results of full-scale fatigue testing, which revealed cracking in the upper radius of frame 47. The actions specified by the proposed AD are intended to prevent such fatigue cracking, which could result in reduced structural integrity of frame 47 of the fuselage.

DATES: Comments must be received by August 12, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 96-NM-10-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, 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: Phil Forde, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2146; fax (206) 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 96-NM-10-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-103, Attention: Rules Docket No.

96-NM-10-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, recently notified the FAA that an unsafe condition may exist on all Airbus Model A300-600 series airplanes. The DGAC advises that, during a full-scale fatigue test, cracks were found on the left and right upper radius of frame 47 on a Model A300 series airplane that had accumulated 48,000 flights. Similar cracking also was found on an in-service Model A300 B2 series airplane that had accumulated 18,000 flights. Fatigue cracking of the upper radius could result in rupture of the forward fitting of the frame. Such fatigue cracking, if not detected and corrected in a timely manner, could result in reduced structural integrity of frame 47 of the fuselage.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A300-53-6029, Revision 2, dated November 7, 1994, which describes procedures for repetitive eddy current inspections to detect cracking of the upper radius of the left and right forward fitting of frame 47. For airplanes on which cracking is found, the service bulletin describes procedures for modification of the sealing fitting and sealing sham, and repetitive ultrasonic inspections to detect cracking of the rear of the forward fitting. Among other things, the modification involves performing PR sealing on the fitting and on the fasteners inside the center wing box.

The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 93-162-148(B), dated September 15, 1993, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France 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 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 repetitive eddy current inspections to detect cracking of the upper radius of the left and right forward fitting of frame 47, and repair, if necessary. The inspections would be required to be accomplished in accordance with the service bulletin described previously. The repair would be required to be accomplished in accordance with a method approved by the FAA.

Explanation of Differences Between Service Bulletin and Proposed Rule

Operators should note that, unlike the procedures recommended in the referenced service bulletin, this proposed rule would not permit further flight after detection of cracking in the upper radius of the fitting within certain limits. Instead, this proposed rule would require, prior to further flight, repair of cracking in accordance with a method approved by the FAA. The FAA finds that, in light of the safety implications and consequences associated with such cracking, an adequate level of safety for the affected fleet requires that cracking in the upper radius must be repaired prior to further flight.

Additionally, this proposed AD does not require accomplishment of the modification described in the referenced service bulletin. The service bulletin specifies that purpose of the modification is to provide access to the forward fitting of frame 47 to enable operators to accomplish an ultrasonic inspection to detect longer cracks of the rear of the fitting. The FAA finds that since accomplishment of this modification will not prevent fatigue cracking of the upper radius, in lieu of accomplishing that modification, any cracking detected during the eddy current inspection must be repaired prior to further flight.

In addition, the service bulletin specifies that inspection thresholds and intervals may be adjusted based on certain average flight operations of the airplane. However, the FAA has determined that such adjustments would not address the unsafe condition in a timely manner. Therefore, this proposed AD does not permit such adjustments. In developing the appropriate compliance time for the proposed rule, the FAA considered not

only the manufacturers recommendation, but the safety implications involved with cracking in the upper radius of the fitting of frame 47 and the number of landings that had been accumulated when cracking was detected. In light of these factors, the FAA finds the compliance times specified in the proposed AD for initiating the required actions to be warranted, in that they represent an appropriate interval of time allowable for the affected airplanes to continue to operate without compromising safety.

Further, the service bulletin specifies that operators need not count touch-and-go landings in determining the total number of landings between two consecutive inspections, even if those landings are less than five percent of the landings between inspection intervals. Since fatigue cracking that was found in the upper radius of the fitting of frame 47 is aggravated by landing operations, the FAA finds that all touch-and-go landings must be counted in determining the total number of landings between two consecutive inspections.

Cost Impact

The FAA estimates that 35 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 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 \$8,400, or \$240 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:

Airbus Industrie: Docket 96–NM–10–AD.

Applicability: All Model A300–600 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 (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 reduced structural integrity of frame 47 of the fuselage, accomplish the following:

(a) Prior to the accumulation of 17,300 total landings, or within one year after the effective date of this AD, whichever occurs later: Perform an eddy current inspection to detect cracking of the upper radius of the left and right forward fitting of frame 47, in accordance with Airbus Service Bulletin A300–53–6029, Revision 2, dated November 7, 1994.

(1) If no cracking is found during an eddy current inspection: Repeat the inspection thereafter at intervals not to exceed 6,600 landings.

(2) If any cracking is found during an eddy current inspection: Prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(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, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(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.

Issued in Renton, Washington, on June 25, 1996.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–16651 Filed 6–28–96; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

Gulf of the Farallones National Marine Sanctuary: Petition to Ban the Use of Motorized Personal Watercraft Within the Gulf of the Farallones National Marine Sanctuary

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of receipt of a petition.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) has received a petition from the Environmental Action Committee of West Marin County to ban the use of motorized personal watercraft within the Gulf of the Farallones National Marine Sanctuary.

FOR FURTHER INFORMATION CONTACT: Ed Ueber at 415–556–3509 or Elizabeth Moore at 301–713–3141.

SUPPLEMENTARY INFORMATION: The Gulf of the Farallones National Marine

Sanctuary (GFNMS) was designated in January 1981, and encompasses 948 square nautical miles of ocean and coastal waters off the coast of San Francisco. The GFNMS presently has no regulations restricting the use of motorized personal watercraft.

The Sanctuaries and Reserves Division within NOAA's National Ocean Service (NOS) received a petition on April 18, 1996, from the Environmental Action Committee of West Marin, California (EAC) to ban the use of motorized personal watercraft in the GFNMS. EAC believes that "the use of motorized personal watercraft * * * is completely incompatible with the existence of a marine sanctuary," and gives such reasons as the danger of such craft to biological resources; danger to other human users; noise, water, and air pollution; and incompatibility with other Sanctuary uses such as mariculture and small non-motorized watercraft. NOS is reviewing the petition and will notify the petitioner of its decision whether or not to proceed with a rulemaking to ban the use of motorized personal watercraft in the GFNMS. If NOS decides to initiate rulemaking proceedings, then the public will be provided with an opportunity to comment on the proposed rulemaking in accordance with the procedures of the National Marine Sanctuaries Act and the Administrative Procedures Act.

Dated: June 25, 1996.

David L. Evans,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 96–16676 Filed 6–28–96; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 21

RIN 1076–AD 61

Social Welfare Arrangements With States or Other Agencies

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs (BIA) is proposing to revise the regulations in this part to improve the clarity of the regulations and understanding by the public.

DATES: Comments must be received on or before August 30, 1996.

ADDRESSES: Mail comments to Larry Blair, Chief, Division of Social Services,

Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, 1849 C St. NW., Mail Stop 4603-MIB, Washington, DC 20240; or, hand deliver them to Room 4603 at the above address. Comments will be available for inspection at this address from 9:00 a.m. to 4:00 p.m., Monday through Friday beginning approximately July 15, 1996.

FOR FURTHER INFORMATION CONTACT:

Larry Blair, Chief of the Division of Social Services, Bureau of Indian Affairs at telephone number (202) 208-2721.

SUPPLEMENTARY INFORMATION: The authority to issue rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes, 25 U.S.C. 2 and 9.

Publication of the proposed rule by the Department of the Interior (Department) provides the public an opportunity to participate in the rulemaking process. Interested persons may submit written comments regarding the proposed rule to the location identified in the **ADDRESSES** section of this document.

Executive Order 12778

The Department has certified to the Office of Management and Budget (OMB) that this rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

Executive Order 12866

This rule is not a significant regulatory action under Executive Order 12866 and does not require review by the Office of Management and Budget.

Regulatory Flexibility Act

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.*).

Executive Order 12630

The Department has determined that this rule does not have "significant takings" implications. This rule does not pertain to "taking" of private property interests, nor does it impact private property.

Executive Order 12612

The Department has determined that this rule does not have significant federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights and responsibilities of states.

NEPA Statement

The Department has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Unfunded Mandates Act of 1995

This rule imposes no unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

Paperwork Reduction Act of 1995

Sections 21.3 and 21.4 contain information collection requirements. As required by the Paperwork Reduction

Act of 1995 (44 U.S.C. 3507(d)), the Department of the Interior has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

The Bureau of Indian Affairs may enter into agreements with state, county, or other Federal agencies to provide welfare services for Indians. The information collected will be used to determine the amount of funds necessary to provide services for Indians within specified service areas. It will detail the services to be rendered and a plan for the expenditure of funds by the contractor. The information collected will also be used to measure performance of the contractor and plan future services.

No similar agreement specific information pertaining to welfare services for Indians is collected by the Bureau of Indian Affairs or any other Federal agency. Since tribal circumstances vary from one location to another, no information is available which can be used to contract this service.

The information to be collected from third parties is the same information that a state, county, or other Federal agency would otherwise collect in the provision of welfare services.

The estimate of total burden hours is based upon staff expertise in the program area responsible for the management of welfare services budgets.

CFR section	Number of respondents	Frequency of response	Total annual responses	Burden hours per response	Annual burden hours	Cost to respondents
21.3	50	1	1	16	16	\$400
21.4	50	5	1	32	32	800

Organizations and individuals desiring to submit comments on the information collection requirement should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10202, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the U.S. Department of the Interior.

The Department considers comments by the public on this proposed collection of information in:

Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including

whether the information will have practical utility;

Evaluating the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Enhancing the quality, usefulness, and clarity of the information to be collected; and

Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to the OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Bureau of Indian Affairs on the proposed regulations.

Drafting Information: The primary author of this document was Larry Blair, Division of Social Services, Bureau of Indian Affairs, Department of the Interior.

List of Subjects in 25 CFR Part 21

Indians, Indians—welfare contracts.

For the reasons given in the preamble, part 21 of title 25, chapter I of the Code of Federal Regulations is proposed to be revised as set forth below.

PART 21—SOCIAL WELFARE ARRANGEMENTS WITH STATES OR OTHER AGENCIES

Sec.

- 21.1 Who may negotiate agreements with States, Counties, and other Federal agencies?
- 21.2 Who may sign agreements for the relief of distress and social welfare of Indians?
- 21.3 What must the State, County, or other Federal welfare agency provide?
- 21.4 What standards must welfare service providers meet?
- 21.5 What will the Bureau provide?
- 21.6 What information is collected?
- 21.7 Definitions.

Authority: 25 U.S.C. 454.

§ 21.1 Who may negotiate agreements with States, Counties, and other Federal agencies?

The Secretary may negotiate with State, county, or other Federal welfare agencies to provide welfare services for Indians within a particular State and within the exterior boundaries of Indian reservations or on trust or restricted lands that are under the jurisdiction of the Bureau of Indian Affairs.

§ 21.2 Who may sign agreements for the relief of distress and social welfare of Indians?

The proper officer of the State, county, or other Federal welfare agency must sign agreements to provide welfare services. Evidence of the officer's authority must accompany the agreement. Agreements to provide welfare services are not effective until the Secretary approves and signs them.

§ 21.3 What must the State, County, or other Federal welfare agency provide?

(a) *Plan of operation.* A plan of operation describing the services and assistance to be rendered and a budget showing the plan of expenditures of funds must be submitted with the agreement. No change in the plan of operation may be made without the Secretary's prior approval.

(b) *Financial statements.* Thirty days after the close of each fiscal year, a detailed financial statement showing all expenditures must be submitted to the Secretary. Any deviations from the approved plan of operation must be explained and the records of the contractor must remain available for inspection by representatives of the Bureau of Indian Affairs.

§ 21.4 What standards must welfare service providers meet?

(a) *Service.* The standards of aid, care, and service for Indians can be no less than the standards for other clients requiring similar aid, care, and services.

(b) *Personnel.* Unless the Secretary has agreed otherwise, the personnel employed for provision of public welfare services to Indians are subject to the contractor's merit system and the approval of the Secretary and local welfare authorities.

§ 21.5 What will the Bureau of Indian Affairs provide?

(a) *Cooperative services.* The Bureau will maintain cooperative services at the local level.

(b) *Government property and facilities.* The agreement must specify the terms under which the contractor may use Federal property, facilities and equipment. Agreements that allow use of Federal automobiles must require the contractor be responsible for damage or injury to property or persons and to return the equipment in good condition. The contractor must carry sufficient insurance and expressly relieve the Federal Government of any and all liability for any personal injury or property damages.

§ 21.6 What information is collected?

The information collection requirements contained in § 21.3 will be approved by the Office of Management and Budget as required by 44 U.S.C. 1320 *et seq.* The information collected in the plan of operation will be used to determine how contract funds are utilized and to measure performance of the contractor and plan for future agreements. The information collected in the financial statement will be used to determine the adequacy of services and utilization of the budget provided to the contractor. A response is required to obtain a benefit.

§ 21.7 Definitions.

Must means a mandatory or imperative act or requirement.

Secretary means the Secretary of the Interior.

Dated: June 6, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96-16038 Filed 6-28-96; 8:45 am]

BILLING CODE 4310-02-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900-A133

Rulemaking procedures; Public Participation

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: In a document recently published in the Federal Register (61 FR 11309), the Department of Veterans Affairs (VA) amended the "GENERAL PROVISIONS" regulations by eliminating a policy statement concerning prior notice-and-comment for rulemaking. That action, taken without prior notice-and-comment, concluded that the policy statement was unnecessary. Judicial review has been sought on the basis that such action did not comply with notice-and-comment provisions. While we believe such position is not legally correct, we do not object to providing interested parties with an opportunity to comment on whether the policy statement should be eliminated. Accordingly, a companion document published in the Rules and Regulations section of this issue of the Federal Register reestablishes the policy statement and this document proposes to eliminate it, thus affording interested parties the opportunity to comment thereon. For reasons stated below, it does not appear that there is a need to retain the policy statement.

DATES: Comments must be received on or before August 30, 1996.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900-A133." All written comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Thomas O. Gessel, Director, Office of Regulations Management (02D), Office of General Counsel, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273-8605.

SUPPLEMENTARY INFORMATION: This document proposes to amend the "GENERAL PROVISIONS" regulations in 38 CFR part 1 by removing § 1.12.

This section consists of a policy statement concerning prior notice-and-comment for rulemaking.

The provisions of 5 U.S.C. 553 set forth notice-and-comment requirements for rulemaking and include an exemption from the notice-and-comment requirements for rulemaking concerning public property, loans, grants, benefits, or contracts. Regardless of whether the rulemaking concerns public property, loans, grants, benefits, or contracts, the provisions of 5 U.S.C. 553 also contain exemptions from the notice-and-comment requirements for interpretative rules; general statements of policy; rules of organization, procedure, or practice; and for rules published with an appropriate statement of "good cause." The regulatory history of § 1.12 indicates that, despite the statutory exemption for public property, loans, grants, benefits, or contracts, VA intended to utilize the notice-and-comment provisions for rulemaking unless it were determined that it was appropriate to use an applicable exemption other than an exemption based on the mere fact that the subject matter concerned property, loans, grants, benefits, or contracts (see 37 FR 3552, Feb. 17, 1972).

Subsequent to the promulgation of § 1.12, statutory provisions were established that specifically apply the public notice-and-comment provisions of 5 U.S.C. 553 to VA rulemaking concerning loans, grants, or benefits (see 38 U.S.C. 501(d)). These statutory provisions do not impose notice-and-comment provisions for rulemaking concerning public property or contracts.

Also, subsequent to the promulgation of § 1.12, statutory provisions were established that specifically apply notice-and-comment provisions to certain rulemaking concerning contracts. In this regard, 41 U.S.C. 418b provides, with certain exceptions, that "no procurement policy, regulation, procedure, or form (including amendments or modifications thereto) relating to the expenditure of appropriated funds that has (1) a significant effect beyond the internal operating procedures of the agency issuing the procurement policy, regulation, procedure or form, or (2) a significant cost or administrative impact on contractors or offerors, may take effect until 60 days after the procurement policy, regulation, procedure, or form is published for public comment in the Federal Register."

It does not appear that there is a need for VA to self-impose additional notice-and-comment requirements for

rulemaking beyond those imposed by statute.

A companion document reestablishing § 1.12 is published in the Rules and Regulations section of this issue of the Federal Register.

No notice of proposed rulemaking was required in connection with this rulemaking action. Accordingly, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601–612). Nevertheless, the Secretary of Veterans Affairs certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. The adoption of the proposed rule would not have a direct effect on small entities.

There is no Catalog of Federal Domestic Assistance program number.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Archives and records, Cemeteries, Claims, Courts, Flags, Freedom of information, Government contracts, Government employees, Government property, Infants and children, Inventions and patents, Investigations, Parking, Penalties, Postal Service, Privacy, Reporting and recordkeeping requirements, Seals and insignia, Security measures, Wages.

Approved: June 21, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 1 is proposed to be amended as set forth below:

PART 1—GENERAL PROVISIONS

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

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 1.12 [Removed]

Section 1.12 and the undesignated center heading preceding § 1.12 are removed.

[FR Doc. 96–16643 Filed 6–28–96; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[WA 54–7127; FRL–5529–9]

Clean Air Act Reclassification; Spokane, Washington Carbon Monoxide Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to find that the Spokane, Washington carbon monoxide (CO) nonattainment area has not attained the CO national ambient air quality standard (NAAQS) by the Clean Air Act (CAA) mandated attainment date for moderate nonattainment areas, December 31, 1995. This proposed finding is based on EPA's review of monitored air quality data for compliance with the CO NAAQS. If EPA takes final action on this proposed finding, the Spokane CO nonattainment area will be reclassified by operation of law as a serious nonattainment area. The intended effect of such a reclassification would be to allow the State additional time to submit a new State implementation plan (SIP) providing for attainment of the CO NAAQS by no later than December 31, 2000, the CAA attainment deadline for serious CO areas.

DATES: Written comments on this proposal must be received by July 31, 1996.

ADDRESSES: Written comments should be sent to: Montel Livingston, SIP Manager, Office of Air Quality, M/S OAQ–107, EPA Region 10, Docket #54–7127, 1200 Sixth Avenue, Seattle, Washington 98101. The rulemaking docket for this notice is available for public review during normal business hours at the following location: EPA, Region 10, Office of Air Quality, M/S OAQ–107, 1200 Sixth Avenue, Seattle, Washington 98101. Copies of the docket are also available at the Washington Department of Ecology, Attention Tami Dahlgren, Olympia, Washington 98504–7600, telephone (360) 407–6830; and at the Spokane County Air Pollution Control Authority, West 1101 College, Suite 403, Spokane, Washington 99201, telephone (509) 456–4727.

FOR FURTHER INFORMATION CONTACT: William M. Hedgebeth of the EPA Region 10 Office of Air Quality, (206) 553–7369.

SUPPLEMENTARY INFORMATION:

I. Background

A. CAA Requirements and EPA Actions Concerning Designation and Classifications

The CAA Amendments of 1990 (CAAA) were enacted on November 15, 1990. Under section 107(d)(1)(C) of the CAA, each carbon monoxide (CO) area designated nonattainment prior to enactment of the 1990 Amendments, such as the Spokane area, was designated nonattainment by operation of law upon enactment of the 1990 Amendments. Under section 186(a) of

the CAA, each CO area designated nonattainment under section 107(d) was also classified by operation of law as either "moderate" or "serious" depending on the severity of the area's air quality problem. CO areas with design values between 9.1 and 16.4 parts per million (ppm), such as the Spokane area, were classified as moderate. These nonattainment designations and classifications were codified in 40 CFR part 81. See 56 FR 56694 (November 6, 1991). States containing areas that were classified as moderate nonattainment by operation of law under section 107(d) were required to submit State implementation plans (SIPs) designed to attain the CO national ambient air quality standard (NAAQS) as expeditiously as practicable but no later than December 31, 1995.¹

B. Reclassification to a Serious Nonattainment Area

1. EPA has the responsibility, pursuant to sections 179(c) and 186(b)(2) of the CAA, of determining, within six months of the applicable attainment date whether the Spokane area has attained the CO NAAQS. Under section 186(b)(2)(A), if EPA finds that the area has not attained the CO NAAQS, it is reclassified as serious by operation of law. Pursuant to section 186(b)(2)(B) of the Act, EPA must publish a notice in the Federal Register identifying areas which failed to attain the standard and therefore must be reclassified as serious by operation of law. EPA makes attainment determinations for CO nonattainment areas based upon whether an area has two years (or eight consecutive quarters) of clean air quality data.² Section 179(c)(1) of the CAA states that the attainment determination must be based upon an area's "air quality as of the attainment date." Consequently, EPA will determine whether an area's air quality has met the CO NAAQS by December 31, 1995, based upon the most recent two years of air quality data entered into the Aerometric Information Retrieval System (AIRS) data base.

EPA determines a CO nonattainment area's air quality status in accordance

with 40 CFR part 50.8 and EPA policy.³ EPA has promulgated two NAAQS for CO: an 8-hour average concentration and a 1-hour average concentration. Because there were no violations of the 1-hour standard in the Spokane area in 1994 and 1995, this notice addresses only the air quality status of the Spokane area with respect to the 8-hour standard. The 8-hour CO NAAQS requires that not more than one non-overlapping 8-hour average per year per monitoring site can exceed 9.0 ppm (values below 9.5 are rounded down to 9.0 and they are not considered exceedances). The second exceedance of the 8-hour CO NAAQS at a given monitoring site within the same year constitutes a violation of the CO NAAQS.

2. SIP Requirements for Serious CO Areas: CO nonattainment areas reclassified as serious under section 186(b)(2) of the CAA are required to submit, within 18 months of the area's reclassification, SIP revisions demonstrating attainment of the CO NAAQS as expeditiously as practicable but no later than December 31, 2000. The serious CO area planning requirements are set forth in section 187(b) of the CAA. EPA has issued two general guidance documents related to the planning requirements for CO SIPs. The first is the "General Preamble for the Implementation of Title I of the CAAA of 1990" that sets forth EPA's preliminary views on how the Agency intends to act on SIPs submitted under Title I of the CAA. See generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992). The second general guidance document for CO SIPs issued by EPA is the "Technical Support Document to Aid the States with the Development of Carbon Monoxide State Implementation Plans," July 1992. If the Spokane area is reclassified to serious, the State would have to submit a SIP revision to EPA that, in addition to the attainment demonstration, includes: (1) A forecast of vehicle miles travelled (VMT) for each year before the attainment year and provisions for annual updates of these forecasts; (2) adopted contingency measures; and (3) adopted transportation control measures and strategies to offset any growth in CO emissions from growth in VMT or number of vehicle trips. See CAA sections 187(a)(7), 187(a)(2)(A), 187(a)(3), 187(b)(2), and 187(b)(1). Upon reclassification, contingency measures

in the moderate area plan for the Spokane area must be implemented.

C. Attainment Date Extensions

If a state does not have the two consecutive years of clean data necessary to show attainment of the NAAQS, it may apply, under section 186(a)(4) of the CAA, for a one year attainment date extension. EPA may, in its discretion, grant such an extension if the state has: (1) Complied with the requirements and commitments pertaining to the applicable implementation plan for the area, and (2) the area has measured no more than one exceedance of the CO NAAQS at any monitoring site in the nonattainment area in the year preceding the extension year. Under section 186(a)(4), EPA may grant up to two such extensions if these conditions have been met. Because the Spokane nonattainment area had four exceedances in 1995, the area does not qualify for an extension.

II. This Action

By today's action, EPA is proposing to find that the Spokane CO nonattainment area has failed to demonstrate attainment of the CO NAAQS by December 31, 1995. This proposed finding is based upon air quality data showing violations of the CO NAAQS during 1995.

Ambient Air Monitoring Data: The following table lists the monitoring site in the Spokane CO nonattainment area where the 8-hour CO NAAQS has been exceeded during 1995, based on data validated by the Washington Department of Ecology and entered into the AIRS data base.

EXCEEDANCES OF 8-HOUR CO NAAQS FOR SPOKANE NONATTAINMENT AREA

Monitoring site	1995	
	Concentration	Date of exceedance
3rd and Washington.	10.4 ppm	Jan. 9, 1995.
3rd and Washington.	13.1 ppm	Dec. 11, 1995.
3rd and Washington.	11.2 ppm	Dec. 12, 1995.
3rd and Washington.	9.6 ppm ...	Dec. 15, 1995.

In letters to EPA of February 20, 1996, and March 19, 1996, the City of Spokane raised questions whether the monitoring data from the CO monitor located at 3rd Avenue and Washington Street is representative of the ambient air. In a letter to the City of Spokane dated April

¹ The moderate area SIP requirements are set forth in section 187(a) of the Act and differ depending on whether the area's design value is below or above 12.7 ppm. The Spokane area has a design value above 12.7 ppm. 40 CFR part 81.348.

² See generally memorandum from Sally L. Shaver, Director, Air Quality Strategies and Standards Division, EPA, to Regional Air Office Directors, entitled "Criteria for Granting Attainment Date Extensions, Making Attainment Determinations, and Determinations of Failure to Attain the NAAQS for Moderate CO Nonattainment Areas," October 23, 1995 (Shaver memorandum).

³ See memorandum from William G. Laxton, Director Technical Support Division, entitled "Ozone and Carbon Monoxide Design Value Calculations", June 18, 1990. See also Shaver memorandum.

9, 1996, EPA Region 10 advised that any analysis of whether the monitor was properly sited would need to be conducted in the context of 40 CFR part 58, Appendix E, which provides specific criteria for the placement of CO monitors, including consideration of the placement of such monitors vis-a-vis street canyons and traffic corridors. In addition, the State of Washington Department of Ecology provided EPA with copies of four audit reports from 1995 which indicate that that CO monitor met the Part 58 siting criteria and that the monitor was reporting accurately with the acceptance criteria. This information was provided to the City of Spokane in a letter dated May 28, 1996.

EPA believes that the 1995 exceedances are valid for use in determining the attainment status of the Spokane area. EPA is therefore proposing to find, based on the 1995 CO violations discussed above, that the area did not attain the CO NAAQS by December 31, 1995.

III. Executive Order (EO) 12866

Under E.O. 12866, 58 FR 51735 (October 4, 1993), EPA is required to determine whether regulatory actions are significant and therefore should be subject to OMB review, economic analysis, and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, under paragraph (1), that the rule may "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 environment, public health or safety, or State, local, or tribal governments or communities." The Agency has determined that the finding of failure to attain proposed today would result in none of the effects identified in section 3(f). Under section 186(b)(2) of the CAA, findings of failure to attain and reclassification of nonattainment areas are based upon air quality considerations and must occur by operation of law in light of certain air quality conditions. They do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, findings of failure to attain and reclassification

cannot be said to impose a materially adverse impact on State, local, or tribal governments or communities.

IV. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C 603 and 604. Alternatively, EPA may certify 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 government entities with jurisdiction over populations of less than 50,000. As discussed in section III of this notice, findings of failure to attain and reclassification of nonattainment areas under section 186(b)(2) of the CAA do not in and of themselves create any new requirements. Therefore, I certify that today's proposed action does not have a significant impact on small entities.

V. Unfunded Mandates

Under sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, EPA must assess whether various actions undertaken in association with proposed or final regulations include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to State, local or tribal governments in the aggregate. EPA believes, as discussed above, that the proposed finding of failure to attain and reclassification of the Spokane nonattainment area are factual determinations based upon air quality considerations and must occur by operation of law and, hence, do not impose any Federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, Carbon monoxide.

Authority: 42 U.S.C. 7401-7671q.

Dated: June 17, 1996.

Chuck Clarke,

Regional Administrator.

[FR Doc. 96-16670 Filed 6-28-96; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Parts 260, 261, 262, 264, 268, 269 and 271

[FRL-5528-9]

Requirements for Management of Hazardous Contaminated Media (HWIR-media); Proposed Rule—Notice of Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule: notice of extension of comment period.

SUMMARY: Since publication of the proposed rule for Requirements for Management of Hazardous Contaminated Media (HWIR-media) (61 FR 18780 (April 29, 1996)), EPA has received several requests to extend the comment period. Today, the Agency is extending the comment period 30 days to August 28, 1996.

DATES: The comment period on the proposed rule for Requirements for Management of Hazardous Contaminated Media (61 FR 18780) is extended from July 29, 1996 to August 28, 1996.

ADDRESSES: Commenters on the HWIR-media proposal must send an original and two copies of their comments referencing Docket Number F-96-MHWP-FFFFF to: (1) If using regular US Postal Service mail: RCRA Docket Information Center, Office of Solid Waste (5305W), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW., Washington, DC 20460, or (2) if using special delivery, such as overnight express service: RCRA Docket Information Center (RIC), Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. For other information regarding submitting comments electronically or viewing the comments received and supporting information, please refer to the proposed rule (61 FR 18780 (April 29, 1996)). The RCRA Information Center is located at Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington Virginia and is open for public inspection and copying of supporting information for RCRA rules from 9 am to 4 pm Monday through Friday, except for Federal holidays. The public must make an appointment to view docket materials by calling (703) 603-9230. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost \$0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Hotline at 1-800-424-9346 or TDD 1-800-553-7672 (hearing impaired).

Callers within the Washington Metropolitan Area must dial 703-412-9810 or TDD 703-412-3323 (hearing impaired). The RCRA Hotline is open Monday-Friday, 9 a.m. to 6 p.m., Eastern Standard Time. For more detailed information on specific aspects of the HWIR-media rulemaking, contact Carolyn L. Hoskinson, Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, phone (703) 308-8626.

SUPPLEMENTARY INFORMATION: On April 29, 1996, EPA proposed Requirements for Management of Hazardous Contaminated Media (HWIR-media). See 61 FR 17870. The Agency established a 90-day comment period and indicated that comments on the proposal would be accepted until July 29, 1996.

EPA has received written requests to extend the comment period for HWIR-media from the Commonwealth of Massachusetts, WMX Technologies, Inc., American Petroleum Institute, and the American Industrial Health Council. The additional time requested was for 60 days.

As justification for a time extension, stakeholders noted: (1) the significant impact on state superfund and hazardous waste programs, (2) the need to coordinate comments with other organizations, (3) the complexity of the rulemaking, (4) the overlap of this comment period with the comment period for the Advanced Notice of Proposed Rulemaking (ANPR) for Corrective Action for releases from Solid Waste Management Units at Hazardous Waste Management Facilities (61 FR 19432 (May 1, 1996)) which ends July 30, 1996, and (5) the need to gather and evaluate data.

The Agency has decided to grant an additional 30 days beyond the proposed 90-day comment period to allow stakeholders enough time to review the provisions of the rulemaking and to formulate comments and recommendations for the Agency's consideration in developing the final rule. The Agency believes that 120 days allows for sufficient time for commenters to evaluate the proposal, coordinate comments with others, and gather and evaluate data. This 30 day extension will stagger the comment deadlines for this proposed rule and the corrective action ANPR (61 FR 19432) mentioned above.

The Agency does not believe that the 60 day extension requested is necessary. The Agency has extensively involved stakeholders during the preparation of the proposed rulemaking, beginning in January 1993. EPA announced public

meetings of the HWIR Federal Advisory Committee in the Federal Register and the public was invited to attend and participate in the discussions between January 1993 and September 1994. Stakeholders were aware of the types of issues that would be discussed in the proposed rule, and therefore have had adequate time to prepare to present comments and data to the Agency on the general issues. As for the specific requirements proposed in the April 29, 1996 proposal, 120 days provides sufficient time to respond. There is broad agreement that reform of the RCRA Subtitle C management requirements for remediation wastes is needed. The Agency wishes to move forward with this important reform, and believes that the requested 60 day extension would cause unnecessary delay. Accordingly, the Agency is extending the comment period 30 days to August 28, 1996 to provide for a 120-day comment period.

The Agency also received requests to extend the comment period for 60 additional days for the RCRA corrective action Advance Notice of Proposed Rulemaking ("ANPR") (61 FR 19432) from American Petroleum Institute and the American Industrial Health Council. As justification for a time extension, stakeholders noted: (1) The need for adequate time for public review, and (2) limited expert resources to comment on both the HWIR-media (61 FR 18780) proposal and the corrective action ANPR (61 FR 19432) at the same time. The Agency has decided to retain the current 90 day comment period for the ANPR; comments on the ANPR are due by July 30, 1996. Although the ANPR requests comment on a range of corrective action issues, it does not propose any specific changes to the program, and is primarily soliciting views of interested parties rather than detailed technical analysis. Therefore, the Agency believes that a 90 day public comment period is adequate time. The Agency intends to move expeditiously forward with its plans to identify and implement improvements to the corrective action program. Any newly proposed or repropoed corrective action regulations which follow the ANPR will undergo appropriate public involvement and review as part of the rulemaking process. In addition, the Agency is providing relief from commenting on HWIR-media and the corrective action ANPR at the same time by extending the comment period for the HWIR-media proposal.

One of the requests for an extension asked that the Agency specifically identify those portions of the 1990 corrective action proposal (55 FR 30798

(July 27, 1990)) which EPA plans to promulgate as final. EPA has not determined what, if any, portions of the 1990 proposal are appropriate for finalizing, but rather solicited comment on this issue. EPA provided opportunity for notice and comment on the 1990 proposal at the time of that proposal. Comments submitted during the 1990 comment period, as well as comments on this ANPR, will be considered before the Agency takes final action on any part of the 1990 proposal. In the May 1, 1996 ANPR (61 FR 19432) EPA requests that commenters identify specific elements of the 1990 proposal which could be promulgated without additional public review and the advantages and disadvantages of immediately promulgating such provisions. Please see the May 1, 1996 ANPR (61 FR 19432, 19456) for additional discussion of this issue.

Dated: June 20, 1996.

Elliott Laws,

Assistant Administrator for the Office of Solid Waste and Emergency Response.

[FR Doc. 96-16669 Filed 6-28-96; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-7184]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each

community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT:

Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646-2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also

used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612 Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Arkansas	Adona (City) Perry County.	Howell Creek	At confluence with Rocky Cypress Creek	None	*363
			Approximately 400 feet upstream of Locust Road.	None	*411
		Rocky Cypress Creek	Approximately 6,950 feet downstream of Railroad Street.	None	*339
			Approximately 1,500 feet upstream of Railroad Street.	None	*366

Maps are available for inspection at the City of Adona, City Hall, Highway 10 West, Adona, Arkansas.

Send comments to The Honorable Bill Greene, Mayor, City of Adona, P.O. Box 101, Adona, Arkansas 72001.

Arkansas	Houston (City) Perry County.	West Fork Mill Creek	Approximately 450 feet upstream of Little Rock and Western Railroad bridge.	N/A	*286
			Approximately 1,650 feet upstream of Route 113 bridge.	N/A	*286
		West Fork Mill Creek Tributary 1.	Approximately 200 feet above confluence with West Fork Mill Creek.	N/A	*286
			Approximately 250 feet upstream of Route 216 bridge.	N/A	*297
		West Fork Mill Creek Tributary 2.	Approximately 650 feet upstream of confluence with West Fork Mill Creek.	N/A	*287
			Approximately 300 feet upstream of private drive (northern).	N/A	*295
		Houston Creek	Approximately 1,400 feet downstream of Little Rock and Western Railroad bridge.	N/A	*305
			Approximately 1,100 feet upstream of Route 113 bridge.	N/A	*329

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified

Maps are available for inspection at City Hall, City of Houston, Main Street, Houston, Arkansas.

Send comments to The Honorable Jerry Lawson, Mayor, City of Houston, P.O. Box 166, Houston, Arkansas 72070.

Arkansas	Searcy (City) White County.	Deener Creek	At confluence with Little Red River	*221	*221
			Just upstream of North Main Street	*221	*221
			Approximately 100 feet upstream of North Maple (Highway 16).	*223	*225
		Gin Creek	Approximately 100 feet downstream of Ella Street.	*232	*233
			At confluence with Deener Creek	*221	*221
			Just upstream of Davis Drive	*221	*221

Maps are available for inspection at the City of Searcy, City Hall, 401 West Arch, Searcy, Arkansas.

Send comments to The Honorable David Evans, Mayor, City of Searcy, 401 West Arch, Searcy, Arkansas 72143.

Arkansas	Washington County and Incorporated Areas.	Middle Fork White River ...	Approximately 0.22 mile upstream of Highway 16.	None	*1,182
			Just downstream of Harris Drive (Extended).	None	*1,192
		White River	Approximately 2.8 miles downstream of Highway 74.	None	*1,181
			Just downstream of Highway 74	None	*1,195
			Approximately 0.8 mile upstream of East First Avenue.	None	*1,215

Maps are available for inspection at the Washington County Courthouse, 2 North College, Fayetteville, Arkansas.

Send comments to The Honorable Charles Johnson, Washington County Judge, 2 North College, Fayetteville, Arkansas 72701.

Maps are available for inspection at the City of Fayetteville, City Hall, 113 West Mountain Street, Fayetteville, Arkansas.

Send comments to The Honorable Fred Hanna, Mayor, City of Fayetteville, 113 West Mountain Street, Fayetteville, Arkansas 72701.

Maps are available for inspection at the City of Elkins, City Hall, 201 West First Street, Elkins, Arkansas.

Send comments to The Honorable Barbara King, Mayor, City of Elkins, P.O. Box 331, Elkins, Arkansas 72727.

California	Grass Valley (City) Nevada County.	Wolf Creek	At corporate limits (approximately 4,100 feet downstream of confluence of Little Wolf Creek).	None	*2,220
			At confluence of Little Wolf Creek	*2,314	*2,312
			Just downstream of Freeman Lane	*2,351	*2,351

Maps are available for inspection at the City of Grass Valley, 125 East Main Street, Grass Valley, California.

Send comments to The Honorable Devere Mautino, Mayor, City of Grass Valley, 125 East Main Street, Grass Valley, California 95945.

California	Nevada County (Unincorporated Areas).	Wolf Creek	At Allison Ranch Road	None	*2,041
			Just downstream of Marlor Bridge	None	*2,066
			Approximately 2,950 feet upstream of Marlor Bridge.	None	*2,110
			Approximately 100 feet upstream of private bridge.	None	*2,206
			Approximately 4,050 feet upstream of confluence of Allison Ranch Ditch.	None	*2,300
			Just upstream of Brunswick Road	None	*2,605
		Little Wolf Creek	Approximately 2,980 feet upstream of Brunswick Road.	None	*2,677
			Approximately 3,300 feet above confluence with Wolf Creek.	None	*2,451
			Approximately 3,740 feet above confluence with Wolf Creek.	None	*2,455

Maps are available for inspection at Nevada County, 950 Maidu Avenue, Nevada City, California.

Send comments to The Honorable Karen Knecht, Chairperson, Nevada County Board of Supervisors, 950 Maidu Avenue, Nevada City, California 95959-8617.

California	San Joaquin County (Unincorporated Areas).	North Fork Mokelumne River.	At divergence from South Fork Mokelumne River.	*15	*15
			Approximately 5,500 feet upstream of divergence from South Fork Mokelumne River.	*15	*15

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 14,000 feet upstream of divergence from South Fork Mokelumne River.	None	*18
			At Interstate Highway 5	None	*19
			At confluence with Cosumnes River	None	*19

Maps are available for inspection at the San Joaquin County Flood Control and Water Conservation District, 1810 East Hazelton Avenue, Stockton, California.

Send comments to The Honorable Robert J. Cabral, Chairman, San Joaquin County Board of Supervisors, 222 East Weber Avenue, Room 701, Stockton, California 95202.

Missouri	Butler County (Unincorporated Areas).	Pike Creek	Just upstream of U.S. Highway 67 south-bound.	*339	*339
			Approximately 800 feet upstream of Roxie Road.	*342	*340
			Just upstream of Highway PP	*345	*346
			Approximately 800 feet upstream of confluence of North Branch Pike Creek.	None	*347
		North Branch Pike Creek	Approximately 700 feet downstream of Holly Trail at the City of Poplar Bluff corporate limits.	*410	*411
		Just upstream of Holly Trail.	At Oak Grove Road	*421	*420
				*427	*427

Maps are available for inspection at 114 Elm Street, Poplar Bluff, Missouri.

Send comments to The Honorable Bob Manns, Chairman, County Commissioners, County Courthouse, Poplar Bluff, Missouri 63901.

Missouri	Poplar Bluff (City)	Pike Creek	Just upstream of the Missouri Pacific Railroad.	*335	*336
	Butler County	At confluence of Black Creek.		*338	*339
			At confluence of Sunset Creek	*342	*340
			Approximately 400 feet downstream of confluence of North Branch Pike Creek.	*347	*346
		North Branch Pike Creek	Approximately 350 feet upstream of confluence with Pike Creek.	*348	*347
			Approximately 2,000 feet upstream of confluence with Pike Creek.	*363	*364
			At confluence of East Fork Pike Creek	*383	*382
			Approximately 100 feet upstream of Russell Road.	*409	*410
			Just upstream of Oak Grove Road	*427	*427
		Hogg Creek	At confluence with Pike Creek	*339	*339
		Just upstream of Tremont Street.		*345	*345
			Approximately 150 feet upstream of Pershing Street.	*354	*354
			Just upstream of Gray Street	*393	*393
			Just upstream of North 14th Street	*424	*422
		Hogg Creek Tributary	At confluence with Hogg Creek	*349	*347
			Approximately 500 feet upstream of confluence with Hogg Creek.	*351	*351
			Just downstream of Highland Road	*360	*358
		Park Creek	Just upstream of 5th Street	*338	*338
			At 6th Street	*338	*339
			Just upstream of 8th Street	*340	*340
			Just upstream of Oakwood Drive	*346	*346
		Shady Creek	Approximately 400 feet downstream of North Main Street.	None	*352
			Approximately 150 feet upstream of Montclair Drive.	None	*359
			Just upstream of Fox Drive	None	*379
			Just upstream of Shady Lane	None	*399
			Approximately 500 feet upstream of Woodstone Road.	None	*429
		Woodlawn Branch	Approximately 200 feet downstream of East Avondale Drive.	None	*346
			Just upstream of confluence of Clay Creek.	None	*351
			Just upstream of South Avondale Drive	None	*354

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Maps are available for inspection at the City of Poplar Bluff, 114 Elm Street, Poplar Bluff, Missouri. Send comments to The Honorable Ron Black, Mayor, City of Poplar Bluff, P.O. Box 460, Poplar Bluff, Missouri 63902.					
Oklahoma	Adair County (Unincorporated Areas).	Caney Creek	Approximately 3,900 feet downstream of confluence with Spring Tributary.	None	*976
			Approximately 1,600 feet upstream of County Road.	None	*1,042
			Approximately 1,850 feet upstream of County Road.	None	*1,044
			Approximately 5,500 feet upstream of confluence with Eighth Street Tributary.	None	*1,059
			Approximately 1,600 feet upstream of Oklahoma Avenue.	None	*1,118
		Eigth Street Tributary	At confluence with Caney Creek	None	*1,054
			Approximately 150 feet downstream of Eighth Street.	None	*1,068
	Master Drain Tributary	At confluence with Caney Creek	None	*1,050	

Maps are available for inspection at the Adair County Courthouse, Stilwell, Oklahoma.

Send comments to The Honorable Darryll Wilson, Chairperson, Adair County Board of Commissioners, P.O. Box 169, Stilwell, Oklahoma 74960.

Oklahoma	Stilwell (City) Adair County.	Caney Creek	Approximately 3,000 feet downstream of Olive Street (at the corporate limits).	None	*1,042
			Approximately 2,700 feet downstream of Olive Street (at the corporate limits).	None	*1,044
			Approximately 700 feet downstream of Olive Street (at the corporate limits).	None	*1,059
			Just downstream of Elm Street	None	*1,085
			Just upstream of Oklahoma Avenue (at the corporate limits).	None	*1,118
		Eighth Street Tributary	Approximately 350 feet downstream of Eighth Street (at the corporate limits).	None	*1,065
			Approximately 100 feet downstream of Eighth Street (at the corporate limits).	None	*1,068

Maps are available for inspection at the City Clerk's Office, 503 West Division, Stilwell, Oklahoma.

Send comments to The Honorable Neil Morton, Mayor, City of Stilwell, 503 West Division, Stilwell, Oklahoma 74960.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: June 25, 1996.

Richard W. Krimm,

Acting Associate Director for Mitigation.

[FR Doc. 96-16698 Filed 6-28-96; 8:45 am]

BILLING CODE 6718-04-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Parts 1 and 8

[Docket No. OST-96-1427; Notice 96-16]

RIN: 2105-AC51

Classified Information; Revision

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice of proposed rulemaking.

SUMMARY: DOT proposes to revise its regulations regarding classification and declassification of, and access to,

classified information, and to delegate to the Assistant Secretary for Administration authority to ensure compliance within DOT with the regulations and the underlying Executive Orders. This action is taken in response to the President's Regulatory Reinvention Initiative and in order to implement recent Executive Orders.

DATES: Comments are due August 30, 1996.

ADDRESSES: Comments should be addressed to Documentary Services Division, Attention: Docket Section, Room PL401, Docket No. OST-96-1427, Department of Transportation, C-55, Washington, DC 20590. Any person wishing acknowledgment that his/her comments have been received should include a self-addressed stamped postcard. Comments received will be available for public inspection and copying in the Documentary Services Division, Room PL401, Department of Transportation Building, 400 Seventh Street, SW, Washington, DC, from 10:00

a.m. to 5:00 p.m. ET Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Robert I. Ross, Office of the General Counsel, C-10, Department of Transportation, Washington, DC 20590, telephone (202) 366-9156, FAX (202) 366-9170.

SUPPLEMENTARY INFORMATION: In 1995, the President of the United States issued two Executive Orders making substantial revisions to the rules under which agencies of the Executive Branch, such as DOT, manage information that requires special treatment in the interest of national security. Briefly stated, Executive Order 12958 of April 17, 1995, Classified National Security Information, requires that less information be classified; and Executive Order 12968 of August 2, 1995, Access to Classified Information, requires agencies to provide administrative review of decisions to deny access to classified information. This proposal seeks to implement both Orders. To

foster uniform administration within DOT, authority to ensure compliance is being delegated to the Assistant Secretary for Administration.

Analysis of Regulatory Impacts

This amendment is not a "significant regulatory action" within the meaning of Executive Order 12866. It is also not significant within the definition in DOT's Regulatory Policies and Procedures, 49 FR 11034 (1979), in part because it does not involve any change in important Departmental policies. Because the economic impact should be minimal, further regulatory evaluation is not necessary. Moreover, I certify that this proposal will not have a significant economic impact on a substantial number of small entities.

This proposal does not significantly affect the environment, and therefore an environmental impact statement is not required under the National Environmental Policy Act of 1969. It has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for federalism to warrant preparation of a Federalism Assessment.

Finally, the proposal does not contain any collection of information requirements, requiring review under the Paperwork Reduction Act of 1980.

List of Subjects

49 CFR Part 1

Authority delegations (government agencies), Organization and functions (government agencies), Transportation Department.

49 CFR Part 8

Classified information.

In accordance with the above, DOT proposes to amend 49 CFR, as follows:

PART 1—[AMENDED]

1. The authority citation for part 1 would continue to read as follows:

Authority: 49 USC 322.

2. In § 1.59, a new paragraph (e)(9) would be added to read as follows:

§ 1.59 Delegations to the Assistant Secretary for Administration.

(e) * * *.

(9) Ensure Department-wide compliance with Executive Orders 10450, 12829, 12958, 12968, and related regulations and issuances.

* * * * *

3. Part 8 would be revised to read as follows:

PART 8—CLASSIFIED INFORMATION: CLASSIFICATION/DECLASSIFICATION/ACCESS

Subpart A—General

Sec.

- 8.1 Scope.
- 8.3 Applicability.
- 8.5 Definitions.
- 8.7 Spheres of responsibility.

Subpart B—Classification/Declassification of Information

- 8.9 Information Security Review Committee.
- 8.11 Authority to classify information.
- 8.13 Authority to downgrade or declassify.
- 8.15 Mandatory review for classification.
- 8.17 Classification challenges.
- 8.19 Procedures for submitting and processing requests for classification reviews.
- 8.21 Burden of proof.
- 8.23 Classified information transferred to the Department of Transportation.

Subpart C—Access to Information

- 8.25 Personnel Security Review Board.
 - 8.27 Public availability of declassified information.
 - 8.29 Access by historical researchers and former Presidential appointees.
 - 8.31 Industrial security.
- Authority: EO 10450, 18 FR 2489, 3 CFR 1949–1953, Com., p. 936; EO 12829, 58 FR 3479; EO 12458, 60 FR 19825; EO 12968, 60 FR 40245.

Subpart A—General

§ 8.1 Scope.

This part sets forth procedures for the classification, declassification, and availability of information that must be protected in the interest of national security, in implementation of Executive Order 12958 of April 17, 1995, "Classified National Security Information;" and for the review of decisions to revoke, or not to issue, national security information clearances, or to deny access to classified information, under Executive Order 12968 of August 2, 1995, "Access to National Security Information".

§ 8.3 Applicability.

This part applies to all elements of the Department of Transportation.

§ 8.5 Definitions.

As used in this part:

Classification means the act or process by which information is determined to be classified information.

Classification levels means the following three levels at which information may be classified:

(a) *Top Secret*. Information that requires the highest degree of protection, and the unauthorized disclosure of which could reasonably be expected to cause exceptionally grave

damage to the national security that the original classification authority is able to identify or describe.

(b) *Secret*. Information that requires a substantial degree of protection, and the unauthorized disclosure of which could reasonably be expected to cause serious damage to the national security that the original classification authority is able to identify or describe.

(c) *Confidential*. Information that requires protection and the unauthorized disclosure of which could reasonably be expected to cause damage to the national security that the original classification authority is able to identify or describe.

Classified information or *classified national security information* means information that has been determined under Executive Order 12958, or any predecessor or successor order, to require protection against unauthorized disclosure, and is marked to indicate its classified status when in documentary form.

Clearance means that an individual is eligible, under the standards of Executive Orders 10450 and 12968 and appropriate DOT regulations, for access to classified information.

Damage to the national security means harm to the national defense or foreign relations of the United States from the unauthorized disclosure of information, to include the sensitivity, value, and utility of that information.

Declassification means the authorized change in the status of information from classified information to unclassified information.

Downgrading means a determination by a declassification authority that information classified and safeguarded at a specific level shall be classified and safeguarded at a lower level.

Information means any knowledge that can be communicated, or documentary material, regardless of its physical form or characteristics, that is owned by, produced by or for, or is under the control of the United States Government. *Control* means the authority of the agency that originates information, or its successor in function, to regulate access to the information.

Mandatory declassification review means the review for declassification of classified information in response to a request for declassification that qualifies under Section 3.6 of Executive Order 12958.

Original classification means an initial determination that information requires, in the interest of national security, protection against unauthorized disclosure.

Original classification authority means an individual authorized in

writing, either by the President or by agency heads or other officials designated by the President, to classify information in the first instance.

§ 8.7 Spheres of responsibility.

(a) Pursuant to Section 5.6(c) of Executive Order 12958, and to Section 6.1 of Executive Order 12968, the Assistant Secretary for Administration is hereby designated as the senior agency official of the Department of Transportation with assigned responsibilities to assure effective compliance with and implementation of Executive Order 12958, Executive Order 12968, Office of Management and Budget Directives, these regulations, and related issuances.

(b) In the discharge of these responsibilities, the Assistant Secretary for Administration will be assisted by the Director of Security, who, in addition to other actions directed by this part, will evaluate the overall application of and adherence to the security policies and requirements prescribed herein and who will report his/her findings and recommendations to the Assistant Secretary for Administration, heads of Departmental elements, and, as appropriate, to the Secretary.

(c) Secretarial Officers and heads of Departmental elements will assure that the provisions herein are effectively administered, that adequate personnel and funding are provided for this purpose, and that corrective actions that may be warranted are taken promptly.

Subpart B—Classification/Declassification of Information

§ 8.9 Information Security Review Committee.

(a) There is hereby established a Department of Transportation Information Security Review Committee, which will have authority to:

(1) Act on all suggestions and complaints not otherwise resolved with respect to the Department's administration of Executive Order 12958 and implementing directives, including those regarding overclassification, failure to declassify, or delay in declassifying;

(2) Act on appeals of requests for classification reviews, and appeals of requests for records under 5 U.S.C. 552 (Freedom of Information Act) when the initial, and proposed final, denials are based on continued classification of the record; and

(3) Recommend to the Secretary, when necessary, appropriate administrative action to correct abuse or

violation of any provision of Executive Order 12598 and implementing directives.

(b) The Information Security Review Committee will be composed of the Assistant Secretary for Administration, who will serve as Chair; the General Counsel; and the Director of Security. When matters affecting a particular Departmental agency are at issue, the Associate Administrator for Administration for that agency, or the Chief of Staff for the U.S. Coast Guard, as the case may be, will participate as an ad hoc member, together with the Chief Counsel of that agency. Any regular member may designate a representative with full power to serve in his/her place.

(c) In carrying out its responsibilities to review decisions to revoke or not to issue clearances, or to deny access to classified information, the Committee will establish whatever procedures it deems fit.

§ 8.11 Authority to classify information.

(a) Executive Order 12958 confers upon the Secretary of Transportation the authority to originally classify information as SECRET with further authorization to delegate this authority.

(b) The following delegations of authority to originally classify information as "SECRET", which may not be redelegated, are hereby made:

(1) *Office of the Secretary of Transportation.* The Deputy Secretary; Assistant Secretary for Administration; Director of Intelligence and Security; Director of Security.

(2) *United States Coast Guard.* Commandant; Chief, Office of Law Enforcement and Defense Operations.

(3) *Federal Aviation Administration.* Administrator; Assistant Administrator for Civil Aviation Security.

(4) *Maritime Administration.* Administrator.

(c) Although the delegations of authority set out in paragraph (b) of this section are expressed in terms of positions, the authority is personal and is invested only in the individual occupying the position. The authority may not be exercised "by direction of" a designated official. The formal appointment or assignment of an individual to one of the identified positions or a designation in writing to act in the absence of one of these officials, however, conveys the authority to originally classify information as "SECRET".

(d) Previous delegations and redelegations of authority within the Department of Transportation to originally classify information are hereby rescinded.

§ 8.13 Authority to downgrade or declassify.

Information originally classified by the Department may be specifically downgraded or declassified by either the official authorizing the original classification, if that official is still serving in the same position, the originator's current successor in function, a supervisory official of either, officials delegated declassification authority in writing by the Secretary, or by the Departmental Information Security Review Committee.

§ 8.15 Mandatory review for classification.

(a) All information classified by the Department of Transportation under Executive Order 12958 or predecessor orders shall be subject to a review for declassification if:

(1) the request for review describes the information with sufficient specificity to enable its location with a reasonable amount of effort; and

(2) the information has not been reviewed for declassification within the prior two years. If the information has been reviewed within the prior two years, or the information is the subject of pending litigation, the requestor will be informed of this fact, and of the Department's decision not to declassify the information and of his/her right to appeal the Department's decision not to declassify the information to the Interagency Security Classification Appeals Panel.

(b) All information reviewed for declassification because of a mandatory review will be declassified if it does not meet the standards for classification in Executive Order 12958. The information will then be released unless withholding is otherwise authorized and warranted under applicable law.

§ 8.17 Classification challenges.

(a) Authorized holders of information classified by the Department of Transportation who, in good faith, believe that its classification status is improper are encouraged and expected to challenge the classification status of the information before the Departmental Information Security Review Committee.

(1) No individual will be subject to retribution for bringing such a challenge; and

(2) Each individual whose challenge is denied will be advised that he/she may appeal to the Interagency Security Classification Appeals Panel established by § 5.4 of Executive Order 12958.

(b) This classification challenge provision is not intended to prevent an authorized holder of information classified by the Department of

Transportation from informally questioning the classification status of particular information. Such information inquiries should be encouraged as means to resolve classification concerns and reduce the administrative burden of formal challenges.

§ 8.19 Procedures for submitting and processing requests for classification reviews.

(a) The Director of Security is hereby designated as the official to whom a member of the public or another department or agency should submit a request for a classification review of classified information produced by or under the primary cognizance of the Department. Elements of the Department that receive a request directly will immediately notify the Director.

(b) If the request for classification review involves material produced by or under the cognizance of the U.S. Coast Guard or the Federal Aviation Administration, the Director will forward the request to the headquarters security staff of the element concerned for action. If the request involves material produced by other Departmental elements, the Director will serve as the office acting on the request.

(c) The office acting on the request will:

(1) Immediately acknowledge receipt of the request and provide a copy of the correspondence to the Director. If a fee for search of records is involved pursuant to 49 CFR part 7, the requester will be so notified;

(2) Conduct a security review, which will include consultation with the office that produced the material and with source authorities when the classification, or exemption of material from automatic declassification, was based upon determinations by an original classifying authority; and

(3) Assure that the requester is notified of the determination within 30 calendar days or given an explanation as to why further time is necessary, and provide a copy of the notification to the Director.

(d) If the determination reached is that continued classification is required, the notification to the requester will include, whenever possible, a brief statement as to why the requested material cannot be declassified. The notification will also advise the requester of the right to appeal the determination to the Departmental Information Security Review Committee. A requester who wishes to appeal a classification review decision,

or who has not been notified of a decision after 60 calendar days, may submit an appeal to the Departmental Information Security Review Committee.

(e) If the determination reached is that continued classification is not required, the information will be declassified and the material remarked accordingly. The office acting on the request will then refer the request to the office originating the material or higher authority to determine if it is otherwise withholdable from public release under the Freedom of Information Act (5 U.S.C. 552) and the Department's implementing regulations (49 CFR part 7).

(1) If the material is available under the Freedom of Information Act, the requester will be advised that the material has been declassified and is available. If the request involves the furnishing of copies and a fee is to be collected, the requester will be so advised pursuant to 49 CFR part 7, Departmental regulations implementing the Freedom of Information Act.

(2) If the material is not available under the Freedom of Information Act, the requester will be advised that the material has been declassified but that the record is unavailable pursuant to the Freedom of Information Act, and that the provisions concerning procedures for reconsidering decisions not to disclose records, contained in 49 CFR part 7, apply.

(f) Upon receipt of an appeal from a classification review determination based upon continued classification, the Departmental Information Security Review Committee will acknowledge receipt immediately and act on the matter within 30 calendar days. With respect to information originally classified by or under the primary cognizance of the Department, the Committee, acting for the Secretary, has authority to overrule previous determinations in whole or in part when, in its judgment, continued protection in the interest of national security is no longer required. When the classification of the material produced in the Department is based upon a classification determination made by another department or agency, the Committee will immediately consult with its counterpart committee for that department or agency.

(1) If it is determined that the material produced in the Department requires continued classification, the requester will be so notified and advised of the right to appeal the decision to the Interagency Classification Review Committee.

(2) If it is determined that the material no longer requires classification, it will be declassified and remarked. The Committee will refer the request to the General Counsel, or to the head of the Departmental agency concerned, as the case may be, to determine if the material is otherwise withholdable from the public under the Freedom of Information Act (5 U.S.C. 552) and Departmental regulations, (49 CFR Part 7), and paragraphs (f)(1) and (2) of this section will be followed. A copy of the response to the requester will be provided to the Committee.

(g) Requests for a classification review of material more than 25 years old will be referred directly to the Archivist of the United States and the requester will be notified of the referral. In this event, the provisions of § 8.19 apply.

(h) Whenever a request is insufficient in the description of the record sought, the requester will be asked to limit his request to records that are reasonably obtainable. If, in spite of these steps, the requester does not describe the records with sufficient particularity, or the record requested cannot be obtained with a reasonable amount of effort, the requester will be notified of the reasons why the request is denied and of his/her right to appeal the determination to the Departmental Information Security Review Committee.

§ 8.21 Burden of proof.

For the purpose of determinations to be made under §§ 8.13, 8.15, and 8.17, the burden of proof is on the originating Departmental agency to show that continued classification is warranted.

§ 8.23 Classified information transferred to the Department of Transportation.

(a) Classified information officially transferred to the Department in conjunction with a transfer of function, and not merely for storage purposes, will be considered to have been originated by the Department.

(b) Classified information in the custody of the Department originated by a department or agency that has ceased to exist and for whom there is no successor agency will be deemed to have been originated by the Department. This information may be declassified or downgraded by the Department after consultation with any other agency that has an interest in the subject matter of the information. Such agency will be allowed 30 calendar days in which to express an objection, if it so desires, before action is taken. A difference of opinion that cannot be resolved will be referred to the Departmental Information Security Review Committee, which will consult with its

counterpart committee for the other agency.

(c) Classified information transferred to the National Archives and Records Administration will be declassified or downgraded by the Archivist in accordance with Executive Order 12958, Departmental classification guides, and any existing procedural agreement between the Archivist and the Department. The Department will take all reasonable steps to declassify information contained in records determined to have permanent historical value before they are accessioned in the National Archives.

(d) To the extent practicable, the Department will adopt a system of records management that will facilitate the public release of documents at the time such documents are declassified under the provisions of this part for automatic declassification. To the maximum extent possible without destroying the integrity of the Department's files, all such material will be segregated or set aside for public release upon request. The Department will cooperate with the Archivist in efforts to establish a Government-wide database of information that has been declassified.

Subpart C—Access to Information

§ 8.25 Personnel Security Review Board.

(a) There is hereby established a Department of Transportation Personnel Security Review Board, which will, on behalf of the Secretary of Transportation (except in any case in which the Secretary personally makes the decision), make the administratively final decision on an appeal arising in any part of the Department from:

(1) A decision not to grant access to classified information;

(2) A decision to revoke access to classified information; or

(3) A decision under § 8.29 of this part to deny access to classified information.

(b) The Personnel Security Review Board will be composed of:

(1) two persons appointed by the Assistant Secretary for Administration: one from the Office of Personnel and Training, and one, familiar with personnel security adjudication, from the Office of Security, who will serve as Chair;

(2) one person appointed by the General Counsel, who, in addition to serving as a member of the Board, will provide to the Board whatever legal services it may require; and

(3) one person appointed by each of the Commandant of the Coast Guard and the Federal Aviation Administrator.

(4) Any member may designate a representative, meeting the same criteria

as the member, with full power to serve in his/her place.

(c) In carrying out its responsibilities to review final decisions to revoke or deny access to classified information, the Board will establish whatever procedures it deems fit.

§ 8.27 Public availability of declassified information.

(a) It is a fundamental policy of the Department to make information available to the public to the maximum extent permitted by law. Information that is declassified for any reason loses its status as material protected in the interest of national security. Accordingly, declassified information will be handled in every respect on the same basis as all other unclassified information. Declassified information is subject to the Departmental public information policies and procedures, with particular reference to the Freedom of Information Act (5 U.S.C. 552) and implementing Departmental regulations (49 CFR part 7).

(b) In furtherance of this policy, all classified material produced after June 1, 1972 that is of sufficient historical or other value to warrant preservation as permanent records in accordance with appropriate records administrative standards, and that becomes declassified, will be systematically reviewed prior to the end of each calendar year for the purpose of making the material publicly available. To the maximum extent possible without destroying the integrity of the Department's files, all such material will be segregated or set aside for public release upon request.

§ 8.29 Access by historical researchers and former Presidential appointees.

(a) *Historical researchers.* (1) Persons outside the executive branch who are engaged in historical research projects may have access to classified information provided that:

(i) Access to the information is clearly consistent with the interests of national security; and

(ii) The person to be granted access is trustworthy.

(2) The provisions of this paragraph apply only to persons who are conducting historical research as private individuals or under private sponsorship and do not apply to research conducted under Government contract or sponsorship. The provisions are applicable only to situations where the classified information concerned, or any part of it, was originated by the Department or its contractors, or where the information, if originated elsewhere, is in the sole custody of the Department.

Any person requesting access to material originated in another agency or to information under the exclusive jurisdiction of the National Archives and Records Administration will be referred to the other agency or to the National Archives and Records Administration, as appropriate.

(3) When a request for access to classified information for historical research is received, it will be referred to the appropriate local security office. That office will obtain from the applicant completed Standard Form 86, Questionnaire for National Security Positions, in triplicate, and Standard Form 87, Fingerprint Chart; a statement in detail to justify access, including identification of the kind of information desired and the organization or organizations, if any, sponsoring the research; and a written statement (signed, dated, and witnessed) with respect to the following:

(i) That the applicant will abide by regulations of the Department:

(A) To safeguard classified information; and

(B) To protect information that has been determined to be proprietary or privileged and is therefore not eligible for public dissemination.

(ii) That the applicant understands that any classified information that the applicant receives affects the security of the United States.

(iii) That the applicant acknowledges an obligation to safeguard classified information or privileged information of which the applicant gains possession or knowledge as a result of the applicant's access to files of the Department.

(iv) That the applicant agrees not to reveal to any person or agency any classified information or privileged information obtained as a result of the applicant's access except as specifically authorized in writing by the Department, and further agrees that the applicant shall not use the information for purposes other than those set forth in the applicant's application.

(v) That the applicant agrees to authorize a review of the applicant's notes and manuscript for the sole purpose of determining that no classified information or material is contained therein.

(vi) That the applicant understands that failure to abide by conditions of this statement will constitute sufficient cause for canceling the applicant's access to classified information and for denying the applicant any future access, and may subject the applicant to criminal provisions of Federal law as referred to in this statement.

(vii) That the applicant is aware and fully understands that title 18, United

States Code, Crimes and Criminal Procedures, and the Internal Security Act of 1950, as amended, title 50, United States Code, prescribe, under certain circumstances, criminal penalties for the unauthorized disclosure of information respecting the national security, and for loss, destruction, or compromise of such information.

(viii) That this statement is made to the U.S. Government to enable it to exercise its responsibilities for the protection of information affecting the national security.

(ix) That the applicant understands that any material false statement that the applicant makes knowingly and willfully will subject the applicant to the penalties of 18 U.S.C. 1001.

(4) The security office will process the forms in the same manner as specified for a preappointment national agency check for a critical-sensitive position. Upon receipt of the completed national agency check, the security office, if warranted, may determine that access by the applicant to the information will be clearly consistent with the interests of national security and the person to be granted access is trustworthy. If deemed necessary, before making its determination, the office may conduct or request further investigation. Before access is denied in any case, the matter will be referred through channels to the Director of Security for review and submission to the Personnel Security Review Board for final review.

(5) If access to TOP SECRET or intelligence or communications security information is involved a special background investigation is required. However, this investigation will not be requested until the matter has been referred through channels to the Director of Security for determination as to adequacy of the justification and the consent of other agencies as required.

(6) When it is indicated that an applicant's research may extend to material originating in the records of another agency, approval must be obtained from the other agency prior to the grant of access.

(7) Approvals for access will be valid for the duration of the current research project but no longer than 2 years from the date of issuance, unless renewed. If a subsequent request for similar access is made by the individual within 1 year from the date of completion of the current project, access may again be granted without obtaining a new National Agency Check. If more than 1 year has elapsed, a new National Agency Check must be obtained. The local security office will promptly advise its headquarters security staff of

all approvals of access granted under these provisions.

(8) An applicant may be given access only to that classified information that is directly pertinent to the applicant's approved project. The applicant may review files or records containing classified information only in offices under the control of the Department. Procedures must be established to identify classified material to which the applicant is given access. The applicant must be briefed on local procedures established to prevent unauthorized access to the classified material while in the applicant's custody, for the return of the material for secure storage at the end of the daily working period, and for the control of the applicant's notes until they have been reviewed. In addition to the security review of the applicant's manuscript, the manuscript must be reviewed by appropriate offices to assure that it is technically accurate insofar as material obtained from the Department is concerned, and is consistent with the Department's public release policies.

(b) *Former Presidential appointees.* Persons who previously occupied policymaking positions to which they were appointed by the President may be granted access to classified information or material that they originated, reviewed, signed, or received, while in public office, provided that:

(1) It is determined that such access is clearly consistent with the interests of national security; and

(2) The person agrees to safeguard the information, to authorize a review of the person's notes to assure that classified information is not contained therein, and that the classified information will not be further disseminated or published.

§ 8.31 Industrial security.

(a) *Background.* The National Industrial Security Program was established by Executive Order 12829 of January 6, 1993 for the protection of information classified pursuant to Executive Order 12356 of April 2, 1982, National Security Information, or its predecessor or successor orders, and the Atomic Energy Act of 1954, as amended. The Secretary of Defense serves as the Executive Agent for inspecting and monitoring contractors, licensees, grantees, and certificate holders that require or will require access to, or that store or will store, classified information, and for determining the eligibility for access to classified information of contractors, licensees, certificate holders, and grantees, and their respective employees.

(b) *Implementing regulations.* The Secretary of Transportation has entered into agreement for the Secretary of Defense to render industrial security services for the Department of Transportation. Regulations prescribed by the Secretary of Defense to fulfill the provisions of Executive Order 12829 have been extended to protect release of classified information for which the Secretary of Transportation is responsible. Specifically, this regulation is DOD 5220.22-M, National Industrial Security Program Operating Manual. This regulation is effective within the Department of Transportation, which functions as a User Agency as prescribed in the regulation. Appropriate security staffs, project personnel, and contracting officers assure that actions required by the regulation are taken.

Issued in Washington, DC, on May 31, 1996.

Federico Peña,

Secretary of Transportation.

[FR Doc. 96-16524 Filed 6-28-96; 8:45 am]

BILLING CODE 4910-62-P

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 96-066; Notice 01]

RIN 2127-AG19

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment; Heavy Truck Conspicuity; Evaluation Plan

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comment on proposed collection of information.

SUMMARY: NHTSA is initiating a study to evaluate the safety effects of the Conspicuity Systems requirement (Section 5.7) of Federal Motor Vehicle Safety Standard (FMVSS) No.108, "Lamps, Reflective Devices, and Associated Equipment. To carry out the study, NHTSA has requested that special motor vehicle crash data be collected by two state law enforcement agencies. Before a Federal agency can collect certain information, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal Agencies must solicit public comment on the proposed collection of

information. In compliance with these procedures, NHTSA requests comments on the issues contained at the end of this notice.

DATES: Comments must be received by August 30, 1996.

ADDRESSES: Comments should refer to the docket and notice numbers set forth above and be submitted to the Docket Section, NHTSA, Room 5109, 400 Seventh Street SW., Washington, DC 20590 (Docket hours are from 9:30 a.m. to 4 p.m., Monday through Friday). It is requested, but not required, that one original plus 2 copies of the comments be provided.

FOR FURTHER INFORMATION CONTACT: Charles J. Kahane, Chief, Evaluation Division, Office of Strategic Planning and Evaluation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366-1574. (For information on OMB processing procedures for the proposed information collection, contact: Ed Kosek, NHTSA Information Collection Clearance Officer, NHTSA, 400 Seventh Street SW., Washington, DC 20590. Telephone (202) 366-2589).

SUPPLEMENTARY INFORMATION: In September 1992, the NHTSA amended FMVSS Number 108 (49 CFR 571.108), "Lamps, Reflective Devices, and Associated Equipment". This revision, effective December 1, 1993, requires that heavy truck trailers (i.e., those 80 or more inches in width with a Gross Vehicle Weight Rating over 10,000 pounds) manufactured after this date be equipped with retroreflective material (57 FR 58406). Two types of material are permitted—(1) retroreflective sheeting, or tape, and (2) reflex reflectors. The purpose of the material is to reduce traffic accidents, and resulting deaths and injuries, by increasing the visibility of heavy truck trailer combination vehicles and making them more conspicuous to other motorists. Nighttime collisions of other vehicles into the sides and rear of large tractor trailer trucks are the primary types of crashes targeted to be reduced by the retroreflective material.

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735), NHTSA is required to conduct periodic evaluations to assess the effectiveness of the vehicle safety standards it has promulgated. These studies estimate the actual safety benefits achieved by the standards and provide a basis for assessing whether the standards are functioning as intended. Typically, the evaluation studies consist of the analyses of highway crash data which compare the

experience of vehicles equipped with a given standard with the experience of vehicles not equipped with the standard. In addition to all trailers manufactured since December 1993, which are required to have conspicuity marking, some companies have also equipped their older trailers with the material. Trailers equipped prior to December 1993 sometimes used colors and patterns which differ from those specified in the standard. A data collection effort is planned to provide crash information for the purpose of evaluating the safety effects of the conspicuity requirement under FMVSS No.108. NHTSA will analyze the data to estimate the safety benefits, in terms of crashes, injuries, and fatalities avoided that can be attributed to the requirement.

It is proposed that the data be collected by state law enforcement officers (i.e., state police) who investigate and report on highway motor vehicle crashes as part of their regularly assigned duties. For each crash involving a large truck trailer combination vehicle, the information to be provided will consist of a copy of the standard state accident report, which is regularly filed with applicable state authorities, plus a special accident report supplement designed to record data specific to the study of the effects of the retroreflective material on the trailers. The officers investigating the heavy truck crashes will complete the data items on the supplement for each such crash occurring within their jurisdiction. Data from both the report supplement and the corresponding state accident report are required in order to evaluate the safety effects of the conspicuity standard. Two states, Pennsylvania and Florida, are being proposed as the data collection sites. All state-reported crashes of tractor trailer combination vehicles which occur within the boundaries of the two states will be reported. A tractor trailer combination vehicle is defined as a truck tractor pulling one or two trailers—i.e., tractor with semi-trailer or tractor with double trailers.

The data to be provided to NHTSA will consist of two parts. Part 1 will be a copy of the official state motor vehicle accident report involving a heavy truck tractor combination vehicle that is filed with the applicable authorities in the states where the study is being conducted. Part 2 will consist of the special supplement to each state motor vehicle accident report for the designated truck crashes. A copy of the proposed supplement, "Investigator's Supplementary Truck-Tractor Trailer Accident Report," is shown in the

accompanying illustration. The instructions for completing the supplement are also shown. The supplement would be printed as a one-page form with the report form on one side and the instructions on the other side. In order to have sufficient data for a definitive statistical evaluation, it is proposed that the two states collect and provide the specified information for a two-year period. The accident reports would be collected at the state level and forwarded to NHTSA on a monthly basis.

NHTSA estimates that the reporting burden per heavy truck crash report will average 30 minutes. This includes the time to review the instructions, complete the accident report supplement, transmit the information (state report plus supplement), and to coordinate and oversee the collection at the state level. Based on recent crash statistics from the two selected states, it is estimated that approximately 2,000 reports of tractor trailer crashes per year will be reported by each state. The number of respondents (officers who file reports for the designated crashes) cannot be precisely determined, but based on the annual number of crashes and the size of the law enforcement agencies in the two states, the typical officer would complete one report per year. In actuality, some officers may complete no reports while others could complete several reports. This will be a function of where, throughout the state road systems, the crashes occur, and the specific officers who have investigation and reporting jurisdiction over those areas at the time the crashes occur. The total reporting burden for the proposed information collection project is therefore best estimated on the basis of the total estimated number of crashes expected to be reported. For the two study states over the two-year period, it is estimated that 8,000 crashes will be reported. Thus, the total reporting burden is estimated at 4,000 hours (8,000 crashes times 0.5 hours per crash).

NHTSA has consulted with the two selected states and has obtained their consent to support the agency in its evaluation study of retroreflective marking on heavy truck trailers. In compliance with the requirements of the Office of Management and Budget (5 CFR part 1320, "Reporting and Recordkeeping Requirements," effective August 29, 1995), NHTSA requests comments on the proposed collection of information. Comments will be used by the agency in:

a. Evaluating 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;

b. Evaluating 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;

c. Enhancing the quality, utility, and clarity of the information to be collected; and

d. Minimizing 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.

Submission of Comments

Interested persons are invited to submit comments. All comments received before the close of business on the comment closing date will be considered and will be available for examination in the docket at the above

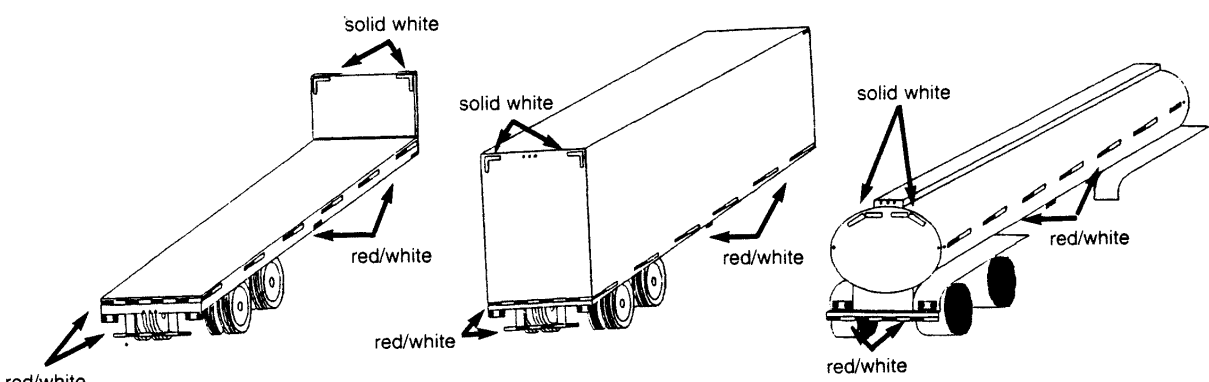
address both before and after that date. To the extent possible, comments filed after the closing date will also be considered.

Authority: 44 U. S. C. 3506 (c); delegation of authority at 49 CFR 1.50.

L. Robert Shelton,

Acting Associate Administrator for Plans and Policy.

BILLING CODE 4910-59-P

 U.S. Department of Transportation National Highway Traffic Safety Administration		Investigator's Supplementary Truck-Tractor Trailer Accident Report National Highway Traffic Safety Administration Special Study <i>(To be completed for all accidents involving a truck-tractor pulling one, or more, trailers)</i> <i>(See instructions on reverse side)</i>	
1	Date of Accident: ____ / ____ / ____ Day of Accident: ☐ Sun ☐ M ☐ T ☐ W ☐ T ☐ F ☐ Sat Time of Accident: Military Time ____ hrs		ACCIDENT REPORT NUMBER <i>(from state accident report)</i>
	Address (Place where accident occurred) _____ County: _____ City, Town or Township: _____		
	Road on which accident occurred (Give name of street or highway no.): _____		
	Posted Speed Limit: _____		
2 Light Condition: ☐ Daylight ☐ Dark ☐ Dark, Lighted ☐ Dawn ☐ Dusk Weather Condition: ☐ Clear ☐ Rain ☐ Fog ☐ Snow/Sleet			
TRAILER—UNIT 1			
3	Trailer Type: ☐ Van ☐ Tanker ☐ Flatbed ☐ Garbage ☐ Auto Transporter ☐ Other (Specify) _____		
	Trailer Vehicle Identification No. (VIN): _____		
	Retroreflective Tape: ☐ Yes ☐ No		
	Tape Pattern: ☐ Side/Rear, per FMVSS 108 or similar (See Figure below) ☐ Other Pattern		
	Tape Color: ☐ Red/White, per FMVSS 108 ☐ Solid White ☐ Solid Yellow ☐ Solid Blue ☐ Other (Specify) _____		
	TAPE CONDITION— Trailer Sides: ☐ Clean ☐ Some Dirt ☐ Very Dirty ☐ Tape peeling, missing segments Trailer Rear: ☐ Clean ☐ Some Dirt ☐ Very Dirty ☐ Tape peeling, missing segments		
TRAILER—UNIT 2			
4	Trailer Type: ☐ Van ☐ Tanker ☐ Flatbed ☐ Garbage ☐ Auto Transporter ☐ Other (Specify) _____		
	Trailer Vehicle Identification No. (VIN): _____		
	Retroreflective Tape: ☐ Yes ☐ No		
	Tape Pattern: ☐ Side/Rear, per FMVSS 108 or similar (See Figure below) ☐ Other Pattern		
	Tape Color: ☐ Red/White, per FMVSS 108 ☐ Solid White ☐ Solid Yellow ☐ Solid Blue ☐ Other (Specify) _____		
	TAPE CONDITION— Trailer Sides: ☐ Clean ☐ Some Dirt ☐ Very Dirty ☐ Tape peeling, missing segments Trailer Rear: ☐ Clean ☐ Some Dirt ☐ Very Dirty ☐ Tape peeling, missing segments		
 Typical Trailer Conspicuity Treatments			

Instructions for Completing Supplementary Report on Truck-Tractor Trailer Accidents
National Highway Traffic Safety Administration Special Study

When To Use Form

If the accident involved a truck-tractor pulling one or more trailers—i.e., tractor with semi-trailer, or tractor with double trailers. Both single vehicle and multi-vehicle accidents are to be reported. *NOTE:* The vehicle data to be reported concerns only **trailers**.

DATA ELEMENT INSTRUCTIONS

Accident Information

Block 1

Date of Accident: Enter month, day, and year.

Day of Accident: Enter day of week.

Time of Accident: Enter the time (*military*).

Place Where Accident Occurred: Enter county, city (*town or township*).

Road on Which Accident Occurred: Enter Street, or State Highway Number.

Posted Speed Limit: Enter speed limit in m.p.h.

Accident Report Number: enter Number of the state accident report.

Block 2

Light Condition: Check the appropriate light condition.

Weather Condition: Check the appropriate weather condition.

Vehicle (Trailer) Information

Complete the trailer information corresponding to the respective traffic UNIT—i.e., “1” or “2”—as recorded on the state report form.

NOTE: If a tractor was pulling more than 1 trailer, complete the information for each trailer, numbering the trailers “1”, “2”, with “1” being the lead trailer. If more than 2 trailers were involved in the accident, use additional **SUPPLEMENTARY REPORT** Forms, as needed, to record information on all trailers.

Block 3/Block 4

Trailer Type: Check the trailer type.

Trailer VIN: Enter the Vehicle Identification No. (VIN) of the trailer.

Retroreflective Tape: Check whether or not the trailer was equipped with retroreflective tape.

Tape Pattern: Check whether or not the tape pattern was similar to FMVSS requirement (*refer to illustration*).

Tape Color: Check whether or not the tape color was similar to FMVSS requirement (*refer to illustration*).

Tape Condition, Sides: Check the box which best describes the condition of the tape on the sides of the trailer.

Tape Condition, Rear: Check the box which best describes the condition of the tape on the rear of the trailer.

Comments

Notices

Federal Register

Vol. 61, No. 127

Monday, July 1, 1996

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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TM-96-00-1]

Nominations for Members of the National Organic Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Organic Foods Production Act (OFPA) of 1990, as amended, requires the establishment of a National Organic Standards Board (NOSB) to assist in the development of standards for substances to be used in organic production and to advise the Secretary of Agriculture on any other aspects of the implementation of the Act. The NOSB was originally established on January 24, 1992, with individual members appointed for staggered appointments of 3, 4, and 5 years. Appointments for five members will be up in January 1997, and the Secretary seeks nominations of individuals to be considered for selection as NOSB members.

DATES: Written nominations, with resumes, must be postmarked on or before August 31, 1996.

ADDRESSES: Nominations should be sent to Dr. Harold S. Ricker, Program Manager, National Organic Program, Transportation and Marketing Division, Room 2945 South Building, Agricultural Marketing Service, U.S. Department of Agriculture (USDA), P. O. Box 96456, Washington, D.C. 20090-6456.

FOR FURTHER INFORMATION CONTACT: Dr. Harold S. Ricker, (202) 720-3252.

SUPPLEMENTARY INFORMATION: The OFPA of 1990 requires the Secretary to establish an organic certification program for producers and handlers of agricultural products that have been produced using organic methods. In developing this program, the Secretary is required to establish an NOSB. The

purpose of the NOSB is to assist in the development of standards for substances to be used in organic production and to advise the Secretary on any other aspects of the implementation of the program.

The current NOSB has worked to develop recommendations to the Secretary to establish the initial program. It is anticipated that the NOSB will continue to work on recommendations as appropriate and on the continuing review of substances considered for organic production and processing.

A member of the NOSB shall serve for a term of 5 years, except that the Secretary appointed the original members of the NOSB for staggered terms of 3, 4, and 5 years. The terms of five members of the current NOSB, who were appointed for 5-year terms, will be completed on January 24, 1997. A member may serve consecutive terms if such member served an original term that was less than 5 years as provided for in the OFPA of 1990.

Nominations are sought for the positions of farmer/grower (1), handler/processor (1), consumer/public interest (1), environmentalist (1), and scientist (1). Individuals desiring to be appointed to the NOSB at this time must be either an owner or operator of an organic farming operation, an owner or operator of an organic handling operation, an individual who represents public interest or consumer interest groups, an expert in the area of environmental protection or resource conservation, or an individual with expertise in the fields of toxicology, ecology, or biochemistry.

Selection criteria will include such factors as: demonstrated experience and interest in organics; commodity and geographic representation; endorsed support of consumer and public interest organizations; demonstrated experience with environmental concerns; and other factors as may be appropriate for specific positions.

After applications have been reviewed, individuals receiving nominations will be contacted and supplied with biographical forms. The biographical information must be completed and returned to USDA within 10 working days of its receipt, to expedite the background clearance that is required by USDA.

Dated: June 24, 1996.

Eileen S. Stommes,
Director, Transportation and Marketing Division.

[FR Doc. 96-16634 Filed 6-28-96; 8:45 am]

BILLING CODE 3410-02-P

Animal and Plant Health Inspection Service

[Docket No. 96-036-1]

Availability of Environmental Assessments and Findings of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that four environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of the genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are requested to call ahead on (202) 690-2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737-1237; (301) 734-7612. For copies of the environmental assessments and findings of no significant impact, contact Mr. Clayton Givens at (301) 734-7612; e-mail: cgivens@aphis.usda.gov. Please refer to

the permit numbers listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained or a notification acknowledged before a regulated article may be introduced into the United States. The regulations set forth the permit application

requirements and the notification procedures for the importation, interstate movement, and release into the environment of a regulated article.

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human

environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date issued	Organisms	Field test location
96-017-02	Monsanto Company	5-2-96	Potato plants genetically engineered to express glyphosate herbicide tolerance and altered carbohydrate metabolism.	Idaho, Maine, and Missouri.
96-071-02	VanderHave USA	5-3-96	Sunflower plants USA genetically engineered to contain novel genes for insect resistance.	North Dakota.
96-099-02	Calgene, Inc.	5-16-96	Tomato plants genetically engineered for virus resistance.	California and Florida.
96-064-01	S.R. Noble Foundation, Inc..	5-20-96	Barrel medic plants genetically engineered to express tolerance to phosphinothricin herbicides.	Oklahoma.

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500-1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 25th day of June 1996.

Donald W. Luchsinger,
Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96-16709 Filed 6-28-96; 8:45 am]

BILLING CODE 3410-34-P

Commodity Credit Corporation

Methodology for Evaluating Applications for Participation in the Market Access Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In an effort to improve administration of the Market Access Program (MAP), formerly the Market Promotion Program, authorized by section 203 of the Agricultural Trade Act of 1978 (7 U.S.C. 5623), the

Commodity Credit Corporation (CCC) invites suggestions regarding the methodology to be used by CCC to evaluate and allocate funding among applicants. Criteria for the approval of MAP applications and for allocating MAP resources appears at 7 CFR 1485.14. Specifically, CCC is interested in suggestions as to weights or scores that should be assigned to the individual criteria or other ways to effectively assess the individual criteria. CCC does not intend at this time to change the actual approval criteria or allocation factors it considers when evaluating applications and, therefore, any comment should be limited to methods to evaluate existing criteria.

DATES: In order to be considered, written comments must be received by July 31, 1996.

ADDRESSES: Send comments to U.S. Department of Agriculture, Foreign Agricultural Service, Marketing Operations Staff, STOP 1042, 1400 Independence Ave., S.W., Washington, D.C. 20250-1042.

FOR FURTHER INFORMATION CONTACT: Sharon McClure or Denise Fettes at (202) 720-5521.

Signed at Washington, D.C. on June 21, 1996.

Timothy J. Galvin,
Acting Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 96-16633 Filed 6-28-96; 8:45 am]

BILLING CODE 3410-10-M

Grain Inspection, Packers and Stockyards Administration

Graben Livestock Auction Sales, Tisgah, AL

Correction

On June 6, 1996, a notice was published in the Federal Register (61 FR 28837) of the proposed posting for certain stockyards listing their facility number, name, and location.

This notice is to correct the posting number and the location assigned to Graben Livestock Auction Sales.

The notice should have read:

AL-189 Graben Livestock Auction Sales, Pisgah, Alabama

Done at Washington, DC, this 24th day of June 1996.

Daniel L. Van Ackeren,
Director, Livestock Marketing Division.
[FR Doc. 96-16632 Filed 6-28-96; 8:45 am]

BILLING CODE 3410-EN-M

ASSASSINATION RECORDS REVIEW BOARD**Sunshine Act Meeting****DATE:** July 9–10, 1996.**PLACE:** ARRB, 600 E Street, NW., Washington, DC.**STATUS:** Closed.**MATTERS TO BE CONSIDERED:**

1. Review and Accept Minutes of Closed Meeting
2. Review of Assassination Records
3. Other Business

CONTACT PERSON FOR MORE INFORMATION:

Thomas Samoluk, Associate Director for Communications, 600 E Street, NW., Second Floor, Washington, DC 20530. Telephone: (202) 724-0088; Fax: (202) 724-0457.

David G. Marwell,
Executive Director.

[FR Doc. 96-16860 Filed 6-27-96; 3:03 pm]

BILLING CODE 6118-01-P**COMMISSION ON CIVIL RIGHTS****Agenda and Notice of Public Meeting of the Mississippi Advisory Committee**

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Mississippi Advisory Committee to the Commission will convene at 6:00 p.m. and recess at 9:00 p.m. on Wednesday, July 10, 1996, and reconvene on Thursday, July 11, 1996, at 9:00 a.m. and adjourn at 12:00 p.m., at the Delta State University Performing Arts Center, Highway 8, West, Cleveland, MS 38733. The purpose of the meeting is to allow Committee members to receive a briefing on race relations issues in the aftermath of church burnings.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913-551-1400 (TDD 913-551-1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 25, 1996.
Carol-Lee Hurley,
Chief, Regional Programs Coordination Unit.
[FR Doc. 96-16664 Filed 6-28-96; 8:45 am]

BILLING CODE 6335-01-P**DEPARTMENT OF COMMERCE****Foreign-Trade Zones Board****[Docket 53-96]****Foreign-Trade Subzone 183A—Dell Computer Corporation Application for Expansion**

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Foreign Trade Zone of Central Texas, Inc., grantee of FTZ 183, requesting authority to expand Subzone 183A at the computer manufacturing facilities of Dell Computer Corporation (Dell) located in Austin, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on June 19, 1996.

Subzone 183A was approved on November 16, 1992 (Board Order 607, 57 FR 56902; 12/1/92). The subzone currently consists of the following three sites: *Site 1:* (32 acres) located in the Braker Center Industrial Park, at the intersection of Braker Lane and Metric Boulevard; *Site 2:* McKalla 2 (124,000 sq. ft.) located at 2500 McHale Court within the Rutland Center Industrial Park; and, *Site 3:* Research 1 (100,685 sq. ft.) located at 8701 Research Boulevard, Austin, Texas. Sites 2 and 3 are temporary sites, which expire on December 31, 1996.

The applicant is now requesting authority to expand the subzone as follows:

- Expand Site 1 to include three buildings (Braker C, D & F, 9 acres, 143,280 sq. ft.)
- Add Site 2 to the subzone plan on a permanent basis
- Expand Site 2 by adding a building (McKalla I, 135,000 sq. ft.) located at 10220 McKalla Drive; and,
- Add Site 3 to the subzone plan on a permanent basis.

Dell is authorized to manufacture computers and related products under zone procedures within Subzone 183A. This proposal does not involve any new manufacturing authority under zone procedures.

In accordance with the Board's regulations (as revised, 56 FR 50790-50808, 10-8-91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment (original and 3 copies) is invited from interested parties (see FTZ Board address below). The closing date for their receipt is August 30, 1996. Rebuttal comments in

response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to September 16, 1996).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, 410 E. 5th Street, Suite 414-A, Austin, TX 78711

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th and Pennsylvania Avenue, NW., Washington, DC 20230

Dated: June 24, 1996.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 96-16748 Filed 6-28-96; 8:45 am]

BILLING CODE 3510-DS-P**International Trade Administration****Intent To Revoke Antidumping Duty Orders and Findings and To Terminate Suspended Investigations**

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty orders and findings and to terminate suspended investigations.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its intent to revoke the antidumping duty orders and findings and to terminate the suspended investigations listed below. Domestic interested parties who object to these revocations and terminations must submit their comments in writing no later than the last day of July 1996.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed under Antidumping Proceeding at: Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482-4737.

SUPPLEMENTARY INFORMATION:**Background**

The Department may revoke an antidumping duty order or finding or terminate a suspended investigation if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are

notifying the public of our intent to revoke the following antidumping duty orders and findings and to terminate the suspended investigations for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months:

Antidumping Proceeding

Armenia

Solid Urea

A-831-801

52 FR 26366

July 14, 1987

Contact: Thomas Barlow at (202) 482-0410

Azerbaijan

Solid Urea

A-832-801

52 FR 26366

July 14, 1987

Contact: Thomas Barlow at (202) 482-0410

Belarus

Solid Urea

A-822-801

52 FR 26366

July 14, 1987

Contact: Thomas Barlow at (202) 482-0410

Georgia

Solid Urea

A-833-801

52 FR 26366

July 14, 1987

Contact: Thomas Barlow at (202) 482-0410

Germany

Industrial Nitrocellulose

A-428-803

55 FR 28271

July 10, 1990

Contact: Todd Peterson at (202) 482-4195

Iran

In-Shell Pistachio Nuts

A-507-502

51 FR 25922

July 17, 1986

Contact: Valerie Turoscy at (202) 482-0145

Japan

Cast Iron Pipe Fittings

A-588-605

52 FR 25281

July 6, 1987

Contact: Sheila Forbes at (202) 482-5253

Japan

High Power Microwave Amplifiers and Components Thereof

A-588-005

47 FR 31413

July 20, 1982

Contact: Hermes Pinilla at (202) 482-3477

Japan

Industrial Nitrocellulose

A-588-812

55 FR 28268

July 10, 1990

Contact: Rebecca Trainor at (202) 482-0666

Japan

Synthetic Methionine

A-588-041

38 FR 18382

July 10, 1973

Contact: Charles Riggle at (202) 482-0650

Kazakhstan

Solid Urea

A-834-801

52 FR 26366

July 14, 1987

Contact: Thomas Barlow at (202) 482-0410

Kyrgyzstan

Solid Urea

A-835-801

52 FR 26366

July 14, 1987

Contact: Thomas Barlow at (202) 482-0410

Latvia

Solid Urea

A-449-801

52 FR 26366

July 14, 1987

Contact: Thomas Barlow at (202) 482-0410

Lithuania

Solid Urea

A-451-801

52 FR 26366

July 14, 1987

Contact: Thomas Barlow at (202) 482-0410

Moldova

Solid Urea

A-841-801

52 FR 26366

July 14, 1987

Contact: Thomas Barlow at (202) 482-0410

Romania

Solid Urea

A-485-601

53 FR 26366

July 14, 1987

Contact: Tom Futtner at (202) 482-3813

Russia

Solid Urea

A-821-801

52 FR 26366

July 14, 1987

Contact: Thomas Barlow at (202) 482-0410

South Korea

Industrial Nitrocellulose

A-580-805

55 FR 28266

July 10, 1990

Contact: Rebecca Trainor at (202) 482-0666

Tajikistan

Solid Urea

A-842-801

52 FR 26366

July 14, 1987

Contact: Thomas Barlow at (202) 482-0410

The People's Republic of China

Industrial Nitrocellulose

A-570-802

55 FR 28267

July 10, 1990

Contact: Rebecca Trainor at (202) 482-0666

The Ukraine

Solid Urea

A-823-801

52 FR 26366

July 14, 1987

Contact: Thomas Barlow at (202) 482-0410

Turkmenistan

Solid Urea

A-843-801

52 FR 26366

July 14, 1987

Contact: Thomas Barlow at (202) 482-0410

Uzbekistan

Solid Urea

A-844-801

52 FR 26366

July 14, 1987

Contact: Thomas Barlow at (202) 482-0410

If no interested party requests an administrative review in accordance with the Department's notice of opportunity to request administrative review, and no domestic interested party objects to the Department's intent to revoke or terminate pursuant to this notice, we shall conclude that the antidumping duty orders, findings, and suspended investigations are no longer of interest to interested parties and shall proceed with the revocation or termination.

Opportunity To Object

Domestic interested parties, as defined in § 353.2(k) (3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke these antidumping duty orders and findings or to terminate the suspended investigations by the last day of July 1996. Any submission to the Department must contain the name and case number of the proceeding and a statement that explains how the objecting party qualifies as a domestic interested party under § 353.2(k) (3), (4), (5), and (6) of the Department's regulations.

Seven copies of such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230. You must also include the pertinent certification(s) in accordance with § 353.31(g) and § 353.31(i) of the Department's regulations. In addition, the Department requests that a copy of the objection be sent to Michael F. Panfeld in Room 4203. This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: June 24, 1996.

Joseph A. Spetrini,
Deputy Assistant Secretary for Compliance.
[FR Doc. 96-16747 Filed 6-28-96; 8:45 am]
BILLING CODE 3510-DS-P

[A-570-843]

Notice of Amendment of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Katherine Johnson at (202) 482-4929, Shawn Thompson at (202) 482-1776, or James Terpstra at (202) 482-3965, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 by the Uruguay Rounds Agreements Act (URAA).

Amendment to the Final Determination

We are amending the final determination of sales at less than fair value of bicycles from the People's Republic of China (PRC), to reflect the correction of ministerial errors made in the margin calculations in that determination. Although the International Trade Commission (ITC) has already issued its negative final injury determination in this investigation, we are publishing this amendment to the final determination in accordance with section 353.28(c) of the Department's regulations.

Scope of Investigation

The product covered by this investigation is bicycles of all types, whether assembled or unassembled, complete or incomplete, finished or unfinished, including industrial bicycles, tandems, recumbents, and folding bicycles. For purposes of this investigation, the following definitions apply irrespective of any different definition that may be found in Customs rulings, U.S. Customs law, or the Harmonized Tariff Schedule of the United States (HTSUS): (1) The term "unassembled" means fully or partially unassembled or disassembled; (2) the term "incomplete" means lacking one or more parts or components with which the complete bicycle is intended to be equipped; and (3) the term "unfinished" means wholly or partially unpainted or lacking decals or other essentially aesthetic material. Specifically, this investigation is intended to cover: (1) Any assembled complete bicycle, whether finished or unfinished; (2) any unassembled complete bicycle, if shipped in a single shipment, regardless of how it is packed and whether it is finished or unfinished; and (3) any incomplete bicycle, defined for purposes of this investigation as a frame, finished or unfinished, whether or not assembled together with a fork, and imported in the same shipment with any two of the following components: (a) The rear wheel; (b) the front wheel; (c) a rear derailleur; (d) a front derailleur; (e) any one caliper or cantilever brake; (f) an integrated brake lever and shifter, or separate brake lever and click stick lever; (g) crankset; (h) handlebars, with or without a stem; (i) chain; (j) pedals; and (k) seat (saddle), with or without seat post and seat pin.

The scope of this investigation is not intended to cover bicycle parts except to the extent that they are attached to or in the same shipment as an unassembled complete bicycle or an incomplete bicycle, as defined above.

Complete bicycles are classifiable under subheadings 8712.00.15, 8712.00.25, 8712.00.35, 8712.00.44, and 8712.00.48 of the 1995 HTSUS. Incomplete bicycles, as defined above, may be classified for tariff purposes under any of the aforementioned HTSUS subheadings covering complete bicycles or under HTSUS subheadings 8714.91.20-8714.99.80, inclusive (covering various bicycle parts). The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this investigation is dispositive.

Case History

In accordance with section 735(d) of the Tariff Act of 1930, as amended (the Act), on April 30, 1996, the Department published its final determination that bicycles from the PRC were being, or were likely to be, sold in the United States at less than fair value (61 FR 19026). Subsequent to the final determination, we received allegations that the Department made ministerial errors in the margin calculations.

On June 12, 1996, the Department was formally notified by the ITC that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded by reason of imports of bicycles from the PRC that are sold in the United States at less than fair value.

Amendment of Final Determination

On May 1, 1996, Chitech Industries Ltd. (Chitech) submitted allegations that ministerial errors were made in the Department's final determination. On May 2, 1996, petitioners submitted ministerial error allegations with regard to China Bicycle Co. (Holdings) Ltd. (CBC). On May 3, 1996, CBC, CATIC Bicycle Co., Ltd. (CATIC), Giant China Co., Ltd. (Giant), and Hua Chin Bicycle (S.Z.) Co., Ltd. (Hua Chin) submitted their ministerial error allegations. On May 6, 1996, Bo An Bicycle (Shenzhen) Co., Ltd. (Bo An), Merida Bicycle (Shenzhen) Co., Ltd. (Merida), Shenzhen Overlord Bicycle Co., Ltd. (Overlord), and Universal Cycle Corporation (Guangzhou) (Universal) submitted their ministerial error allegations. Also, on May 6, 1996, petitioners submitted additional ministerial error allegations. On May 7, 1996, petitioners responded to CATIC, Merida, Giant, and Hua Chin's ministerial error allegations.

For a detailed discussion of the alleged ministerial errors and the Department analysis, see, the memo from The Team to Paul Joffe, Acting Assistant Secretary for Import Administration, regarding Clerical Error Allegations in the Final Determination of Bicycles From the People's Republic of China, dated May 10, 1996. (Clerical Error Memo). Pursuant to section 735(e) of the Act and section 353.28(c) of the Department's regulations, we have corrected the ministerial errors in the final determination. However, certain alleged errors were not corrected because we determined that they were not ministerial errors. See, Clerical Error Memo. The revised final weighted-average dumping margins are as follows:

Manufacturer/ producer/ exporter	Original final margin percentage	Revised final per- centage
Bo An	0.00	0.00
CATIC	13.67	2.02
Giant	*0.97	*0.67
Hua Chin	0.00	0.00
Merida	7.44	*0.37
CBC	3.25	2.95
Overlord	0.00	0.00
Chitech (Shun Lu)	2.05	*1.83
Universal	11.06	2.27
PRC-Wide	61.67	61.67

*De minimis.

Discontinuation of Suspension of Liquidation

Although the aforementioned ministerial error corrections affect the rates for CATIC, Giant, Merida, CBC, Chitech, and Overlord, in accordance with section 735(c)(2) of the Act, because of the negative determination by the ITC, we have already directed the Customs Service to discontinue suspension of liquidation for entries of bicycles imported from the PRC, entered or withdrawn from warehouse, for consumption between November 9, 1995 and May 7, 1996, and to release any bond or other security, and refund any cash deposit, posted to secure the payment of estimated antidumping duties with respect to these entries.

This determination is published pursuant to section 735(d) of the Act (19 USC 1673(d)) and 19 CFR 353.20.

Dated: June 24, 1996.

Robert S. LaRussa,
Acting Assistant Secretary for Import
Administration.

[FR Doc. 96-16750 Filed 6-28-96; 8:45 am]

BILLING CODE 3510-DS-P

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of

Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 96-058. Applicant: American Museum of Natural History, Department of Earth & Planetary Sciences, Central Park West at 79th Street, New York, NY 10024-5192. Instrument: Electron Microprobe, Model SX 100. Manufacturer: Cameca, France. Intended Use: The instrument will be used for studies of rocks, minerals, meteorites, volcanic glasses, experimental glasses, synthetic materials, metals and alloys. Experiments conducted will include: (1) Measurement of x-ray intensities, (2) backscattered and secondary electron imaging of sample and (3) cathodoluminescence emission of samples when bombarded by a ray of electrons. In addition, the instrument will be used for educational purposes in courses for petrology and mineralogy students. Application accepted by Commissioner of Customs: May 24, 1996.

Docket Number: 96-059. Applicant: Massachusetts Institute of Technology, 77 Massachusetts Avenue, Cambridge, MA 02139. Instrument: Electronic Speckle Pattern Interferometry System, Model SD-10-S. Manufacturer: Newport Instruments AG, Switzerland. Intended Use: The instrument will be used for measuring deformations of the graphite epoxy host structure of a composite actuator developed for studies of the reduction of sound that is transmitted through plates and cylinders. The speckle pattern produced by the laser is viewed with a CCD camera and digitized in real time for analysis by a computer which calculates the deformation. Application accepted by Commissioner of Customs: May 24, 1996.

Docket Number: 96-060. Applicant: University of Minnesota, Department of Biochemistry, 1479 Gortner Avenue, St. Paul, MN 55108. Instrument: EPR Spectrometer. Manufacturer: Bruker, Germany. Intended Use: The instrument will be used to study paramagnetic species in photosynthetic proteins; in particular to obtain structural information about redox active tryosines and the manganese cluster of photosystem II. These species will be oxidized during the enzymatic mechanism, and the instrument will be used to verify that this oxidation has occurred and to study the kinetics of the oxidation and reduction. Application accepted by Commissioner of Customs: May 31, 1996.

Docket Number: 96-061. Applicant: University of Hawaii, Manoa, School of Ocean Earth Science & Technology, 1000 Pope Road, Honolulu, HI 96822.

Instrument: Individual Acid Bath Carbonate Device. Manufacturer: Finnigan MAT, Germany. Intended Use: The instrument will be used to automatically generate carbon dioxide gases from solid samples containing carbonate, under vacuum, from individual reaction chambers, provide cryogenic distillation of said gases and automatically feed said gases into the sample inlet of an existing mass spectrometer to measure the stable isotope ratios of carbon and oxygen of generated gases. Application accepted by Commissioner of Customs: June 3, 1996.

Docket Number: 96-062. Applicant: University of Oklahoma, 660 Parrington Oval, Norman, OK 73019. Instrument: ESR Spectrometer System. Manufacturer: Bruker Instruments, Germany. Intended Use: The instrument will be used for a variety of experimental needs including the following: (1) Analysis of nitroxide spin-labeled proteins as a measure of polypeptide structure, folding and conformational dynamics, (2) analysis of allosteric transition metal complexes, electron structures of cytochrome P-450 model compounds, (3) characterization of stable free radical/cations and anions and paramagnetic metallocenes, (4) determination of the distribution of spin density and molecular structure of organocobalt radicals, (5) study of spin states and oxidation states of both porphyrin and non-porphyrin Fe(II) and Fe(III) complexes and (6) photo-ESR, to probe the photogeneration of charges in photoconducting polymers. Application accepted by Commissioner of Customs: June 5, 1996.

Docket Number: 96-063. Applicant: University of Georgia, Institute of Ecology, Athens, GA 30602-2022. Instrument: SIR Mass Spectrometer, Model Delta C. Manufacturer: Finnigan Corporation, Germany. Intended Use: The instrument will be used for the application of stable isotope studies of nitrogen-15 and carbon-13 to ecological research. Specific studies will include the following: (1) long term ecological consequences of field manipulations on soil organic matter dynamics across a spectrum of croplands, old fields and deciduous forest, (2) influence of soil arthropods on below-ground processes, (3) microbial-faunal interactions, (4) forest ecosystem dynamics following disturbance in the southern Appalachians and (5) influence of microarthropod-microbial interactions on forest floor nitrogen dynamics. The instrument will also be used for educational purposes in the courses: ECL 863, Nuclear Tracers in Ecology and ECL 900, Problems in Ecology.

Application accepted by Commissioner of Customs: June 6, 1996.

Docket Number: 96-064. Applicant: University of California, Davis, Department of Geology, Davis, CA 95616. Instrument: Magnetometer and Demagnetizer. Manufacturer: Molspin Instruments, United Kingdom. Intended Use: The instruments will be used for the study of the magnetic properties of sedimentary rocks retrieved as part of the Cape Roberts Drilling Project, a collaboration that will provide information about the climatic and tectonic history of the Antarctic continent during the past 65 million years. The magnetometer will be used to determine the direction of magnetization of rocks and the alternating field demagnetizer will be used to determine whether the directions measured with the magnetometer are reliable. Application accepted by Commissioner of Customs: June 9, 1996.

Docket Number: 96-065. Applicant: University of Massachusetts, Amherst, Amherst, MA 01003. Instrument: Electron Microscope, Model JEM-3010. Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument will be used to investigate the morphology and structure of polymers, proteins, ceramics, electronic materials and metals. In addition, the instrument will be used for educational purposes in the courses PSE 899 Ph.D. Dissertation, PSE 699 Master's Thesis, PSE 721 Morphology of Polymers and PSE 602 Polymer Characterization Laboratory. Application accepted by Commissioner of Customs: June 11, 1996.

Frank W. Creel,
Director, Statutory Import Programs Staff.
[FR Doc. 96-16617 Filed 6-28-96; 8:45 am]
BILLING CODE 3510-DS-P

The Pennsylvania State University, et al. Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 95-122. Applicant: The Pennsylvania State University, University Park, PA 16802. Instrument: Trace Gas Preconcentrator. Manufacturer: Finnigan MAT, Germany. Intended Use: See notice at 61 FR 6629,

February 21, 1996. Advice received from: The National Institutes of Health, March 20, 1996.

Docket Number: 95-123. Applicant: Carnegie Institution of Washington, Washington, DC 20015-1305. Instrument: Upgrade of 252 Mass Spectrometer. Manufacturer: Finnigan MAT, Germany. Intended Use: See notice at 61 FR 6629, February 21, 1996. Advice received from: The National Institutes of Health, March 20, 1996.

Docket Number: 95-128. Applicant: University of Maryland at College Park, College Park, MD 20742. Instrument: Extended SpectraKinetics Photomultiplier, Model SK.1E. Manufacturer: Applied Photophysics, United Kingdom. Intended Use: See notice at 61 FR 6630, February 21, 1996. Advice received from: The National Institutes of Health, March 21, 1996.

Docket Number: 95-129. Applicant: Massachusetts Institute of Technology, Cambridge, MA 02139. Instrument: Rapid Scanning Diode Array, Model MG 6040. Manufacturer: Hi-Tech Scientific, United Kingdom. Intended Use: See notice at 61 FR 6630, February 21, 1996. Advice received from: The National Institutes of Health, March 21, 1996.

Docket Number: 95-130. Applicant: University of Wisconsin-Madison, Madison, WI 53706. Instrument: Upgraded Pulse Compressor, Model DMP-100. Manufacturer: Microlase Optical Systems Ltd., United Kingdom. Intended Use: See notice at 61 FR 6630, February 21, 1996. Advice received from: The National Institutes of Health, March 21, 1996.

Docket Number: 96-001. Applicant: University of California, Davis, Davis, CA 95616-8605. Instrument: Water Gas Phase Equilibration System. Manufacturer: Finnigan MAT, Germany. Intended Use: See notice at 61 FR 8041, March 1, 1996. Advice received from: The National Institutes of Health, March 25, 1996.

Docket Number: 96-013. Applicant: Northern Illinois University, DeKalb, IL 60115-2862. Instrument: Diode-Array Detector for Stopped-Flow Spectrometer, Model PDA.1. Manufacturer: Applied Photophysics, Ltd., United Kingdom. Intended Use: See notice at 61 FR 11614, March 21, 1996. Advice received from: The National Institutes of Health, March 27, 1996.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instruments, for the purposes for which the instruments are intended to be used, is being manufactured in the United States. Reasons: These are compatible accessories for instruments previously

imported for the use of the applicants. In each case, the instrument and accessory were made by the same manufacturer. The National Institutes of Health advises that the accessories are pertinent to the intended uses and that it knows of no comparable domestic accessories.

We know of no domestic accessories which can be readily adapted to the previously imported instruments.

Frank W. Creel,
Director, Statutory Import Programs Staff.
[FR Doc. 96-16615 Filed 6-28-96; 8:45 am]
BILLING CODE 3510-DS-P

University of California, Los Alamos; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 96-008. Applicant: University of California, Los Alamos National Laboratory, Los Alamos, CA 87545. Instrument: Mass Spectrometer, Model Plasma Trace 2. Manufacturer: Fisons Instruments, United Kingdom. Intended Use: See notice at 61 FR 8042, March 1, 1996.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides a magnet sector analyzer with sub-ppt detection limits for Be, Co, In, Bi and U with abundance sensitivities of 5×10^{-7} for Zn and 1×10^{-6} for U at resolution 400. These capabilities are pertinent to the applicant's intended purposes and we know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,
Director, Statutory Import Programs Staff.
[FR Doc. 96-16616 Filed 6-28-96; 8:45 am]
BILLING CODE 3510-DS-P

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Publication of Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty.

SUMMARY: The Department of Commerce (the Department), in consultation with the Secretary of Agriculture, has prepared a quarterly update to its annual list of foreign government subsidies on articles of cheese subject to an in-quota rate of duty. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Brian Albright or Maria MacKay, Office of Countervailing Compliance, Import

Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington, D.C. 20230, telephone: (202) 482-2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 (as amended)(the Act) requires the Department to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(h)(4) of the Act, and to publish an annual list and quarterly updates of the type and amount of those subsidies.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h)(2) of the Act) being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice

lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: June 25, 1996.

Robert S. LaRussa,
Acting Assistant Secretary for Import Administration.

APPENDIX.—SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY

Country	Program(s)	Gross ¹ Subsidy (cents per pound)	Net ² Subsidy (cents per pound)
Austria	European Union (EU) Restitution Payments	32.6	32.6
Belgium	EU Restitution Payments	29.4	29.4
Canada	Export Assistance on Certain Types of Cheese	25.5	25.5
Denmark	EU Restitution Payments	30.5	30.5
Finland	EU Restitution Payments	30.4	30.4
France	EU Restitution Payments	28.5	28.5
Germany	EU Restitution Payments	32.2	32.2
Greece	EU Restitution Payments	0.00	0.00
Ireland	EU Restitution Payments	29.1	29.1
Italy	EU Restitution Payments	56.5	56.5
Luxembourg	EU Restitution Payments	29.4	29.4
Netherlands	EU Restitution Payments	27.6	27.6
Norway	Indirect (Milk) Subsidy	19.1	19.1
	Consumer Subsidy	42.3	42.3
		61.4	61.4
Portugal	EU Restitution Payments	28.1	28.1
Spain	EU Restitution Payments	28.9	28.9
Switzerland	Deficiency Payments	182.2	182.2
U.K.	EU Restitution Payments	29.7	29.7

¹ Defined in 19 U.S.C. 1677(5).

² Defined in 19 U.S.C. 1677(6).

[FR Doc. 96-16749 Filed 6-28-96; 8:45 am]

BILLING CODE 3510-DS-P

[C-559-802]

Antifriction Bearings and Parts Thereof (AFBs) From Singapore; Termination of Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of termination of countervailing duty administrative reviews.

SUMMARY: On June 15, 1995 (60 FR 31447), in response to a request from the Government of Singapore (GOS) and the Minebea group of companies (NMB Singapore Ltd., Pelmech Industries Pte. Ltd., Minebea Trading Pte. Ltd., and Minebea Company Limited Singapore Branch), the Department of Commerce (the Department) initiated administrative reviews of the countervailing duty orders on

antifriction bearings and parts thereof from Singapore for the Minebea group. In accordance with 19 CFR 355.22(a)(5) (Interim Regulations, 60 FR 25137, (May 11, 1995)), the Department is now terminating these reviews because the GOS and the Minebea group have withdrawn their request for reviews.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Brian Albright or Norma Paola Hernández, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th

Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-2786.

SUPPLEMENTARY INFORMATION:

Background

On May 31, 1995, the Department received a request for administrative reviews of these countervailing duty orders from the GOS and the Minebea group, producers and exporters of the subject merchandise from Singapore, for the period January 1, 1994, through December 31, 1994. No other interested party requested reviews of the countervailing duty order. On June 15, 1995, the Department published in the Federal Register (60 FR 31447) a notice of "Initiation of Countervailing Duty Administrative Reviews" initiating administrative reviews of the countervailing duty orders on the Minebea group for that period. On June 16, 1996, the GOS and the Minebea group withdrew their request for reviews.

Section 355.22(a)(5) of the Department's regulations stipulates that the Secretary may permit a party that requests a review to withdraw the request not later than 90 days after the date of publication of the notice of initiation of the requested review. This regulation also provides that the Secretary may extend the time limit for withdrawal of the request if it is reasonable to do so.

Based on a statement of no further interest in the orders filed by the petitioner, the Department completed changed circumstances reviews and revoked these orders effective January 1, 1995. (See Antifriction Bearings and Parts Thereof from Singapore; Final Results of Changed Circumstances Countervailing Duty Reviews and Revocation Countervailing Duty Orders, 61 FR 20796, May 8, 1996). Further, no other interested party requested reviews of the countervailing duty orders in this case, and we have received no submissions regarding the GOS and the Minebea group's withdrawal of their request for reviews. Therefore, under the circumstances presented in these reviews, we are waiving the 90-day requirement in section 355.22(a)(5) of the Department's regulations. Accordingly, we are terminating these reviews of the countervailing duty orders on antifriction bearings and parts thereof from Singapore.

This notice is published in accordance with 19 CFR 355.22(a)(5).

Dated: June 25, 1996.
Joseph A. Spetrini,
Deputy Assistant Secretary for Compliance.
[FR Doc. 96-16746 Filed 6-28-96; 8:45 am]
BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

[I.D. 062596A]

RIN 0648-AH58

Atlantic Coast Weakfish; Intent to Prepare a Supplemental Environmental Impact Statement

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare a supplemental environmental impact statement (SEIS); request for written comments.

SUMMARY: NMFS announces its intent to prepare an SEIS to assess the impact of Atlantic Coast weakfish harvests and possible proposed regulations on the natural and human environment. This notice of intent requests public input (written comments) on issues that NMFS should consider in preparing the SEIS. In addition, the SEIS will examine specific recommendations to the Secretary of Commerce (Secretary) by the Atlantic States Marine Fisheries Commission (Commission) in its Amendment 3 to the Fishery Management Plan For Weakfish (Plan) and new stock assessment information. Public hearings for the SEIS will be scheduled at a later date. This notice also references the published Final Environmental Impact Statement (FEIS) information and announces that NMFS is considering measures for the 1996 fishing year and beyond for the Atlantic Coast weakfish fishery in the exclusive economic zone (EEZ).

DATES: Written comments on the intent to prepare the SEIS will be accepted until July 22, 1996. Public hearings will be announced in the Federal Register at a later date.

ADDRESSES: Comments should be sent to: Richard H. Schaefer, Director, Office of Fisheries Conservation and Management (F/CM), National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Tom Meyer, telephone (301) 713-2339.

SUPPLEMENTARY INFORMATION:

Section 804(b) of the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA) enacted in December 1993,

(Public Law 103-206) states that, in the absence of an approved and implemented fishery management plan (FMP) under the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1801 *et seq.*, and after consultation with the appropriate Fishery Management Council(s) (Council), the Secretary of Commerce (Secretary) may implement regulations to govern fishing in the EEZ that are:

1. Necessary to support the effective implementation of an Atlantic States Marine Fisheries Commission (Commission) coastal fishery management plan (CFMP); and

2. Consistent with the national standards set forth in section 301 of the Magnuson Act (16 U.S.C. 1851).

These regulations may include measures recommended by the Commission to the Secretary that are necessary to support the provisions of a CFMP. Regulations issued by the Secretary to implement an approved FMP prepared by the appropriate Council(s) or the Secretary under the Magnuson Act shall supersede any conflicting regulations issued by the Secretary under section 804(b) of ACFCMA.

The provisions of sections 307 through 311 of the Magnuson Act (16 U.S.C. 1857 through 1861) regarding prohibited acts, civil penalties, criminal offenses, civil forfeitures, and enforcement shall apply with respect to regulations issued under section 804(b) of ACFCMA as if such regulations were issued under the Magnuson Act.

In accordance with the ACFCMA, the Secretary of Commerce (Secretary) implemented a final rule, after publishing an FEIS, to impose a moratorium on fishing for weakfish in the EEZ, Federal Register (60 FR 58246) on November 27, 1995. However, the rule was vacated by the U.S. Federal District Court, Norfolk, Virginia, on February 16, 1996. The basis for the court's decision was that the Atlantic States Marine Fisheries Commission's (Commission) Fishery Management Plan For Weakfish (FMP) did not contain recommendations to the Secretary and, therefore, cannot be considered a valid FMP under the Act.

The regulations have not been enforced since the judge issued his order.

The Commission has recently adopted Amendment 3 to the FMP (Amendment 3); it includes the following specific recommendations for Secretarial action in the EEZ to support the Commission's FMP:

1. Require a minimum weakfish size of 12 inches total length;

2. Require that weakfish harvested in the EEZ be landed in accordance with the landing laws of the state in which they are landed, with the exception that weakfish harvested in the EEZ may not be landed in a "de minimus" state;

3. Require minimum mesh sizes in the EEZ "consistent" with a 12-inch minimum fish size. Non-directed fisheries using smaller mesh sizes may possess no more than 150 pounds of weakfish in any one day; and

4. Require that any "flynets" used in the EEZ south of Cape Hatteras be operated in compliance with the applicable regulations of the adjacent state(s).

All states which have declared an interest in the management of fisheries for weakfish are to implement Amendment 3 by October 1, 1996. NMFS will assess the Commission's recommendations during the SEIS process.

Management responsibility for weakfish resides primarily with the coastal states through the Commission's Fishery Management Plan For Weakfish (Plan). This Plan was adopted in 1985 by the coastal states from Maine through Florida in response to severe declines in the weakfish catches and populations along the coast. Increasingly strict state regulations have been imposed by amendments to the Plan since 1985 to restrict further the harvest of weakfish by recreational and commercial fisheries and to allow rebuilding of the stocks.

However, as indicated in the FEIS published in September 1995, even with these restrictions, the weakfish population is not showing signs of recovery. The FEIS clearly indicates that the weakfish stock is overfished and beginning to suffer recruitment failure. Harvest restrictions are definitely needed if weakfish are to recover.

Based on the recent stock assessments, NMFS will consider measures to regulate the Atlantic Coast weakfish fishery in the EEZ for the 1996 fishing year and beyond, including: (1) A prohibition on the taking or possession of weakfish in the EEZ; (2) applying state regulations to the EEZ; (3) imposition of specific Federal regulations on weakfish fishing in the EEZ as recommended by the Commission's Amendment 3 to Plan; and (4) status quo or no action taken.

The Mid-Atlantic Council's workload will not permit it to undertake a Plan at this time. NMFS has determined that regulations in the EEZ must be implemented to support the CFMP for weakfish if there is to be a cooperative

state and Federal effort to rebuild the weakfish stock.

NMFS has determined that the preparation of an SEIS is appropriate, because of the potentially significant impact of EEZ regulations on the human environment, and because no specific EEZ recommendations were available in the Commission's Plan when the 1995 FEIS was prepared. The current Amendment 3 to the Plan has such recommendations (alternative 3), which will be assessed during the SEIS process. Participants in this fishery will be affected and may face more restricted harvest of the weakfish resource while the natural stocks of weakfish are allowed to recover.

Date: June 25, 1996.

Richard H. Schaefer,
Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96-16623 Filed 6-28-96; 8:45 am]

BILLING CODE 3510-22-F

[I.D. 051696C]

Marine Mammals; Scientific Research Permit No. 1004 (P595)

AGENCY: National Marine Fisheries Service, (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that a permit for scientific research has been issued to the Whale Conservation Institute, 191 Weston Road, Lincoln, MA 01773.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment, in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713-2289); and

Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298 (508/281-9250).

SUPPLEMENTARY INFORMATION: On September 28, 1995, notice was published in the Federal Register (60 FR 50189) that a request for a scientific research permit had been submitted by the above-named organization. The request was to import biopsy samples collected from both dead stranded and living, free-ranging animals in the territorial waters of Argentina, Mexico, Costa Rica, Ecuador, Peru, and Chile, over a 2-year period. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972 as amended (16

U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (ESA) as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing endangered species permits (50 CFR parts 217-227).

Issuance of this Permit as required by the ESA of 1973 was based on a finding that the permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: June 21, 1996.

William W. Windom,
Acting Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96-16622 Filed 6-28-96; 8:45 am]

BILLING CODE 3510-22-F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Correction of Information Collection Activity Proposed

AGENCY: Corporation for National and Community Service (CNCS).

ACTION: Correction to information collection activity proposed.

SUMMARY: This document contains corrections to the notice of 60-day comment period prior to submitting Volunteers In Service To America Pre-Application Inquiry, Volunteers In Service To America Project Application, Volunteers In Service To America Project Grant Application, and AmeriCorps*VISTA Project Progress Report forms, published in the Federal Register Volume 61, No. 116 (June 14, 1996), pp. 30226-30227.

DATES: AmeriCorps*VISTA will consider written comments on the proposed applications and reporting requirements received no later than August 13, 1996.

SUPPLEMENTARY INFORMATION:

As published, the Notice omitted the need for each proposed collection of information to solicit comments which:

- Evaluate the accuracy of 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.

Dated: June 25, 1996.

Diana A. London,

*Deputy Director AmeriCorps*VISTA.*

[FR Doc. 96-16636 Filed 6-28-96; 8:45 am]

BILLING CODE 6050-28-M

Information Collection Activity Proposed

AGENCY: The Corporation for National and Community Service (CNCS).

ACTION: Correction to information collection activity proposed.

SUMMARY: This document contains corrections to the Notice of 60-Day Review and Comment on National Service Trust Interest Accrual Form which was published Monday, June 10, 1996, Vol. 61, No. 112, page 29359.

DATES: CNCS will consider comments on the proposed collection of information to be used by AmeriCorps members enrolled in national service to request interest accrual information for his or her term of service on qualified student loans from lending organizations, and payment of such interest by the Corporation to lending institutions for individuals enrolled in national service who were granted forbearance under the National and Community Service Trust Act of 1993.

SUPPLEMENTARY INFORMATION: As published, the notice omitted the need for each proposed collection of information to solicit comments to:

- 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 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.

Gary Kowalczyk,

Acting Chief Financial Officer.

[FR Doc. 96-16638 Filed 6-28-96; 8:45 am]

BILLING CODE 6050-28-M

Revision of National Senior Service Corps' Grant Application

AGENCY: Corporation for National and Community Service.

ACTION: Notice of 60-Day Review and Comment Period on National Senior Service Corps (NSSC) Project Grant Application.

SUMMARY: The National Senior Service Corps announces a 60-day review and comment period during which project sponsors and the public are encouraged to submit comments on suggested revisions to the NSSC Project Grant Application (424-NSSC). The Project Grant Application is submitted by prospective grantees to apply for or renew sponsorship of projects under the Retired and Senior Volunteer Program (RSVP), Foster Grandparent Program (FGP), and Senior Companion Program (SCP), collectively known as the National Senior Service Corps. Completion of the application is required to obtain or retain sponsorship.

DATES: The National Senior Service Corps will consider written comments on the Project Grant Application received on or before August 30, 1996. Comments are particularly invited which—

- (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 including the validity of the methodology and assumptions used;
- (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 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.
- (5) Assess how well the existing Grant Application collects appropriate information to allow agency decision-

makers to fully assess applicant capabilities and plans for quality sponsorship and ability to program for community impacts.

ADDRESS TO SEND COMMENTS: Janice Forney Fisher, National Senior Service Corps (NSSC), Corporation for National Service, 1201 New York Avenue, N.W., Washington, D.C. 20525.

ESTABLISHED ANNUAL REPORTING OR DISCLOSURE BURDEN: 19,398 hours (1,220 annual respondents at an average 15.9 hours burden per respondent).

This document will be made available in alternate format upon request. TDD (202 606-5000 ext. 164).

FOR FURTHER INFORMATION PLEASE

CONTACT: Janice Forney Fisher (202) 606-5000 ext. 275.

Regulatory Authority: National Service Trust Act of 1993.

Dated: June 20, 1996.

Thomas E. Endres,

Deputy Director, National Senior Service Corps.

[FR Doc. 96-16637 Filed 6-28-96; 8:45 am]

BILLING CODE 6050-28-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review; Notice

The Department of Defense has submitted to OMB for clearance, the following proposal for revision to a currently approved collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title; Associated Form; and OMB Control Number: Application for MSC Afloat Employment; MSC 12310/1; OMB Control Number 0703-0014.

Type of Request: Reinstatement without change.

Number of Respondents: 11,700.

Responses Per Respondent: 1.

Annual Responses: 11,700.

Average Burden Per Response: 2 hours.

Annual Burden Hours: 23,400.

Needs and Uses: This collection of information is used to identify specific knowledges, skills, and abilities, as well as to determine qualifications of, merchant marine applicants for positions on Military Sealift Command ships. The associated form is used by the applicant to provide information beyond that inherent in the licenses and documents held by the individual.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302.

Dated: June 25, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96-16610 Filed 6-28-96; 8:45 am]

BILLING CODE 5000-04-M

Defense Science Board Task Force on Land-Attack Cruise Missile Defense; Notice of Advisory Committee Meetings

SUMMARY: The Defense Science Board Task Force on Land-Attack Cruise Missile Defense will meet in closed session on July 22-23, 1996 at Science Applications International Corporation, McLean, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will focus on architectures and implementation strategies for achieving a US military capability against this emerging threat. Organizational issues and issues related to the potential use of common sensors and/or weapons from Cruise Missile Defense and Ballistic Missile Defense should also be addressed.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92-463, as amended (5 U.S.C. App. II, (1994)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly this meeting will be closed to the public.

Dated: June 25, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96-16611 Filed 6-28-96; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF ENERGY

Draft Environmental Impact Statement on the Disposal of the S1C Prototype Reactor Plant; Notice of Availability and Announcement of a Public Hearing

AGENCY: Department of Energy.

ACTION: Notice of availability.

SUMMARY: The Department of Energy (DOE) Office of Naval Reactors (Naval Reactors) has completed a Draft Environmental Impact Statement on the Disposal of the S1C Prototype Reactor Plant. The Draft Environmental Impact Statement was prepared in accordance with the National Environmental Policy Act (NEPA) of 1969; Council on Environmental Quality regulations implementing NEPA (40 CFR Parts 1500-1508); and DOE NEPA Implementing Procedures (10 CFR Part 1021). Naval Reactors will conduct a public hearing and receive comments on the Draft Environmental Impact Statement, which addresses the potential environmental impacts related to the disposal of the S1C Prototype reactor plant, located in Windsor, Connecticut.

This Notice announces that the Draft Environmental Impact Statement will be available to the public at the Windsor, Connecticut Public Library or by mail upon request. Upon completion of general distribution of the document, Naval Reactors will file the Draft Environmental Impact Statement with the Environmental Protection Agency, which will then publish a notice in the Federal Register to start the formal comment period.

DATES: Naval Reactors invites interested agencies, organizations, and the general public to provide oral or written comments on the Draft Environmental Impact Statement. All written comments on the Draft Environmental Impact Statement are due by August 19, 1996. Oral comments will be accepted at the public hearing to be held August 7, 1996 at Windsor Town Hall at the address listed below.

ADDRESSES: Comments should be sent to Mr. C. G. Overton, Chief, Windsor Field Office, Office of Naval Reactors, U.S. Department of Energy, P.O. Box 393, Windsor, CT 06095; telephone (860) 687-5610. Copies of the Draft Environmental Impact Statement also

may be requested from Mr. Overton. The public hearing will be held at 7:00 pm on August 7, 1996 at the Windsor Town Hall, 275 Broad Street, Windsor, CT 06095.

SUPPLEMENTARY INFORMATION:

Background

The S1C Prototype reactor plant is located on the 10.8 acre Windsor Site in Windsor, Connecticut, approximately 5 miles north of Hartford. The S1C Prototype reactor plant first started operation in 1959 and served for more than 30 years as both a facility for testing reactor plant components and equipment and for training Naval personnel. As a result of the end of the Cold War and the downsizing of the Navy, the S1C Prototype reactor plant was shut down in 1993. Since then, the S1C Prototype reactor plant has been defueled, drained, and placed in a stable protective storage condition.

Alternatives Considered

1. Prompt Dismantlement

This alternative would involve the prompt dismantlement of the reactor plant. All structures would be removed from the Windsor Site, and the Windsor Site would be released for unrestricted use. To the extent practicable, the resulting low-level radioactive metals would be recycled at existing commercial facilities that recycle radioactive metals. The remaining low-level radioactive waste would be disposed of at the DOE Savannah River Site in South Carolina. The Savannah River Site currently receives low-level radioactive waste from Naval Reactors sites in the eastern United States. Both the volume and radioactive content of the S1C Prototype reactor plant waste would be within the range of impacts of low-level radioactive waste that is currently received at Savannah River from Naval Reactors sites. Transportation of low-level radioactive waste to the DOE Hanford Site in Washington State also is evaluated.

2. Deferred Dismantlement

This alternative would involve keeping the defueled S1C Prototype reactor plant in protective storage for 30 years before dismantling it. Deferring dismantlement for 30 years would allow nearly all of the cobalt-60 radioactivity to decay away. Nearly all of the gamma radiation within the reactor plant comes from cobalt-60.

3. No Action

This alternative would involve keeping the defueled S1C Prototype reactor plant in protective storage

indefinitely. Since there is some residual radioactivity with very long half lives such as nickel-59 in the defueled reactor plant, this alternative would leave this radioactivity at the Windsor Site indefinitely.

4. Other Alternatives Considered

These alternatives include permanent on-site disposal. Such on-site disposal could involve building an entombment structure over the S1C Prototype reactor plant or developing a below ground disposal area at the Windsor Site. Another alternative would be to remove the S1C Prototype reactor plant as a single large reactor compartment package for offsite disposal. Each of these alternatives was considered but eliminated from detailed analysis.

Public Hearing

The purpose of the hearing is to receive comments on the Draft Environmental Impact Statement. The meeting will be chaired by a presiding officer and will not be conducted as an evidentiary hearing; speakers will not be cross-examined, although the presiding officer and Naval Reactors representatives present may ask clarifying questions of those who provide oral comments. To ensure that everyone has an adequate opportunity to speak, five minutes will be allotted for each speaker. Depending on the number of persons requesting to speak, the presiding officer may allow more time for elected officials, or speakers representing multiple parties, or organizations. Persons wishing to speak on behalf of organizations should identify the organization. Persons wishing to speak may either notify Mr. Overton in writing at the address below or register at the meeting. As time permits, individuals who have spoken subject to the five minute rule will be afforded additional speaking time. Written comments also will be accepted at the meeting.

Availability of Copies of the Draft Environmental Impact Statement

Copies of the Draft Environmental Impact Statement are being distributed to interested Federal, State, and local agencies, and to individuals who have expressed interest. Copies of the Draft Environmental Impact Statement and its supporting references are available for inspection at the Windsor Public Library at 323 Broad Street, Windsor, CT 06095. Copies of the Draft Environmental Impact Statement may be requested from Mr. Overton at the above phone number.

Issued at Arlington, VA this 20th day of June 1996.

B. DeMars,

Admiral, U.S. Navy, Director, Naval Nuclear Propulsion Program.

[FR Doc. 96-16680 Filed 6-28-96; 8:45 am]

BILLING CODE 6450-01-P

Storage and Disposition of Weapons-Usable Fissile Materials—Nonproliferation and Arms Control Assessment

AGENCY: Department of Energy.

ACTION: Notice of intent; request for public comment.

SUMMARY: The Department of Energy intends to conduct a Nuclear Nonproliferation and Arms Control Assessment of the weapons-usable fissile materials storage and disposition alternatives contained in the Storage and Disposition of Weapons-Usable Fissile Materials Draft Programmatic Environmental Impact Statement (Draft PEIS) (February 1996, DOE/EIS-0229-D). While not conducted as part of the formal National Environmental Policy Act process, the study will be performed to provide the fullest possible public involvement in the Department's consideration of weapons-usable fissile materials storage and plutonium disposition. The Assessment will be considered in identifying preferred alternatives for storage of weapons-usable fissile materials and disposition of plutonium. The goals of the proposed Assessment will be to help identify the nuclear nonproliferation and arms control benefits and vulnerabilities associated with each of the storage and disposition alternatives considered in the Draft PEIS and identify potential steps to maximize nonproliferation and arms control benefits and mitigate any vulnerabilities associated with the various alternatives.

DATES: All comments on the outline are due by August 9, 1996 and those received by that time will be considered by DOE in drafting the nonproliferation and arms control assessment. Comments received after that date will be considered by DOE to the extent practicable.

Meetings will be held in following locations:

July 23, 1996, 2:00pm–4:30pm (local time), University of Texas at Austin, Texas Union, North Entrance, 3.304, Quadrangle Room, 24th and Guadalupe, Austin, Texas 78712.
July 25, 1996, 2:00pm–4:30pm (local time), Stanford University, Galvez House Conference Room, 320 Galvez Street, Stanford, CA 94305.

July 29, 1996, 2:00pm–4:30pm (local time), Northwestern University, Norris Student Center, Louis South, 2nd Floor, 1999 South Campus Drive, Evanston, IL 60208.

July 31, 1996, 2:00pm–4:30pm (local time), Massachusetts Institute of Technology, Stratton Student Center, Mezzanine Lounge, 3rd Floor, 84 Massachusetts Ave., Cambridge, MA 02139.

August 1, 1996, 2:00pm–4:30pm, Department of Energy Headquarters, Forrestal Building, Room 1E245, Washington, DC 20585.

ADDRESSES: The Department of Energy invites interested agencies, organizations, and the general public to provide oral and/or written comments on the outline of the proposed Nonproliferation and Arms Control Assessment as set forth in this Notice. Written and oral comments will be accepted at the public meetings to be held at the times and locations listed above. Persons desiring to participate in the meetings are requested to pre-register by calling the toll-free number listed no later than one week prior to the meeting.

Written comments on the outline, requests for the President's Nonproliferation and Export Control Policy Statement, the National Academy of Sciences report, or the Draft Programmatic Environmental Impact Statement should be sent to: Mr. Jon B. Wolfsthal, Office of Arms Control and Nonproliferation (NN-42), Attn.: Assessment, U.S. Department of Energy, 1000 Independence Ave, S.W., Washington, DC 20585-0001. Electronic mail comments can be sent to Jon.Wolfsthal@HQ.DOE.GOV. Comments are due by August 9, 1996.

Persons wanting additional information or to pre-register for any of the public meetings can do so by calling 1-800-835-8009. Additional information can be obtained by visiting the Office of Nonproliferation and National Security's world wide web homepage at HTTP://WWW.NN.DOE.GOV/NN/.

SUPPLEMENTARY INFORMATION: There are a number of reasons behind the Department's effort to identify and implement safe, secure and timely storage and disposition of these weapons-usable materials. Many of these reasons relate to U.S. efforts to prevent the spread of nuclear weapons to additional nations or sub-national groups, and to encourage safe and secure storage and disposition of weapons-usable materials by other countries. Identifying the various implications for these goals presented

by the alternatives being evaluated by the Department is the central goal of the proposed Assessment.

The end of the Cold War and the east-west confrontation have significantly affected the way in which the United States and other countries approach the management of weapons-usable fissile materials (primarily highly enriched uranium (HEU) and plutonium). The reductions of nuclear weapons agreed to by the United States and Russia in bilateral treaties and through other initiatives has reduced U.S. national security requirements for fissile materials and, as a result, substantial amounts of weapons-usable fissile materials have been declared surplus to U.S. defense needs, and decisions about the storage of all weapons-usable fissile materials and the disposition of plutonium will therefore be required. The national policy, as outlined by the President on September 27, 1993 (White House Press Release), is to seek to eliminate where possible the accumulation of stockpiles of HEU and plutonium, and to ensure that where these materials already exist they are subject to the highest standards of safety, security and international accountability.

In addition, the President in September 1993 initiated a comprehensive review of long-term options for plutonium disposition, taking into account technical, nonproliferation, environmental, budgetary and economic considerations. The proposed Nonproliferation and Arms Control Assessment represents a vital part of that review.

In early 1994, the National Academy of Sciences published a report, *Management and Disposition of Excess Weapons Plutonium*. This study, commissioned by the President's National Security Council, provides information regarding management and disposition of surplus nuclear materials, in particular plutonium.

In the United States, weapons-usable fissile nuclear materials are currently stored at several DOE sites, including the Pantex Plant (Amarillo, Texas), the Hanford Site (Richland, Washington), Idaho National Engineering Laboratory (Idaho Falls, Idaho), the Rocky Flats Environmental Technology Site (Golden, Colorado), the Savannah River Site (Aiken, South Carolina), Lawrence Livermore National Laboratory (Livermore, California), Los Alamos National Laboratory (Los Alamos, New Mexico), and the Oak Ridge Reservation (Oak Ridge, Tennessee).

Recent nuclear arms reduction agreements and pledges, along with Presidential decisions concerning what

stocks of nuclear materials are surplus to national defense and defense-related program needs, will largely determine how much material will be available for disposition, and when.

The outline will be used to draft a Nonproliferation and Arms Control Assessment, which will then be reviewed and commented on by a panel of experts. This panel, which will be convened as a sub-committee of the Secretary of Energy's Advisory Board (SEAB), will include members of the SEAB and other experts and will be chaired by a SEAB member. The comments by the SEAB panel will be incorporated into the draft assessment, which will then be published and made available for public comment and additional public meetings in the fall. Following those meetings and comments, a final assessment will be prepared and published by the end of 1996.

Alternatives Considered

The Department is evaluating the following reasonable long-term storage alternatives: (1) Upgrade or replacement of current Plutonium and HEU storage facilities at multiple DOE sites, (2) consolidation of Plutonium at a single DOE site, and (3) collocation of Plutonium and HEU at a single DOE site. The six candidate storage sites are: the Hanford Site, Washington; the Idaho National Engineering Laboratory (INEL), Idaho; the Nevada Test Site (NTS), Nevada; the Oak Ridge Reservation (ORR), Tennessee; the Pantex Plant, Texas; and the Savannah River Site (SRS), South Carolina. For disposition, the Draft PEIS analyzes broader, programmatic strategies and technologies. The reasonable disposition alternatives fall into three categories: (1) The Deep Borehole Category consisting of two alternatives—Direct Disposition, and Immobilized Disposition; (2) the Immobilization Category consisting of three alternatives—Vitrification, Ceramic Immobilization, and Electrometallurgical Treatment; and (3) the Reactor Category consisting of four alternatives—Existing Light Water Reactors (LWRs), Evolutionary LWRs, Partially Completed LWRs, and the Canadian Deuterium Uranium (CANDU) Reactor. In addition, No Action Alternatives are analyzed, in which no change in storage and/or no disposition would occur.

The outline and the subsequent study will review the nonproliferation and arms control implications of the reasonable alternatives under evaluation, assess the relative nonproliferation and arms control

benefits and vulnerabilities of each alternative, and identify potential steps that could be taken to maximize the associated benefits and to minimize the associated liabilities. The report will be used in conjunction with environmental impact analyses, analyses of the cost, schedule and technical viability assessments of each option, other reports and public comments in making a final decision on how to store weapons-usable fissile materials and dispose of surplus plutonium.

Dated: June 26, 1996.

Kenneth N. Luongo,
*Senior Advisor to the Secretary of Energy
for Nonproliferation Policy and Director,
Office of Arms Control and Nonproliferation,*

Outline for Nonproliferation and Arms Control Assessment of Weapons-Usable Fissile Material Storage and Disposition Alternatives

(A) Introduction and Summary

- I. Current situation and upcoming developments
- II. Need for action
 - (a) Internal U.S. management of materials
 - (b) International imperatives/objectives
- III. Background and previous studies
- IV. Alternatives under consideration
- V. Main nonproliferation considerations (Summary)
 - (a) Technical factors
 - (b) Policy factors

(B) Policy Factors

- I. Relevant policy documents
 - (a) Relevant Presidential Decision Directives and statements
 - (b) US/Russian & P-8 summit statements
 - (c) Other documents and guidance
- II. International initiatives/cooperation

(C) Long-Term Storage of Fissile Materials

- I. Description of four main storage alternatives (contained in Draft PEIS)
 - (a) Upgrade facilities at multiple sites (separate/multiple HEU and Pu Storage sites)
 - (b) Consolidation of Plutonium storage
 - (c) Collocation of Plutonium and Highly enriched uranium storage
 - (d) No action
- II. Nonproliferation and arms control analysis of four main storage alternatives
 - (a) Nonproliferation and arms control-related benefits
 - Technical
 - Policy
 - (b)—Nonproliferation and arms

control liabilities/vulnerabilities —Technical —Policy	Candu Reactor in Canada (b) Immobilization Vitrification Ceramic Immobilization Electrometallurgical Treatment	Technical Policy
III. Identify/Recommend steps to maximize positive and reduce negative impacts of main storage options	(c) Deep Borehole Review Direct Disposition Immobilized Disposition	III. Identify/Recommend steps to maximize benefits and reduce any negative nonproliferation impacts of options
(D) Disposition Options for Surplus Plutonium	(d) No Action	(E) General Recommendations/Conclusions
I. Description and analysis of four groups of alternatives (See Figure 1 for factors to be considered)	II. Nonproliferation analysis of three main categories of options (See Figure I).	(The Assessment will not rank the alternatives based on nonproliferation criteria, but will recommend possible ways to maximize benefits or mitigate any negative nonproliferation implications associated with particular alternatives.)
(a) Reactor Options (US and/or European MOX fabrication) Evolutionary LWRs Partially Completed LWRs Existing LWRs	(a) Nonproliferation and arms control benefits Technical Policy (b) Nonproliferation and arms control liabilities/vulnerabilities	

FIGURE 1.—TECHNICAL/POLICY FACTORS AND MITIGATING STEPS

Technical factors	Policy factors	Mitigating steps
TIME LINES —Time to Start —Time to Finish RISK OF DIVERSION IN PROCESS —Material form and attractiveness —Material security and accounting —Transport security —Process through-put —Other process issues —Material inventories —Number of facilities and sites —Bilateral and international monitoring —Political and security conditions in countries involved RISK OF RE-USE IN WEAPONS —Final material form and attractiveness —Physical access to material —Cost, time and observability of recovery —Bilateral and international monitoring.	Impacts on foreign programs and activities Impact on current and future U.S. policy Impacts on nonproliferation agreements and regimes Political implementability Impacts on current and future fissile material related negotiations Impact on future dismantlement activities	Safeguards and Security International monitoring and access Implementation variations Stated justifications Bilateral or multilateral agreements or PAGE arrangements

[FR Doc. 96-16679 Filed 6-28-96; 8:45 am]

BILLING CODE 6450-01-P

Federal Energy Regulatory Commission

[Docket No. RP96-282-000]

Algonquin Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

June 25, 1996.

Take notice that on June 20, 1996, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of July 20, 1996:

Twenty-eighth Revised Sheet No. 20A
Original Sheet No. 93C
Fourth Revised Sheet No. 700
Third Revised Sheet No. 701
Second Revised Sheet No. 702
Fourth Revised Sheet No. 703

Algonquin states that the purpose of this filing is to flow through \$177,225.78 of take-or-pay charges billed to Algonquin by National Fuel Gas Supply Corporation under the revised allocation methodology. Algonquin requests that the Commission grant any waiver that may be necessary to place these tariff sheets into effect on the date requested.

Algonquin states that copies of this filing were mailed to all customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in § 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 proceeding. 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.

Lois D. Cashell,
Secretary.

[FR Doc. 96-16631 Filed 6-28-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-95-012]

Colorado Interstate Gas Company; Notice of Compliance Filing

June 25, 1996.

Take notice that on June 21, 1996, Colorado Interstate Gas Company (CIG), tendered for filing a semiannual compliance filing consisting of work papers detailing accrued interest payments made by CIG to its affected customers related to the unused portion

of transportation credits in the above referenced docket.

CIG states that this is the final report and the appropriate refund has been made to all affected customers.

CIG states that copies of the filing were served upon all of the parties to this proceeding and affected state commissions and affected parties.

Any person desiring to protest said 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 on or before July 2, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestant parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 96-16629 Filed 6-28-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. OR96-14-000]

Exxon Company, U.S.A., a division of Exxon Corporation, v. Amerada Hess Pipeline Company, et al.; Notice of Complaint June 25, 1996.

Take notice that on June 19, 1996, Exxon Company, U.S.A. (EUSA), a division of Exxon Corporation, filed a complaint against the seven Trans Alaska Pipeline System (TAPS) owners, Amerada Hess Pipeline Corporation, ARCO Transportation Alaska, Inc., BP Pipelines (Alaska) Inc., Exxon Pipeline Company, Mobil Alaska Pipeline Company, Phillips Alaska Pipeline Corporation, and Unocal Pipeline Company (TAPS Carriers), pursuant to Sections 9, 13(1) and 15(1) of the Interstate Commerce Act, 49 U.S.C. App. Sections 9, 13(1), 15(1), and Rule 206 of the Commission's Rules of Practice and Procedures.

EUSA alleges that the TAPS Carriers have violated sections 1(5), 3(1) and 6(7) of the ICA, 49 U.S.C. App. Sections 1(5), 3(1), 6(1) and 6(7), by imposing certain TAPS Quality Bank charges which are unjust and unreasonable by unjustifiably giving a preference to shippers of heavier petroleum, thereby unduly discriminating against shippers of lighter petroleum, and by failing to adhere to the TAPS Quality Banks tariffs.

EUSA requests that the Commission (1) Consolidate this proceeding with the

Quality Bank proceedings in Docket Nos. OR89-2-009, *et al.*; (2) find that the current Quality Bank methodology violates sections 1(5), 3(1), 6(1), and 6(7) of the ICA; (3) award damages to EUSA; (4) prescribe as appropriate Quality Bank methodology; and (5) amend the TAPS Quality Bank tariffs to provide expressly for EUSA and other shippers to audit administration of the Quality Bank methodology.

Any person desiring to be heard or to protest the instant complaint should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed on or before July 19, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceeding. 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. Answers to this complaint shall be due on or before July 19, 1996.

Lois D. Cashell,
Secretary.

[FR Doc. 96-16628 Filed 6-28-96; 8:45 am]

BILLING CODE 6717-01-M

Federal Energy Regulatory Commission

[Docket No. MG96-15-000]

Koch Gateway Pipeline Company; Notice of Filing

June 25, 1996.

Take notice that on June 17, 1996, Koch Gateway Pipeline Company (Koch) submitted revised standards of

conduct under Order Nos. 497 *et al.*¹ and Order Nos. 566 *et seq.*²

Koch states that the changes are the result of its contracting with its marketing affiliate, Koch Gas Services Company, to act as its agent for Koch's merchant services.

Any person desiring to be heard or to protest said 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 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before July 10, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestant parties to the proceeding. 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.

Lois D. Cashell,
Secretary.

[FR Doc. 96-16627 Filed 6-28-96; 8:45 am]

BILLING CODE 6717-01-M

Federal Energy Regulatory Commission

[Docket No. CP96-573-000]

Northwest Pipeline Corporation; Notice of Application

June 25, 1996.

Take notice that on June 17, 1996, Northwest Pipeline Corporation

¹ Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,820 (1988); Order No. 497-A, *order on rehearing*, 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 (1989); Order No. 497-B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶ 30,908 (1990); Order No. 497-C, *order extending sunset date*, 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); *Tenneco Gas v. FERC* (affirmed in part and remanded in part), 969 F. 2d 1187 (D.C. Cir. 1992), Order No. 497-D, *order on remand and extending sunset date*, III FERC Stats. & Regs. Preambles ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497-E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993), Order No. 497-F (*order denying rehearing and granting clarification*), 66 FERC ¶ 61,347 (March 24, 1994).

² Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994); Order No. 566-A, *order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566-B, *order on rehearing*, 59 FR 65707, (December 21, 1994); 69 FERC ¶ 61,334 (December 14, 1994).

(Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108-0900, filed in Docket No. CP96-573-000 an application pursuant to Section 7(b) of the Natural Gas Act and Section 157.18 of the Commission's regulations for an order permitting and approving an abandonment by removal the following five inactive receipt point meter stations.

- Klondike Receipt Meter Station located in Grand County, Utah
- Amoco Wheeler Receipt Meter Station located in La Plata County, Colorado
- C. C. Company Receipt Meter Station located in Grand County, Utah
- Papoose Canyon Receipt Meter Station located in Dolores County, Colorado
- Unicon Producing Company (UPC) Durango Receipt Meter Station located in La Plata County, Colorado

Northwest states that at each meter station it plans to remove all above ground facilities except for the valve taps; that the removed facilities will be scrapped, except for a 70 barrel tank at the Amoco Wheeler Receipt Meter Station and the meters which will be used at other locations; that the accounting treatment for the abandonments will be as proposed in its Exhibit Y to the application; and that the sites will be restored to original conditions; all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 16, 1996, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application, if no

motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northwest to appear or to be represented at the hearing.

Lois D. Cashell,
Secretary.

[FR Doc. 96-16626 Filed 6-28-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP96-281-000]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

June 25, 1996.

Take notice that on June 19, 1995, Williams Natural Gas Company (WNG), tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective on July 1, 1996:

Thirteenth Revised Sheet No. 6A
Second Revised Sheet No. 6B
Third Revised Sheet No. 204
Fifth Revised Sheet No. 205

WNG states that this filing is being made pursuant to part 154 of the Commission's regulations and as contemplated in WNG's abandonment of facilities filing in Docket No. CP94-196. In that filing WNG stated that tariff sheets reflecting the abandonment would be filed upon the Commission's issuance of an order approving the abandonment.

WNG states that a copy of its filing was served on all participants listed on the service list maintained by the Commission in Docket No. CP94-196 and on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in section 154.210 of the Commission's Regulations. Any person wishing to become a party must file a motion to intervene. 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.

Lois D. Cashell,
Secretary.

[FR Doc. 96-16630 Filed 6-28-96; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5530-1]

Sustainable Development Challenge Grant Program

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Solicitation of Proposals for FY 1996; Request for Comments on Program Design for Full Implementation in FY 1997.

SUMMARY: The U.S. Environmental Protection Agency (EPA) announces and solicits applications for a new competitive grant program, the Sustainable Development Challenge Grant (SDCG) program, one of President Clinton's "high priority" actions described in the March 16, 1995 report, "Reinventing Environmental Regulation." The EPA expects to fund a limited number of pilot projects in FY 1996 through the new SDCG program. EPA is also asking for comments on the program design to help develop a full scale program for FY 1997. The Sustainable Development Challenge Grant program is intended to "encourage community, business, and government to work cooperatively to develop flexible, locally-oriented approaches that link place-based environmental management with sustainable development and revitalization." The SDCG program will challenge communities to invest in a sustainable future that links environmental protection and economic prosperity to provide equitable opportunities for health, safety and well-being. These grants are intended to: catalyze community-based and regional projects to promote sustainable development; build partnerships to increase community long-term capacity to protect the environment; and leverage public and private investments to enhance environmental quality by enabling sustainable community efforts to continue beyond EPA funding.

This document includes: background information on the Sustainable Development Challenge Grant program; a description of the program; the

criteria; the process for selection of projects; and the program's relationship to other related EPA activities.

DATES: The period for submission of proposals for FY 1996 will begin upon publication of this Federal Register notice pursuant to the Information Collection Request (ICR No. 1755.01) approved by the Office of Management and Budget (OMB Approval No. 2010-0026) under the Paperwork Reduction Act. Project pre-applications must be postmarked by August 1, 1996. Comments on this Federal Register notice concerning program design for full implementation in FY 1997 are due August 30, 1996.

ADDRESSES: Comments on the FY 1997 program may be provided in writing. Please send your comments by mail or fax to: Pamela A. Hurt, U.S. EPA, Office of Regional Operations and State/Local Relations (1501), 401 M St., S. W., Washington, D.C. 20460. The fax number for the office is 202-260-9365.

Applications. Pre-application kits for FY 1996 project proposals are available upon request from EPA Headquarters. These kits will include more detailed guidance and may be requested in writing from the address above, or by fax addressed to Pamela A. Hurt at 202-260-9365, or by voice mail at 202-260-0422. EPA will notify successful applicants in writing and provide technical assistance in preparation of formal applications.

The original plus one copy of the pre-application, should be sent to: Pamela A. Hurt, U.S. EPA, Office of Regional Operations and State/Local Relations, (1501), 401 M Street, S.W., Washington, D.C. 20460. Pre-applications should include a one page cover sheet that summarizes: the amount of assistance requested from EPA; the various entities or organizations that will be partners in the project; and the project's anticipated results. The cover sheet should also include the applicant's name, address, and phone number. The project proposal narrative should be limited to five (5) double-sided pages and explain the relationship of the proposal to the criteria for project selection described in this notice.

FOR FURTHER INFORMATION CONTACT: Pamela A. Hurt, U.S. EPA, Office of Regional Operations and State/Local Relations (1501), 401 M Street, S.W., Washington, D.C. 20460, or by voice mail at (202) 260-0422.

SUPPLEMENTARY INFORMATION:

Purpose

EPA intends these competitive grants to be catalysts that challenge communities to invest in a sustainable

future, recognizing that sustainable environmental quality and economic prosperity are inextricably linked. The Sustainable Development Challenge Grant program is an important opportunity for EPA to award competitive grants for seed funding to leverage private and other public sector investment in communities (and larger geographic areas such as watersheds) to build partnerships that increase a community's long-term capacity to protect the environment through sustainable development. This grant program challenges local communities to invest in their own sustainable futures.

Overview of the Sustainable Development Challenge Grant Approach

The grant program encourages communities to recognize and build the fundamental connection between environmental protection and economic development. Accomplishing this linkage requires integrating environmental protection in policy and decision-making at all levels of government and throughout the economy. The SDCG program recognizes the significant role that communities have and should play in environmental protection. The program acknowledges that sustainable development is often best designed and implemented at a community level. This program also requires a stakeholder process that will identify measurable milestones as steps in an iterative process that integrates environmental and economic goals. The EPA will implement this program consistent with the principles of Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (February 11, 1994). Projects funded must ensure that no one is subjected to unjust or disproportionate environmental impacts.

Achieving sustainability is a responsibility shared by environmental, community and economic interests at all levels of government and the private sector. This emphasis on strong community involvement requires a commitment to ensuring that all Americans, of varying economic and social groups, are afforded opportunities to participate in decision-making. Only through the combined efforts, and collaboration of governments, private organizations, and individuals can our communities, regions, states, and nation achieve the benefits of sustainable development.

Linkages to Other Initiatives

The Sustainable Development Challenge Grant (SDCG) program is a new competitive grant program, one of 25 major environmental reforms announced by President Clinton in March 1995, as part of EPA's Reinventing Environmental Regulation.

EPA and its state and local partners are reinventing the way environmental protection is accomplished in the United States. The Agency recognizes that environmental progress will not be achieved solely by regulation, but also requires individual, institutional, and corporate responsibility, commitment and stewardship. The Sustainable Development Challenge Grant program is consistent with other community-based efforts EPA has introduced, such as Brownfields, Project XL, and the Community-Based Environmental Protection Approach, which stimulate broad community participation. The Sustainable Development Challenge Grant program is also a step in implementing Agenda 21, the Global Plan of Action on Sustainable Development, agreed to by the United States at the Earth Summit in Rio de Janeiro in 1992.

Through the Sustainable Development Challenge Grant Program, EPA intends to further the vision and goals of the President's Council on Sustainable Development (PCSD), created in 1993 by President Clinton. The Council, composed of corporate, government, and non-profit representatives, was charged to find ways to "bring people together to meet the needs of the present without jeopardizing the future." The Council has declared this vision:

"Our vision is of a life-sustaining Earth. We are committed to the achievement of a dignified, peaceful and equitable existence. We believe a sustainable United States will have a growing economy that equitably provides opportunities for satisfying livelihoods and a safe, healthy, high quality of life for current and future generations. Our nation will protect its environment, its natural resource base, and the functions and viability of natural systems on which all life depends." (February 1996)

The Sustainable Development Challenge Grant program furthers this vision by encouraging community initiatives that achieve environmental quality with economic prosperity through public and private involvement and investment.

Examples of Potential Projects

EPA welcomes proposals for many types of projects. The following examples of the types of projects EPA envisions funding. These examples are

only illustrative and are not intended to limit proposals in any way.

- Demonstrate environmental and economic benefits in a rural community through the development of community-based agricultural pollution prevention practices. Reduced use of fertilizers and pesticides by area farmers should result in economic benefits in lower drinking water treatment and monitoring costs, and reduced water treatment costs for local businesses. It is also expected to lower human exposure to agricultural chemicals and minimize adverse impacts to habitat with associated quality of life benefits.

- Demonstrate the design and establishment of an eco-industrial park. Enlist the participation of local officials, environmental groups, and business interests in designing and establishing an eco-industrial park that will attract industries that can use each other's wastes as raw materials, and that pioneer environmentally sound technologies, thereby promoting new and existing locally based companies that are "zero dischargers". The goal would be to reduce costs for the businesses involved for water treatment, waste incineration, and landfilling. These improvements would be intended to have positive long-term water and air quality benefits.

- Demonstrate a cooperative effort among business interests, environmental groups, and government agencies to design and implement a plan for managing timber lands in such a way that they continue to provide jobs and bring money into the local economy, but also protect critical habitats and sensitive species. As part of the plan development, wildlife agencies and organizations commit to conducting or funding the scientific research needed. The project will also explore opportunities for using extracted timber in local manufacturing and finished goods.

- Demonstrate the interrelationship between federal environmental mandates and sound urban redevelopment as an alternative to suburban sprawl. The project will demonstrate the benefits of development that uses existing urban infrastructure close to the urban core and also protects drinking water sources, air quality, and wildlife habitat. By providing open spaces for natural sumps for the treatment of stormwater runoff, green spaces can be provided to increase aesthetic value and recreational opportunities. The project will increase residential spaces with good access to public transportation, and will assess improvements in air quality, as well as the impact on use of other

infrastructure, sewers, sidewalks and roads. The project will assess the environmental quality benefits gained from urban redevelopment.

Selection Criteria

After determining that the proposed project meets the two statutory threshold determinations described below in the **STATUTORY AUTHORITY** section, EPA will also consider the following criteria, weighting each as indicated:

(1) Sustainability: 40 points

- How well does the proposal integrate environmental protection and economic prosperity?
- Does the proposal define the community it will benefit, either by geographic or political boundaries? Does the proposal define how it relates to regional sustainability?
- Does the proposal take a comprehensive multi-media approach (e.g. air, water, land) to assess environmental quality and set priorities for action?
- Does the proposal use a proactive environmental approach, for example, pollution prevention or watershed protection?
- Will the proposal result in sustainable economic development benefits, such as more appropriate, efficient use of resources so that jobs created will be sustained, or the amount of money retained in the local economy will be maximized?
- Does the proposal represent new solutions for the community, given their previous history and current circumstances?

(2) Community Commitment and Contribution: 30 points

- Do the partners fully represent those in the community who have an interest in or will be affected by the project?
- Will the proposal's outcomes and results benefit all affected groups in the community?
- Does the proposal describe effective methods for community involvement to assure that all affected by the project are provided an opportunity to participate?
- Does the proposal describe the depth and breadth of the community's support (financial and in-kind) for the proposal? Does it provide evidence of long-term commitment to the proposal?

(3) Measurable Results: 30 points

- Does the proposal describe the specific environmental and economic benefits to be gained by the community? What non-sustainable behaviors will be addressed by the proposal?
- Does the proposal include achievable short-term (within three

years) and long-term targets or benchmarks to measure the proposal's contribution to the community's sustainability? (These may be quantitative and/or qualitative.)

- Does the proposal set goals for the proactive environmental approaches it employs?

- After seed funds from EPA are exhausted, does the proposal demonstrate how the work will continue, or how it will evolve into or generate other sustainability efforts, either locally or regionally?

- Will the experiences gained during the project be transferable to other communities?

Statutory Authority

EPA expects to award Sustainable Development Challenge Grants program under the following eight grant authorities: Clean Air Act section 103(b)(3); Clean Water Act section 104(b)(3); Resource Conservation and Recovery Act section 8001; Toxics Substances Control Act section 10; Federal Insecticide, Fungicide, and Rodenticide Act section 20; Safe Drinking Water Act sections 1442(a) and (b); National Environmental Education Act, section 6; and Pollution Prevention Act, section 6605.

As a threshold determination, to be selected for funding, a project must consist of activities within the statutory terms of these EPA grant authorities. Most of the statutes authorize grants for the following activities: "research, investigations, experiments, training, demonstrations, surveys and studies." These activities relate generally to the gathering or transferring of information or advancing the state of knowledge. Grant proposals should emphasize this "learning" concept, as opposed to "fixing" an environmental problem via a well-established method. For example, a proposal to plant some trees in an economically depressed area, in order to prevent erosion, would probably not, in itself, fall within the statutory terms "research, studies" etc., nor would a proposal to start a routine recycling program.

On the other hand, the statutory term "demonstration" can encompass the first instance of the application of a pollution control technique, or an innovative application of a previously used method. Similarly, the application of established practices may qualify when they are part of a broader project which qualifies under the term "research."

As a second threshold determination, in order to be funded, a project's subject generally must be one that is specified in the statutes listed above. For most of

the statutes, a project must address the causes, effects, extent, prevention, reduction, and elimination of air, water, or solid/hazardous waste pollution, or, in the case of grants under the Toxic Substances Control Act or the Federal Insecticide, Fungicide and Rodenticide Act, to "carrying out the purposes of the Act." While the purpose of this program's grants will include the other two aspects of sustainable development and economic prosperity, the overarching concern or principal focus must be on the statutory purpose of the applicable grant authority, in most cases "to control pollution." Note that proposals relating to other topics which are sometimes included within the term "environment" such as recreation, conservation, restoration, protection of wildlife habitats, etc., should describe the relationship of these topics to the statutorily required purpose of pollution control.

Definitions

Sustainable Development: Sustainable development means integrating environmental protection, and community and economic goals. Sustainable development meets the needs of the present generation without compromising the ability of future generations to meet their own needs. The sustainable development approach seeks to encourage broad-based community participation and public and private investment in decisions and activities that define a community's environmental and economic future.

Community: The scale used to define "community" under this challenge grant program will vary with the issues, problems, or opportunities that an applicant intends to address. The SDCG program recognizes the significant role that communities have and should play in environmental protection. "Community" means a geographic area within which different groups and individuals share common interests related to their homes and businesses, their personal and professional lives, the surrounding natural landscape and environment, and the local or regional economy. A community can be one or more local governments, a neighborhood within a small or large city, a large metropolitan area, a small or large watershed, an airshed, tribal lands, ecosystems of various scales, or some other specific geographic area with which people identify.

Who Should Apply

Eligible applicants include: (1) Incorporated non-profit (or not-for-profit) private agencies, institutions and organizations; and (2) public (state,

county, regional or local) agencies, institutions and organizations, including those of federally-recognized Indian tribes. While state agencies are eligible they are encouraged to work in partnership with community groups to strengthen their proposals.

Applicants are not required to have a formal Internal Revenue Service (IRS) non-profit designation, such as 501(c)(3) or 501(c)(4), however they should present their letter of incorporation or other documentation demonstrating their nonprofit or not-for-profit status. Applicants who do have an IRS 501(c)(4) designation are not eligible for grants if they engage in lobbying, no matter what the source of funding for the lobbying activity. (No recipient may use grant funds for lobbying.) Further, profit-makers are not eligible to receive sub-grants from eligible recipients, although they may receive contracts, subject to EPA's regulations on procurement under assistance agreements, 40 Code of Federal Regulations (CFR) 30.40 (for non-governmental recipients) and 40 CFR 31.36 (for governments).

Funding Ranges and Match

Applicants may compete for funding in two ranges for FY 1996: (1) \$50,000 or less, and (2) between \$50,001 and \$100,000. [Please note that for FY 1997 these levels may be changed based on EPA's assessment of FY 1996 experience.] Proposals will be compared to other proposals in the same range (i.e. a proposal for \$50,000 will not compete against a proposal for \$100,000.)

In FY 1996, EPA expects to fund a limited number of projects in the two funding ranges. Applicants may submit multiple proposals, but each specific proposal can only be submitted in one funding range and must be for a separate and distinct project. A separate solicitation will be issued for FY 1997. No organization may receive funding for more than one proposal each year. In addition, projects awarded will be ineligible for future competition. The number of grants awarded in FY 1997 for each range will depend on the total amount of funds available for the Sustainable Development Challenge Grants program.

This program is intended to provide seed money to leverage a broader public and private investment in sustainability activities. As a result, the program requires a minimum non-Federal match of at least 20 percent of the total project budget. EPA strongly encourages applicants to leverage as much investment in community sustainability as possible. EPA funds can be used for no more than 80 percent of the total cost

of the project. The match can come from a variety of public and private sources and can include in-kind goods and services. No Federal funds, however, can be used as matching funds without specific statutory authority.

Selection Process

In order to ensure a fair selection process, an evaluation panel consisting of EPA Regional and Headquarters staff will evaluate the pre-applications. The evaluation panel will assess how well the proposals meet the selection criteria outlined above. The panel's recommendations will be presented to EPA Senior Management for final selection.

What Costs Can Be Paid

Even though a proposal may involve an eligible applicant, eligible activity, and eligible purpose, grant funds cannot necessarily pay for all of the costs which the recipient might incur in the course of carrying out the project. Allowable costs are determined by reference to the EPA regulations cited below and to OMB Circulars A-122, "Cost Principles for Non-profit Organizations", A-21 "Cost Principles for Education Institutions" and A-87, "Cost Principles for State, Local, and Indian Tribal Governments." Generally, costs which are allowable include salaries, equipment, supplies, training, rental of office space, etc., as long as these are "necessary and reasonable." Entertainment costs are an example of unallowable costs.

Applicable Grant Regulations

40 CFR Part 30 (for other than State/local governments e.g. non-profit organizations) (recently revised, see 61 FR 6065 (Feb. 15, 1996)), and Part 31 (for State and local governments and Indian tribes).

Paperwork Reduction Act

The information collection provisions in this Notice, for solicitation of proposals, have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. (ICR No. 1755.01 and OMB Approval No. 2010-0026). The approved Information Collection Request (ICR No. 1755.01) is in effect and will cover all burdens associated with Sustainable Development Challenge Grants. Copies of the ICRs (ICR Nos. 1755.01 and 1755.02) may be obtained from the Information Policy Branch, EPA, 401 M Street, SW., (Mail Code 2136), Washington, DC 20460 or by calling (202) 260-2740.

Dated: June 25, 1996.
 Fred Hansen,
Deputy Administrator.
 [FR Doc. 96-16696 Filed 6-28-96; 8:45 am]
 BILLING CODE 6560-50-P

[FRL-5530-2]

Science Advisory Board Amendment To Previously Published Federal Register Notice and Notification of Public Advisory Committee Meeting; Open Meeting

On June 25, 1996, notice of several meetings of the EPA's Science Advisory Board (SAB) was published in the Federal Register 61 FR 32796. This notice amends section 4 of that notice concerning the July 16-18 meeting of the Drinking Water Committee (DWC). This notice also announces the meeting of the Valuation Subcommittee of the Integrated Risk Project Committee which will meet on July 19, 1996.

1. Drinking Water Committee—Amended Notice of Meeting

This notice amends the statement of purpose and background from section 4 of the Federal Register notice of June 25, 1996 concerning the July 16-18 meeting of the Drinking Water Committee (DWC) at the Holiday Inn Georgetown, 2101 Wisconsin Avenue NW., Washington, D.C. 20007, telephone (202) 338-4600.

As amended, the main purpose of the meeting is to: (a) Evaluate EPA's basis for concluding that protozoan monitoring, required under the Information Collection Rule (ICR), will provide data adequate for supporting a national impact analysis for the Enhanced Surface Water Treatment Rule (ESWTR); (b) discuss the proposals submitted for DWC review in Fiscal Year 1997; (c) discuss emerging requirements regarding testing and evaluation of endocrine disruptors; (d) consider the impacts revisions to the Cancer Guidelines may have on the assessment of waterborne cancer hazards; and, (e) finish drafting the DWC's report on the Agency's Five Year Research Plan for Microbes and Disinfectant By-Products.

Background on the Statistical Evaluation of Pathogenic Parasites: The Agency has promulgated an Information Collection Rule (ICR) which among other things will provide data about the occurrence of the pathogenic parasites *Cryptosporidium* and *Giardia* in the source waters of several hundred water supplies. Information about pathogen occurrence is needed for a Regulatory Impact Analysis of the ESWTR. The

Office of Water (OW) does not believe that current protozoan methods are appropriate for evaluating occurrence at individual sites for the purpose of complying with a regulation. However, OW does think the method is adequate for obtaining data to support a National Impact Analysis.

2. Integrated Risk Project Committee

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the Valuation Subcommittee (Committee) of the Integrated Risk Project Committee (IRP) of the Science Advisory Board (SAB) will meet on July 19, 1996, from 8:30 am to no later than 5:00 pm (Eastern Daylight Time) in Room 17 of the Washington Information Center (WIC) of the US EPA, 401 M Street SW., Washington, DC 20460. This meeting is open to the public, however, due to limited space, seating will be on a first-come basis. The purpose of the meeting is to refine the charge to the Committee and to plan the Committee's efforts as part of the larger IRP effort of the SAB.

Background: In a letter dated October 25, 1995, Deputy Administrator Fred Hansen requested the SAB to update the assessment of environmental risks, priorities, and risk reduction opportunities contained in the 1990 SAB report, Reducing Risk: Setting Priorities and Strategies for Environmental Protection (EPA-SAB-EC-90-021). In subsequent discussions with the Deputy Administrator, the SAB has also agreed to provide insights on economic analysis of risk reduction options and ecosystem valuation. In summary, the current charge to the Valuation Subcommittee is to propose a new framework for assessing the value of ecosystems to humans, including ecological services and environmentally mediated health and quality of life values.

FOR FURTHER INFORMATION: Single copies of the information provided to the Committee can be obtained by contacting Ms. Diana Pozun, Staff Secretary, Committee Operations Staff, Science Advisory Board (1400), US EPA, 401 M Street SW., Washington, DC 20460, telephone (202) 260-8414, fax (202) 260-7118, or Internet at: pozun.diana@epamail.epa.gov. Single copies of Reducing Risk, the report of the previous relative risk ranking effort of the SAB, can be obtained by contacting the SAB's Committee Evaluation and Support Staff (1400), 401 M Street, SW., Washington, DC 20460, telephone (202) 260-8414, or fax (202) 260-1889. Anyone wishing to make an oral presentation at the meeting

must contact Mr. Thomas Miller, Designated Federal Official for the Valuation Subcommittee IRP, *in writing* no later than 4:00 pm (Eastern Daylight Time) July 12 1996, at the above address, via fax (202) 260-7118, or via the Internet at: Miller.Tom@epamail.epa.gov. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. At least 35 copies of any written comments to the Committee are to be given to Mr. Miller no later than the time of the presentation for distribution to the Committee and the interested public. To discuss technical aspects of the meeting, please contact Mr. Miller by telephone at (202) 260-8414.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date, may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Dated: June 21, 1996.
 John R. Fowle III,
Acting Staff Director, Science Advisory Board.
 [FR Doc. 96-16667 Filed 6-28-96; 8:45 am]
 BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

[DA 96-962]

Telecommunications Services Between the United States and Cuba

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On June 17, 1996, the Commission approved the application of AT&T Corp. to acquire and operate additional facilities to provide telecommunications services between the United States and Cuba. The services authorized include both switched voice and private line services.

Grant of the application will permit AT&T to continue to provide improved service to Cuba, pursuant to the new service agreement it entered into with its correspondent in Cuba, EMTELCUBA, which became effective upon grant of a previous application. The Commission has authorized AT&T to provide service between the United States and Cuba in accordance with the provisions of the Cuban Democracy Act. This will allow AT&T to help meet the large demand for direct telecommunications services between the United States and Cuba. Under the guidelines established by the Department of State, AT&T is to submit reports indicating the numbers of circuits activated by facility, on or before June 30, and December 31 of each year, and on the one-year anniversary of this notification in the Federal Register.

EFFECTIVE DATE: June 17, 1996.

FOR FURTHER INFORMATION CONTACT: Troy F. Tanner, Attorney, Common Carrier Bureau, (202) 418-1470.

SUPPLEMENTARY INFORMATION:

Adopted: June 17, 1996.

Released: June 20, 1996.

1. Upon consideration of the above-captioned uncontested application, filed by American Telephone and Telegraph Company (AT&T) pursuant to Section 214 of the Communications Act of 1934, as amended, we find that the present and future public convenience and necessity require a grant thereof.

2. Accordingly, it is ordered that application File No. I-T-C-96-231 is granted, and AT&T is authorized to:

a. lease from Comsat and operate 24 64-kbps satellite circuits between appropriately licensed U.S. earth stations and an appropriate INTELSAT satellite over the Atlantic Ocean, connecting with similar circuits between the satellite and an earth station in Cuba, furnished by AT&T's correspondent;

b. multiplex the circuits authorized in a., above, through the use of Digital Circuit Multiplexing Equipment, to derive up to 120 circuits from the 30 circuits authorized; and

c. use said facilities to provide AT&T's regularly authorized services between the United States and Cuba.

3. It is further ordered that our authorization of AT&T to provide private lines as part of its authorized services is limited to the provision of such private lines only between the United States and Cuba—that is, private lines which originate in the United States and terminate in Cuba or which originate in Cuba and terminate in the United States. In addition, AT&T may

not—and AT&T's tariffs must state that its customers may not—connect private lines provided over these facilities to the public switched network at either the U.S. or Cuban end, or both, for the provision of international switched basic services, unless authorized to do so by the Commission upon a finding that Cuba affords resale opportunities equivalent to those available under U.S. law, in accordance with *Foreign Carrier Entry Order*, 60 FR 67332, December 29, 1995. The limitations in this paragraph are subject to the exceptions contained in Sections 63.01(k)(6)(i) and 63.17 of the Commission's Rules, 47 CFR §§ 63.01(k)(6)(i) and 63.17. See also *Cable & Wireless et al.*, 11 FCC Rcd 1766 (1996), para. 36.

4. It is further ordered that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 CFR Section 43.61.

5. It is further ordered that the applicant shall file annual circuit status reports in accordance with the requirements set forth in *Rules for Filing of International Circuit Status Reports*, CC Docket No. 93-157, Report and Order, 10 FCC Rcd 8605 (1995), 60 FR 51366, October 2, 1995.

6. It is further ordered that AT&T shall split 50/50 with ETESCA the \$1.20 per minute accounting rate for the IMTS services.

7. It is further ordered That the surcharge agreed to between AT&T and ETESCA for received collect calls shall be no greater than \$1.00 per call.

8. It is further ordered That AT&T shall submit reports on or before June 30, and December 31, of each year, and on the one-year anniversary of the notification of the grant of this application in the Federal Register, indicating the number of circuits activated by facility.

9. It is further ordered That this authorization is subject to AT&T's obtaining all necessary licenses and authorizations from the Departments of Treasury and Commerce.

10. It is further ordered That this order is subject to revocation without a hearing in the event the Department of State or the Federal Communications Commission determines that the continuation of communications between the United States and Cuba is no longer in the national interest.

11. This order is issued under Section 0.261 of the Commission's Rules and is effective June 17, 1996. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of

public notice of this order (see Section 1.4(b)(2)).

Federal Communications Commission.

Diane J. Cornell,

Chief, Telecommunications Division,
International Bureau.

[FR Doc. 96-16609 Filed 6-28-96; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1120-DR]

Commonwealth of Pennsylvania; Major Disaster and Related Determinations

AGENCY: Federal Emergency
Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Pennsylvania (FEMA-1120-DR), dated June 18, 1996, and related determinations.

EFFECTIVE DATE: June 18, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 18, 1996, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the Commonwealth of Pennsylvania, resulting from flooding on June 12, 1996, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the Commonwealth of Pennsylvania.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas. Public Assistance may be added at a later date, if requested and warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing

Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Jack Schuback of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Pennsylvania to have been affected adversely by this declared major disaster:

Bucks County for Individual Assistance and Hazard Mitigation,
(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,
Director.

[FR Doc. 96-16702 Filed 6-28-96; 8:45 am]

BILLING CODE 6718-02-P

Open Meeting, Technical Mapping Advisory Council

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. 1, the Federal Emergency Management Agency gives notice that the following meeting will be held:

Name: Technical Mapping Advisory Council.

Date of Meeting: July 15, 1996.

Place: The meeting will be held via TeleVideoconference from 7 sites across the United States.

Time: 12:30 p.m. to 3:30 p.m.

Proposed Agenda: Discussion of goals to be pursued by the Council in the upcoming year; assign action items for the September meeting.

Status: This meeting is open to the public. However, in order to participate you must submit a request in writing. Fax the written request to Mike Buckley at (202) 646-4596 by July 9, 1996. Be sure to include your name and a daytime telephone number.

FOR FURTHER INFORMATION CONTACT:

Michael K. Buckley, P.E., Federal Emergency Management Agency, 500 C Street SW., room 421, Washington, DC 20472; telephone (202) 646-2756 or by fax as noted above.

Dated: June 25, 1996.

Richard W. Krimm,
Acting Associate Director, Mitigation Directorate.

[FR Doc. 96-16703 Filed 6-28-96; 8:45 am]

BILLING CODE 6718-04-P

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-010099-021.

Title: International Council of Containership Operators.

Parties:

American President Lines, Ltd.
A.P. Moller-Maersk
Atlantic Container Line
The Australian National Line
Blue Star Line Ltd.
The Cast Group Limited
China Ocean Shipping (Group) Co.
Cho Yang Shipping Co., Ltd.
Compagnie Generale Maritime
Crowley Maritime Corp.
DSR-Senator Line (Bremen) GmbH
Evergreen Marine Corporation
(Taiwan) Ltd.
Hamburg-Sudamerikanische
Dampfschiffahrtsgesellschaft Eggert
& Amsinck
Hanjin Shipping Co. Ltd.
Hapag-Lloyd AG
Hyundai Merchant Marine Co., Ltd.
Italia di Navigazione, SpA
Kawasaki Kisen Kaisha, Ltd.
Lykes Bros. Steamship Co., Inc.
Malaysian International Shipping
Corporation Berhad
Mediterranean Shipping Company
S.A.
Mitsui OSK Lines, Ltd.
Nippon Yusen Kaisha (NYK Line)
Nedlloyd Lines B.V.
Neptune Orient Lines Ltd.
Orient Overseas Container Line Ltd.
P&O Containers Line
Sea-Land Service, Inc.
South African Marine Corp., Ltd.
Transoceanic Maritima Mexicana,
S.A. de C.V.
United Arab Shipping Co. (S.A.G)
Wilh. Wilhelmsen Lines A/S
Yangming Marine Transport Corp.
Zim Israel Navigation Co., Ltd.

Synopsis: The proposed amendment adds Compagnie Maritime D'Affretement as a party to the Agreement.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 96-16619 Filed 6-28-96; 8:45 am]

BILLING CODE 6730-01-M

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. Once the application has been accepted for processing, it will also 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, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

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 July 25, 1996.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *National City Bancshares, Inc.*, Evansville, Indiana; to acquire 100 percent of the voting shares of First National Bank of Wayne City, Wayne City, Illinois.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *River Bancorp, Inc.*, Ramsey, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Northland Security Bank, Ramsey, Minnesota, a *de novo* bank.

Board of Governors of the Federal Reserve System, June 25, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96-16645 Filed 6-28-96; 8:45 am]

BILLING CODE 6210-01-F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 96-16087) published on page 32817 of the issue for June 25, 1996.

Under the Federal Reserve Bank of Chicago heading, the entry for Great Lakes Financial Resources, Inc., ESOP, Matteson, Illinois, is revised to read as follows:

1. *Great Lakes Financial Resources, Inc.*, ESOP, Matteson, Illinois; to acquire 52.2 percent of the voting shares of Great Lakes Financial Resources, Inc., Matteson, Illinois, and thereby indirectly acquire Bank of Homewood, Homewood, Illinois, Bank of Matteson, Matteson, Illinois, and First National Bank of Blue Island, Blue Island, Illinois.

Comments on this application must be received by July 12, 1996.

Board of Governors of the Federal Reserve System, June 25, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96-16646 Filed 6-28-96; 8:45 am]

BILLING CODE 6210-01-F

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 that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) 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. Once the notice has been accepted for processing, it will also 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, including whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

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 July 15, 1996.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *First Southern Bancshares, Inc.*, Lithonia, Georgia; to acquire certain assets of American Financial Mortgage Corp., Decatur, Georgia, through a newly-formed subsidiary, FSB Mortgage Services, Inc., Lithonia, Georgia, and thereby engage in mortgage lending

activities, pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y.

2. *First State Bancshares of Blakely, Inc.*, Blakely, Georgia; to acquire First Southwest Bancorp, Inc., Donalsonville, Georgia, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 25, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96-16644 Filed 6-28-96; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

[Program Announcement 13655.892]

Grants for Supportive and Nutritional Services to Older Native Hawaiians

AGENCY: Administration on Aging (AoA), Office of the Secretary, Health and Human Services.

ACTION: Announcement of availability of funds and opportunity to apply under the Older Americans Act (Act), Title VI, Grants for Native Americans, part B—Native Hawaiian Program.

SUMMARY: The AoA will accept applications for funding in fiscal year 1996 under the Act, Title VI, Grants for Native Americans, part B—Native Hawaiian Program.

DATES: August 30, 1996.

ADDRESSES: Applicants must be sent to the Department of Health and Human Services, Administration on Aging, Margaret Tolson, Director, Grants Management Division, 330 Independence Avenue, SW, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: M. Yvonne Jackson, Director, Office for American Indian, Alaskan Native, and Native Hawaiian Programs, Administration on Aging, Department of Health and Human Services, Wilbur J. Cohen Federal Building, Room 4257, 330 Independence Avenue, SW, Washington, DC 20201, (202) 619-2713.

SUPPLEMENTARY INFORMATION:

1. Background and Program Purpose

The AoA is responsible for administering the Act which provides for the delivery of supportive and nutritional services to older Americans who are 60 years of age or older. The Act Amendments of 1987 established part B, under title VI of the Act, for the

provision of supportive and nutrition services to Native Hawaiian elders who are 60 years of age or older.

The Act provides that a public or nonprofit private organization having the capacity to provide services for Native Hawaiians is eligible for assistance under Title VI, part B, if the organization will serve at least 50 Native Hawaiian individuals who attained 60 years of age or older, and the organization demonstrate the ability to deliver supportive services and nutrition services.

For the purposes of Title VI, part B, the term "Native Hawaiian" means an individual any of whose ancestors were natives of the area which consists of the Hawaiian Islands prior to 1778.

Nutritional services, and information and assistance services, are required by the Act. Nutritional services include congregate meals and home-delivered meals. Supportive services include information and assistance, transportation, chore services, and other Native Hawaiians. The information and assistance services must be available for older Native Hawaiians living in the geographic boundaries of the Title VI, part B, service area proposed by the applicant organization and approved by the Assistant Secretary for Aging.

Organizations receiving funds to provide services to older Native Hawaiians shall assure that all activities will be conducted in close coordination with the State Agency and the Area Agency on Aging.

2. Eligibility and Funding Information

Public or private nonprofit organization having the capacity to provide services for Native Hawaiians is eligible to receive a grant only if the organization will serve at least 50 Native Hawaiians who have attained 60 years of age or older, and the organization demonstrates the ability to deliver supportive and nutritional services.

3. Available Funds

Funds for fiscal year 1996 will be approximately \$1,600,000. The amounts awarded will include funds for both direct and indirect costs.

For grants made in fiscal year 1996, the budget period will be one year, September 30, 1996, through September 29, 1997. The project period will be for three years, September 30, 1996, through September 29, 1999.

4. Application Process

Applicants should submit applications, describing their proposed plans for nutritional and supportive services for older Native Hawaiians for project period September 30, 1996,

through September 29, 1999, as described in Section 5 below, "Content of the Application."

A three-year project period was chosen in order to reduce the paperwork burden on the grantees. It is the intent of this agency to conduct on-site monitoring at least once during the three-year project period.

The Program Performance and Financial Status reports, due on a semi-annual basis, will be reviewed for compliance with the program regulations. Failure to submit the required reports during the project period may result in loss of future funds, and possibly termination of the grant within the project period. Thirty days prior to the end of each budget period, within the three-year project period, grantees shall notify AoA as to their desire to continue as a grantee. Failure to submit this documentation within the required time frame may result in loss of grant funding. At the beginning of each budget period, within the three-year project period, grantees will be notified of the funding level for the subsequent year.

One original application, signed by the project director, and two copies of the complete application including all attachments, must be submitted to the Administration on Aging, Grants Management Division, Margaret Tolson, Director, 330 Independence Ave., SW, Washington, DC 20201. Incomplete applications will not be considered for funding.

5. Content of the Application

The application must meet the criteria in section 624(a) of the Act, and Title 45 of the Code of Federal Regulations, § 1328.19. The application may be presented in any format selected by the applicant. No standard federal forms are required. Contact Percy Devine, Bi-Regional Administrator, 50 United Nations Plaza, Room 480, San Francisco, CA 94102, telephone number (415) 437-8780 if you have questions concerning the content of the application. The application must include the following information:

A. Objectives and Need for Assistance

This section must include objectives, expressed in measurable terms, which are related to the current nutrition and supportive service needs of the service population. This section must also include a discussion of how the needs were evaluated.

B. Results or Benefits Expected

The application should describe the results or benefits expected from each service proposed.

C. Approach

(1) Description and Method of Delivery of Each Service

(a) Nutrition—Nutrition services are required. There should be a description of the methods, facilities, and staff to be used in preparing, serving, and delivering meals, and the estimated number of persons to be served. The nutrition services provided, either directly or by way of a grant or contract, must be substantially in compliance with the provisions of part C, Title III, which include:

1. Provide at least one hot or other appropriate meal a day, five or more days a week in a congregate setting, and any additional meals which the recipient of a grant may elect to provide. A "meal", as used in section 307(a)(13), 308(b)(7), 311(a)(4), 331(1), 336, 338(a)(1), and 339, 339A of the Act and § 1321.17, § 1321.59 and § 1321.64, is a planned event in a day at which a variety of prepared foods are provided to an individual. These foods shall comply with the U.S. Dietary Guidelines for Americans, published by the Secretary of the Department of Health and the Secretary of the Department of Agriculture, and provide the nutrients specified in the current, daily Recommended Dietary Allowances, as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences, as specified in Section 339(2) unless the meal is a special meal provided to meet the health, religious, or ethnic considerations of eligible individuals. Snacks, partial meals, and second helpings are not considered meals.

2. Provide at least one home delivered hot, cold, frozen, dried, canned, or supplemental food (with a satisfactory storage life) meal per day, five or more days a week, and any additional meals which the recipient of a grant may elect to provide. The above definition of a meal also applies here. Thus neither individual grocery items nor food vouchers may be used in lieu of home delivered meals.

If no Title VI, part B, funds are to be used for nutrition services, the application must state how such services are provided in other ways, and how they are financed.

(b) Information and Assistance—Information and assistance services are required. They must be available for older Native Hawaiians living in the Title VI, part B, service area and there should be a description of what information and assistance services will be provided and how they will be provided. The estimated number of individuals to be served should be

stated. If no Title VI, part B, funds are to be used for information and assistance services, the application must state how such services are provided in other ways, and how they are financed.

(c) Other Supportive Services—The application must describe any other supportive services to be provided wholly or partly by Title VI, part B, funds. The description should include what supportive services will be provided and how they will be provided. The estimated number of persons to be served by each service should be stated.

Legal assistance and ombudsman services may be provided, but are not required. However, if provided, they should be included under "Supportive Services."

If the applicant agency elects to provide legal services, it must substantially comply with the requirements in Title 45 of the Code of Federal Regulations § 1321.71, and all legal assistance providers must comply fully with the requirements in § 1321.71(d) through § 1321.71(k).

Transportation of persons to nutrition sites or other places is a part of "Supportive Services."

(d) Coordination with Title III—The application should provide a description of how Title VI and Title III resources are to be coordinated within the Title VI service area, including information and assistance service.

(2) Evaluation Criteria

The application must discuss the criteria to be used to evaluate the results and successes of the program, based on the objective indicated in Item A above. It will also explain the methodology that will be used to determine if the needs identified and discussed are being met, and if the results and benefits identified in item B above are being achieved.

D. Geographic Location

The application must include a narrative description of the Title VI, part B, service area, and a map with the service area identified. The area to be served by Title VI, part B, must have clear geographic boundaries. There is no prohibition, however, on its overlapping with areas served by Title III.

E. Additional Information

(1) Program Assurances

Title VI, part B, Program Assurances must be included in the application. The Title VI, part B, Program Assurances are those provisions identified in section 624(a) of the Act, and in Title 45 of the Code of Federal Regulations § 1328.19(d), issued August

31, 1988 (see Appendix A). The public or nonprofit private organization must state that it agrees to abide by all the provisions for the entire project period being applied for in fiscal year 1996.

Copies of the Title III and Title VI current law and regulations, and of part 92, may be obtained from the Bi-Regional Administrator for the AoA.

(2) Certification Forms

Certifications are required of the applicant regarding (a) lobbying; (b) debarment, suspension, and other responsibility matters; and (c) drug-free workplace requirements. Please note that a duly authorized representative of the applicant organization must attest to the applicant's compliance with these certifications.

(3) Identifying Information

Applications must identify the project director: Name, Title, Address including Zip Code, Telephone Number, and if available, the FAX number. The organization's EIN (Employer Identification Number) must also be included.

6. Closing Date for Application

To be eligible for consideration, applications must be received or postmarked on or before (60 days from date of publication). (Applicants are cautioned to request a legibly dated U.S. Postal Service postmark, or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service, private metered postmarks are not acceptable as proof of timely mailing.)

7. Action on Applications

Awards will be made by the Assistant Secretary of Aging. Funding decisions will be announced as soon as possible.

Catalog of Federal Domestic Assistance Program #93.655 Grants to Indian Tribes and Native Hawaiians. This Program Announcement is not subject to E.O. 12372.

Fernando M. Torres-Gil,
Assistant Secretary for Aging.

Program Assurances

The Older Americans Act, section 624(a), provides that no grant may be made under this part unless the public or nonprofit private organization submits an application to the Assistant Secretary for Aging which meets such criteria as the Assistant Secretary for Aging may by regulation prescribe. Each such application shall:

(1) provide that the organization will evaluate the need for supportive and nutrition services among older Native Hawaiians to be represented by the organization;

(2) provide for the use of such methods of administration as are necessary for the proper and efficient administration of the program to be assisted;

(3) provide assurances that the organization will coordinate its activities with the State Agency on Aging;

(4) provide that the organization will make such reports in such form and containing such information as the Assistant Secretary for Aging may reasonably require, and comply with such requirements as the Assistant Secretary for Aging may impose to ensure that correctness of such reports;

(5) provide for periodic evaluation of activities and projects carried out under the application;

(6) establish objectives, consistent with the purpose of this title, toward which activities described in the application will be directed, identify obstacles to the attainment of such objectives, and indicate the manner in which the organization proposes to overcome such obstacles;

(7) provide for establishing and maintaining information and assistance services to assure that older Native Hawaiians, to be served by the assistance made available under this part, will have reasonably convenient access to such services;

(8) provide a preference for Native Hawaiians 60 years of age and older for full- or part-time staff positions wherever feasible;

(9) provide that any legal or ombudsman services made available to older Native Hawaiians, represented by the public or nonprofit private organization, will be substantially in compliance with the provisions of Title III relating to the furnishing of similar services; and

(10) provide satisfactory assurance that the fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, federal funds paid under this part to the public or nonprofit private organization, including any funds paid by the organization to a recipient of a grant or contract.

45 CFR 1328.19(d) requires that the application shall provide for assurances as prescribed by the Assistant Secretary for Aging that:

(1) The eligible organization represents at least 50 older Native Hawaiians who have attained 60 years of age or older;

(2) The eligible organization shall conduct all activities, on behalf of older Native Hawaiians, in close coordination

with the State Agency and Area Agency on Aging;

(3) The eligible organization shall comply with all applicable state and local license and safety requirements for the provision of those services;

(4) The eligible organization shall ensure that all services under this part are provided without use of any means tests;

(5) The eligible organization shall comply with all requirements set forth in § 1328.7 through § 1328.17; and

(6) The services provided under this part will be coordinated, where applicable, with services provided under Title III of the Act;

(7) Signature of the principal official of the eligible organization.

Signature _____

Date _____

Title _____

Organization _____

Certification Regarding Drug-Free Workplace Requirements Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government wide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available to Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each

local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules: "Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll' or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs, and (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation or a criminal

drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, of every grant officer or other designee on whose grant activity the convicted employee was working unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance work done in connection with the specific grant (Use Attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code) _____

Check ☐ If there are workplaces on file that are not identified here. Sections 76.630(c) and (d)(2) and 76.635 (a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and or notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, SW., Washington, DC 20201.

Signature _____

Date _____

Title _____

Organization _____

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and belief that its principals involved:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department of agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forger, bribery, falsification or destruction of records, making false statement, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation for this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions", provided below, without modification in all lower tier covered transactions and in all solicitations for lower tier covered actions.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS (To Be Supplied to Lower Tier Participants).

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal Department of agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal

that it will include this clause entitled "Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusions—Lower Tier Covered Transactions" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Signature _____

Date _____

Title _____

Organization _____

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that;

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant loan or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, "Disclosure Form to Report Lobbying," in accordance with its instruction.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Organization

Authorized Signature Title Date

Note: If disclosure Forms are required, please contact: Mr. William Sexton, Deputy Director, Grants and Contracts Management Division, Room 341F, HHH Building, 200 Independence Avenue, SW., Washington, D.C. 20201-0001.

[FR Doc. 96-16681 Filed 6-28-96; 8:45 am]

BILLING CODE 4130-01-M

Centers for Disease Control and Prevention

[30DAY-15]

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 more information on these projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer at (404) 639-7090. Send written comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 30 days of this notice.

The following requests have been submitted for review since the last publication date on June 21, 1996.

Proposed Projects

1. **Ethnographic Study of Tuberculosis Outreach Worker Activities—New—** This data collection will generate descriptive data from those directly involved and responsible for providing outreach to identified TB patients to gain an understanding of outreach activities, how they occur, and their level of effectiveness. Three interview guides have been developed for use with TB outreach workers, their supervisor and a small number of outreach patients. This effort will result in a more comprehensive picture of effective and efficient TB outreach activities. The major product of this effort will be a descriptive analytical report detailing the "lessons learned".

Respondents	Number of respondents	Number of responses/ respondents	Average burden (in hrs.)
Outreach Workers	36	1	0.75
Outreach Workers' Supervisor	36	1	0.75
TB Patients	72	1	0.33

The total annual burden is 78,000. Send comments to Desk officer, CDC; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503.

Dated: June 25, 1996.

Wilma G. Johnson,

Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96-16648 Filed 6-28-96; 8:45 am]

BILLING CODE 4163-18-P

National Center for Environmental Health; Meeting

The National Center for Environmental Health (NCEH), of the Centers for Disease Control and Prevention (CDC) will convene the following meeting cosponsored by the American Association for Clinical Chemistry and the American Heart Association.

Name: Frontiers in Lipid and Lipoprotein Research: Basic Science, Analytical, Clinical, and Public Health Applications.

Times and Dates: 8 a.m.-5 p.m., October 4, 1996; 8 a.m.-5 p.m., October 5, 1996; 8 a.m.-12 noon, October 6, 1996.

Place: Renaissance Hotel—Dallas, 2222 Stemmons Freeway, Dallas, Texas 75207, telephone 214/631-2222.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 500 people.

Purpose: The purpose of this meeting is to provide a forum for presentation of recent advances in lipid and lipoprotein research by recognized experts in the areas of clinical practice, biochemistry, analytical measurement, and public health.

Matters To Be Discussed: Agenda includes: significant advances in lipid and lipoprotein research and new observations that are of critical importance to clinical practice and public health; an integrated review of relevant advances in basic science, measurement technology, epidemiological and clinical research, and public health practice to clearly define the state of the art for understanding and preventing morbidity and mortality due to heart disease.

Contact Persons For More Information: Mary M. Kimberly, Ph.D., Research Chemist, Special Activities Branch, Division of Environmental Health Laboratory Sciences, M/S F25, NCEH, CDC, 4770 Buford Highway, NE., Chamblee, Georgia 30341-3724, telephone 770/488-4683, or Paula M. Steiner, Medical Research Laboratories, 2 Tessenier Drive, Highland Heights, Kentucky 41076, telephone 606/781-8877 extension 252, fax 606/781-9310.

Dated: June 24, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96-16649 Filed 6-28-96; 8:45 am]

BILLING CODE 4163-18-M

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title 45 CFR 303.7—Provision of Services in Interstate Child Support Enforcement Cases; Standard Forms.

OMB No.: 0970-0085.

Description: Regulations at 45 CFR 303.7 require a State child support enforcement agency to transmit child support case information on standard interstate forms when referring a case to another State for processing. The forms promote uniformity and standardization.

States will have the choice of using one of two sets of forms—one set accommodates the Uniform Reciprocal Enforcement of Support Act (URESA) and the other set accommodates the Uniform Interstate Family Support Act (UIFSA). The URESA forms are the existing forms currently used by States. The UIFSA forms were recently developed by a workgroup of child support practitioners; these forms have been pilot-tested in several jurisdictions. UIFSA has now been adopted by over 30 States. OCSE contemplates that UIFSA forms will eventually be used for all cases.

Respondents: State Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Standard forms	54	3000	.2666667	43,200

Estimated Total Annual Hours: 43,200.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: June 25, 1996.

Larry Guerrero,

Director, Office of Information Services.

[FR Doc. 96-16694 Filed 6-28-96; 8:45 am]

BILLING CODE 4184-01-M

Submission for OMB Review; Comment Request

Title: State Plan for Foster Care and Adoption Assistance—Title IV-E.

OMB No.: 0980-0141.

Description: A State Plan for foster care and adoption assistance is required by section 471 of the Social Security Act from any State wishing to claim Federal Financial Participation for foster care and adoption assistance. States may use a preprinted format or may develop their own format which meets the requirements of the law. The Plan is

submitted only once and amended as necessary. Our experience is that a State

will amend a Plan once every 4 years; approximately 12 per year.

Respondents: State governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Case plan	51	1	15	180

Estimated Total Annual Burden Hours: 180.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: June 12, 1996.

Larry Guerrero,

Director, Office of Information Services.

[FR Doc. 96-16620 Filed 6-28-96; 8:45 am]

BILLING CODE 4184-01-M

Food and Drug Administration

[Docket No. 96M-0193]

Kaneka America Corp.; Premarket Approval of Liposorber LA-15 System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Kaneka America Corp., New York, NY, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the Liposorber LA-15 System. After reviewing the recommendation of the Gastroenterology and Urology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of February 21, 1996, of the approval of the application.

DATES: Petitions for administrative review by July 31, 1996.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Linda L. Dart, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-594-1220.

SUPPLEMENTARY INFORMATION: On October 3, 1991, Kaneka America Corp., New York, NY 10022, submitted to CDRH an application for premarket approval of the Liposorber LA-15 System. The device is a low density lipoprotein (LDL) apheresis system, indicated for use in performing low density lipoprotein cholesterol (LDL-C) apheresis to acutely remove LDL-C from the plasma of the following high risk patient populations for whom diet has been ineffective and maximum drug therapy has either been ineffective or not tolerated: Group A—functional hypercholesterolemic homozygotes with LDL-C > 500 milligrams/deciliter (mg/dL); Group B—functional hypercholesterolemic heterozygotes with LDL-C ≥ 300 mg/dL; and Group C—functional hypercholesterolemic heterozygotes with LDL-C ≥ 200 mg/dL and documented coronary heart disease (CHD).

The LDL-C levels for the indicated patient populations are baseline LDL-C levels obtained after the patient has had, at a minimum, a 6-month trial of an American Heart Association Step II diet (or equivalent) and maximum tolerated combination drug therapy designed to reduce LDL-C. Maximum tolerated combination drug therapy is an adequate trial of drugs from at least two separate classes of hypolipidemic agents such as, bile acid sequestrants, HMG-CoA reductase inhibitors, fibric acid derivatives, niacin/nicotinic acid, etc. Documented CHD includes documentation of coronary artery

disease by coronary angiography or a history of myocardial infarction, coronary artery bypass surgery, percutaneous transluminal coronary angioplasty (PTCA) or alternative revascularization procedure (e.g., atherectomy or stent), or progressive angina documented by exercise or nonexercise stress test. Baseline lipid levels are to be determined after stabilization on diet and drug therapy by making two measurements during a 2- to 4-week period. (Note: the two values should be within 10 percent of each other, indicating a stable condition.)

Although clinical benefit of LDL-C lowering has been documented in several diet, drug and/or surgical intervention trials, clinical studies using the Liposorber LA-15 System were not designed to address and did not establish the long-term clinical benefit of acutely lowering LDL-C.

On April 21, 1995, the Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee, an FDA advisory panel, reviewed and recommended approval of the application. On February 21, 1996, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory

committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before July 31, 1996, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 9, 1996.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 96-16663 Filed 6-28-96; 8:45 am]

BILLING CODE 4160-01-F

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current

information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1-800-741-8138 or 301-443-0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETING: The following advisory committee meeting is announced:

Advisory Committee for Reproductive Health Drugs

Date, time, and place. July 19, 1996, 9 a.m., FDA Technical Center, 16071 Industrial Dr., Gaithersburg, MD. Attendees should allow time to proceed through security procedures. Admission to the facility by public participants will be available on a first come, first serve basis, and will be limited to approximately 200, the number of seats available to the public in the conference room. There will be an overflow room with both audio and video link to the meeting. The overflow room is located at the Hilton Hotel, 620 Perry Pkwy., Gaithersburg, MD.

Type of meeting and contact person. Open committee discussion, 9 a.m. to 1:30 p.m.; open public hearing, 1:30 p.m. to 3:30 p.m., unless public participation does not last that long; open committee discussion, 3:30 p.m. to 5 p.m.; Philip A. Corfman, Center for Drug Evaluation and Research (HFD-580), Food and Drug Administration, 5600 Fishers Lane, rm. 14B-04, Rockville, MD 20857, 301-443-3510, FAX 301-443-9282, or e-mail july19@cder.fda.gov. Information concerning the meeting is available from FDA Advisory Committee Information Hotline, 1-800-741-8138 (301-443-0572 in the Washington, DC area), Advisory Committee for Reproductive Health Drugs, code 12537. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the practice of obstetrics, gynecology, and related specialties.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in

writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person in writing by mail, e-mail, or fax no later than 5 p.m., EDT on July 12, 1996, with a brief statement of the general nature of the evidence or arguments they wish to present, the names, telephone numbers, and addresses of proposed participants, and an indication of the approximate time required to make their comments. The time for presentations will be allotted equitably, and will depend on how many individuals give advance notice within the time indicated of their intention to speak. In the interest of time, the agency may require persons with common interests to make joint presentations.

Open committee discussion. The committee will discuss the new drug application for mifepristone for the interruption of early pregnancy.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published

in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above in writing, prior to the meeting.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI-35), Food and Drug Administration, rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: June 25, 1996.
Michael A. Friedman,
Deputy Commissioner for Operations.
[FR Doc. 96-16770 Filed 6-28-96; 8:45 am]
BILLING CODE 4160-01-F

Health Care Financing Administration

[BPD-847-CN]

RIN 0938-AH34

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1997 Rates; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction notice.

SUMMARY: On May 31, 1996, we published a proposed rule (61 FR 27444) that would revise the Medicare hospital inpatient prospective payment

systems for operating costs and capital-related costs to implement necessary changes arising from our continuing experience with the systems. In the addendum to the proposed rule, we announced the prospective payment rates for Medicare hospital inpatient services for operating costs and capital-related costs that would apply to discharges occurring on or after October 1, 1996, and set forth the factors for determining the rate-of-increase limits for hospital and hospital units excluded from the prospective payment system. This notice corrects errors made in that document.

FOR FURTHER INFORMATION CONTACT: Tzvi Hefter, (410) 786-1304.

SUPPLEMENTARY INFORMATION: In the May 31, 1996 proposed rule (61 FR 27444), we indicated that the addendum would discuss our proposed update of the factors for determining the rate-of-increase limits for cost reporting periods beginning in Federal fiscal year 1997 for hospitals and hospital units excluded from the prospective payment system. This discussion was inadvertently omitted from the published document.

In addition, there were errors in our calculations of the Geographic Adjustment Factors (GAFs) in tables 4a and 4b. The tables are reprinted in their entirety in this document. The GAFs set forth in table 4c are correct.

The proposed rule also contained other technical and typographical errors. Therefore, we are making the following corrections to the May 31, 1996 proposed rule:

1. On page 27474, in the table entitled Initial Residency Period, after "Allopathy" and before "ANESTHESIOLOGY" insert the following row:

ALLERGY AND IMMUNOLOGY 3.

2. On page 27504, in the second column before "V. Tables", the following information should be inserted:

IV. Proposed Rate-of-Increase Percentages for Excluded Hospitals and Hospital Units

The inpatient operating costs of hospitals and hospital units excluded from the prospective payment system are subject to rate-of-increase limits established under the authority of section 1886(b) of the Act, which is implemented in § 413.40 of the regulations. Under these limits, an annual target amount (expressed in terms of the inpatient operating cost per discharge) is set for each hospital, based on the hospital's own historical cost

experience trended forward by the applicable rate-of-increase percentages (update factors). The target amount is multiplied by the number of Medicare discharges in a hospital's cost reporting period, yielding the ceiling on aggregate Medicare inpatient operating costs for the cost reporting period.

Effective with cost reporting periods beginning on or after October 1, 1991, a hospital that has Medicare inpatient operating costs in excess of its ceiling is paid its ceiling plus 50 percent of its costs in excess of the ceiling. Total payment may not exceed 110 percent of the ceiling. A hospital that has inpatient operating costs less than its ceiling is paid its costs plus the lower of—

- Fifty percent of the difference between the allowable inpatient operating costs and the ceiling; or
- Five percent of the ceiling.

Each hospital's target amount is adjusted annually, at the beginning of its cost reporting period, by an applicable rate-of-increase percentage. Section 1886(b)(3)(B) of the Act provides that for cost reporting periods beginning on or after October 1, 1993, and before October 1, 1994, the applicable rate-of-increase percentage is the market basket percentage increase minus the lesser of 1 percentage point or the percentage point difference between 10 percent and the hospital's "update adjustment percentage" of at least 10 percent. The rate-of-increase percentage for hospitals in the latter case is the market basket percentage increase. The "update adjustment percentage" is the percentage by which a hospital's allowable inpatient operating costs exceeds the hospital's ceiling for the cost reporting period beginning in Federal fiscal year (FY) 1990. For cost reporting periods beginning on or after October 1, 1994, and before October 1, 1997, the update adjustment percentage is the update adjustment percentage from the previous year plus the previous year's applicable reduction. The applicable reduction and applicable rate-of-increase percentage are then determined in the same manner as for FY 1994. The most recent forecasted market basket increase for FY 1997 for hospitals and hospital units excluded from the prospective payment system is 2.7 percent.

3. On pages 27521 to 27527, Table 4a—Wage Index and Capital Geographic Adjustment Factor (GAF) for Urban Areas is corrected by replacing the table with the following table:

TABLE 4a.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS

Urban area (constituent counties or county equivalents)	Wage index	GAF
0040 Abilene, TX Taylor, TX	0.8055	0.8623
0060 Aguadilla, PR Aguada, PR Aguadilla, PR Moca, PR	0.4430	0.5726
0080 Akron, OH Portage, OH Summit, OH	0.9875	0.9914
0120 Albany, GA Dougherty, GA Lee, GA	0.8353	0.8841
0160 Albany-Schenectady-Troy, NY Albany, NY Montgomery, NY Rensselaer, NY Saratoga, NY Schenectady, NY Schoharie, NY	0.8510	0.8954
0200 Albuquerque, NM Bernalillo, NM Sandoval, NM Valencia, NM	0.9390	0.9578
0220 Alexandria, LA Rapides, LA	0.8213	0.8739
0240 Allentown-Bethlehem-Easton, PA Carbon, PA Lehigh, PA Northampton, PA	1.0014	1.0010
0280 Altoona, PA Blair, PA	0.9531	0.9676
0320 Amarillo, TX Potter, TX Randall, TX	0.8557	0.8988
0380 Anchorage, AK Anchorage, AK	1.3285	1.2147
0440 Ann Arbor, MI Lenawee, MI Livingston, MI Washtenaw, MI	1.1688	1.1127
0450 Anniston, AL Calhoun, AL	0.7848	0.8471
0460 Appleton-Oshkosh-Neenah, WI Calumet, WI Outagamie, WI Winnebago, WI	0.8910	0.9240
0470 Arecibo, PR Arecibo, PR Camuy, PR Hatillo, PR	0.4631	0.5903
0480 Asheville, NC Buncombe, NC Madison, NC	0.9365	0.9561
0500 Athens, GA Clarke, GA Madison, GA Oconee, GA	0.9259	0.9486
0520 *Atlanta, GA Barrow, GA	1.0089	1.0061

TABLE 4a.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
Bartow, GA Carroll, GA Cherokee, GA Clayton, GA Cobb, GA Coweta, GA DeKalb, GA Douglas, GA Fayette, GA Forsyth, GA Fulton, GA Gwinnett, GA Henry, GA Newton, GA Paulding, GA Pickens, GA Rockdale, GA Spalding, GA Walton, GA		
0560 Atlantic-Cape May, NJ. Atlantic, NJ Cape May, NJ	1.1102	1.0742
0600 Augusta-Aiken, GA—SC. Columbia, GA McDuffie, GA Richmond, GA Aiken, SC Edgefield, SC	0.8849	0.9197
0640 Austin-San Marcos, TX. Bastrop, TX Caldwell, TX Hays, TX Travis, TX Williamson, TX	0.9252	0.9482
0680 Bakersfield, CA. Kern, CA	1.0202	1.0138
0720 *Baltimore, MD. Anne Arundel, MD Baltimore, MD Baltimore City, MD Carroll, MD Harford, MD Howard, MD Queen Anne's, MD	0.9820	0.9876
0733 Bangor, ME. Penobscot, ME	0.9412	0.9594
0743 Barnstable-Yarmouth, MA. Barnstable, MA	1.3682	1.2395
0760 Baton Rouge, LA. Ascension, LA East Baton Rouge, LA Livingston, LA West Baton Rouge, LA	0.8442	0.8905
0840 Beaumont-Port Arthur, TX. Hardin, TX		

TABLE 4a.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
Jefferson, TX Orange, TX	0.8578	0.9003
0860 Bellingham, WA. Whatcom, WA	1.1342	1.0901
0870 Benton Harbor, MI. Berrien, MI	0.8553	0.8985
0875 *Bergen-Passaic, NJ. Bergen, NJ Passaic, NJ	1.1717	1.1146
0880 Billings, MT. Yellowstone, MT	0.8903	0.9235
0920 Biloxi-Gulfport-Pascagoula, MS. Hancock, MS Harrison, MS Jackson, MS	0.8573	0.8999
0960 Binghamton, NY. Broome, NY	0.8842	0.9192
1000 Birmingham, AL. Blount, AL Jefferson, AL St. Clair, AL Shelby, AL	0.9047	0.9337
1010 Bismarck, ND. Burleigh, ND	0.7976	0.8565
1020 Bloomington, IN. Monroe, IN	0.8619	0.9032
1040 Bloomington-Normal, IL. McLean, IL	0.8921	0.9248
1080 Boise City, ID. Ada, ID Canyon, ID	0.9269	0.9493
1123 *Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH	1.1639	1.1095
Bristol, MA Essex, MA Middlesex, MA Norfolk, MA Plymouth, MA Suffolk, MA Worcester, MA Hillsborough, NH Merrimack, NH Rockingham, NH Strafford, NH		
1125 Boulder-Longmont CO Boulder, CO	0.9383	0.9573
1145 Brazoria, TX Brazoria, TX	0.8865	0.9208
1150 Bremerton, WA Kitsap, WA	1.0926	1.0625

TABLE 4a.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
1240 Brownsville-Harlingen-San Benito, TX	0.8561	0.8991
Cameron, TX		
1260 Bryan-College Station, TX ...	0.8760	0.9133
Brazos, TX		
1280 *Buffalo-Niagara Falls, NY ...	0.9123	0.9391
Erie, NY		
Niagara, NY		
1303 Burlington, VT	0.9126	0.9393
Chittenden, VT		
Franklin, VT		
Grand Isle, VT		
1310 Caguas, PR	0.4661	0.5929
Caguas, PR		
Cayey, PR		
Cidra, PR		
Gurabo, PR		
San Lorenzo, PR		
1320 Canton-Massillon, OH	0.8667	0.9067
Carroll, OH		
Stark, OH		
1350 Casper, WY	0.8841	0.9191
Natrona, WY		
1360 Cedar Rapids, IA	0.8477	0.8930
Linn, IA		
1400 Champaign-Urbana, IL	0.9413	0.9594
Champaign, IL		
1440 Charleston-North Charleston, SC	0.8984	0.9293
Berkeley, SC		
Charleston, SC		
Dorchester, SC		
1480 Charleston, WV	0.9547	0.9688
Kanawha, WV		
Putnam, WV		
1520 *Charlotte-Gastonia-Rock Hill, NC-SC	0.9631	0.9746
Cabarrus, NC		
Gaston, NC		
Lincoln, NC		
Mecklenburg, NC		
Rowan, NC		
Union, NC		
York, SC		
1540 Charlottesville, VA	0.9175	0.9427
Albemarle, VA		
Charlottesville City, VA		
Fluvanna, VA		
Greene, VA		
1560 Chattanooga, TN-GA	0.8867	0.9210
Catoosa, GA		
Dade, GA		
Walker, GA		
Hamilton, TN		

TABLE 4a.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
Marion, TN		
1580 Cheyenne, WY	0.7695	0.8357
Laramie, WY		
1600 *Chicago, IL	1.0756	1.0512
Cook, IL		
DeKalb, IL		
DuPage, IL		
Grundy, IL		
Kane, IL		
Kendall, IL		
Lake, IL		
McHenry, IL		
Will, IL		
1620 Chico-Paradise, CA	1.0441	1.0300
Butte, CA		
1640 *Cincinnati, OH-KY-IN	0.9477	0.9639
Dearborn, IN		
Ohio, IN		
Boone, KY		
Campbell, KY		
Gallatin, KY		
Grant, KY		
Kenton, KY		
Pendleton, KY		
Brown, OH		
Clermont, OH		
Hamilton, OH		
Warren, OH		
1660 Clarksville-Hopkinsville, TN-KY	0.7733	0.8386
Christian, KY		
Montgomery, TN		
1680 *Cleveland-Lorain-Elyria, OH	0.9908	0.9937
Ashtabula, OH		
Cuyahoga, OH		
Geauga, OH		
Lake, OH		
Lorain, OH		
Medina, OH		
1720 Colorado Springs, CO	0.9456	0.9624
El Paso, CO		
1740 Columbia, MO	0.8919	0.9246
Boone, MO		
1760 Columbia, SC	0.9178	0.9430
Lexington, SC		
Richland, SC		
1800 Columbus, GA-AL	0.7655	0.8328
Russell, AL		
Chattanooga, GA		
Harris, GA		
Muscogee, GA		
1840 *Columbus, OH	0.9699	0.9793
Delaware, OH		
Fairfield, OH		
Franklin, OH		
Licking, OH		

TABLE 4a.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
Madison, OH		
Pickaway, OH		
1880 Corpus Christi, TX	0.8641	0.9048
Nueces, TX		
San Patricio, TX		
1900 Cumberland, MD-WV	0.8613	0.9028
Allegany, MD		
Mineral, WV		
1920 *Dallas, TX	0.9530	0.9676
Collin, TX		
Dallas, TX		
Denton, TX		
Ellis, TX		
Henderson, TX		
Hunt, TX		
Kaufman, TX		
Rockwall, TX		
1950 Danville, VA	0.8516	0.8958
Danville City, VA		
Pittsylvania, VA		
1960 Davenport-Moline-Rock Island, IA-IL	0.8407	0.8880
Scott, IA		
Henry, IL		
Rock Island, IL		
2000 Dayton-Springfield, OH	0.9582	0.9712
Clark, OH		
Greene, OH		
Miami, OH		
Montgomery, OH		
2020 Daytona Beach, FL	0.8891	0.9227
Flagler, FL		
Volusia, FL		
2030 Decatur, AL	0.8403	0.8877
Lawrence, AL		
Morgan, AL		
2040 Decatur, IL ...	0.7866	0.8484
Macon, IL		
2080 *Denver, CO	1.0291	1.0198
Adams, CO		
Arapahoe, CO		
Denver, CO		
Douglas, CO		
Jefferson, CO		
2120 Des Moines, IA	0.8772	0.9142
Dallas, IA		
Polk, IA		
Warren, IA		
2216 *Detroit, MI	1.0748	1.0506
Lapeer, MI		
Macomb, MI		
Monroe, MI		
Oakland, MI		
St. Clair, MI		
Wayne, MI		
2180 Dothan, AL	0.7758	0.8404
Dale, AL		
Houston, AL		
2190 Dover, DE	0.9017	0.9316
Kent, DE		
2000 Dubuque, IA	0.8149	0.8692

TABLE 4a.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
Dubuque, IA		
2240 Duluth-Superior, MN-WI	0.9437	0.9611
St. Louis, MN		
Douglas, WI		
2281 Dutchess County, NY	1.0604	1.0410
Dutchess, NY		
2290 Eau Claire, WI	0.8698	0.9089
Chippewa, WI		
Eau Claire, WI		
2320 El Paso, TX	0.9486	0.9645
El Paso, TX		
2330 Elkhart-Goshen, IN	0.8820	0.9176
Elkhart, IN		
2335 Elmira, NY ...	0.8436	0.8901
Chemung, NY		
2340 Enid, OK	0.7879	0.8494
Garfield, OK		
2360 Erie, PA	0.9137	0.9401
Erie, PA		
2400 Eugene-Springfield, OR	1.1503	1.1006
Lane, OR		
2440 Evansville-Henderson, IN-KY	0.8990	0.9297
Posey, IN		
Vanderburgh, IN		
Warrick, IN		
Henderson, KY		
2520 Fargo-Moorhead, ND-MN	0.9010	0.9311
Clay, MN		
Cass, ND		
2560 Fayetteville, NC	0.9025	0.9322
Cumberland, NC		
2580 Fayetteville-Springdale-Rogers, AR	0.7236	0.8013
Benton, AR		
Washington, AR		
2620 Flagstaff, AZ-UT	0.9039	0.9331
Coconino, AZ		
Kane, UT		
2640 Flint, MI	1.1273	1.0855
Genesee, MI		
2650 Florence, AL	0.8157	0.8698
Colbert, AL		
Lauderdale, AL		
2655 Florence, SC	0.8614	0.9029
Florence, SC		
2670 Fort Collins-Loveland, CO	1.0628	1.0426
Larimer, CO		
2680 *Ft. Lauderdale, FL	1.0968	1.0653
Broward, FL		
2700 Fort Myers-Cape Coral, FL	0.9093	0.9370
Lee, FL		
2710 Fort Pierce-Port St. Lucie, FL	1.0192	1.0131
Martin, FL		

TABLE 4a.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
St. Lucie, FL		
2720 Fort Smith, AR—OK	0.7885	0.8498
Crawford, AR		
Sebastian, AR		
Sequoyah, OK		
2750 Fort Walton Beach, FL	0.9186	0.9435
Okaloosa, FL		
2760 Fort Wayne, IN	0.8819	0.9175
Adams, IN		
Allen, IN		
DeKalb, IN		
Huntington, IN		
Wells, IN		
Whitley, IN		
2800 *Forth Worth-Arlington, TX	1.0095	1.0065
Hood, TX		
Johnson, TX		
Parker, TX		
Tarrant, TX		
2840 Fresno, CA	1.1202	1.0808
Fresno, CA		
Madera, CA		
2880 Gadsden, AL	0.8901	0.9234
Etowah, AL		
2900 Gainesville, FL	0.9455	0.9623
Alachua, FL		
2920 Galveston-Texas City, TX	1.1022	1.0689
Galveston, TX		
2960 Gary, IN	0.9176	0.9428
Lake, IN		
Porter, IN		
2975 Glens Falls, NY	0.8560	0.8990
Warren, NY		
Washington, NY		
2980 Goldsboro, NC	0.8412	0.8883
Wayne, NC		
2985 Grand Forks, ND—MN	0.9228	0.9465
Polk, MN		
Grand Forks, ND		
2995 Grand Junction, CO	0.8847	0.9195
Mesa, CO		
3000 Grand Rapids-Muskegon-Holland, MI	1.0088	1.0060
Allegan, MI		
Kent, MI		
Muskegon, MI		
Ottawa, MI		
3040 Great Falls, MT	0.9007	0.9309
Cascade, MT		
3060 Greeley, CO	0.9712	0.9802
Weld, CO		
3080 Green Bay, WI	0.9387	0.9576
Brown, WI		

TABLE 4a.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
3120 *Greensboro-Winston-Salem-High Point, NC	0.9327	0.9534
Alamance, NC		
Davidson, NC		
Davie, NC		
Forsyth, NC		
Guilford, NC		
Randolph, NC		
Stokes, NC		
Yadkin, NC		
3150 Greenville, NC	0.9098	0.9373
Pitt, NC		
3160 Greenville-Spartanburg-Anderson, SC	0.8947	0.9266
Anderson, SC		
Cherokee, SC		
Greenville, SC		
Pickens, SC		
Spartanburg, SC		
3180 Hagerstown, MD	0.9195	0.9441
Washington, MD		
3200 Hamilton-Middletown, OH ...	0.9515	0.9665
Butler, OH		
3240 Harrisburg-Lebanon-Carlisle, PA	1.0181	1.0124
Cumberland, PA		
Dauphin, PA		
Lebanon, PA		
Perry, PA		
3283 *Hartford, CT	1.2395	1.1584
Hartford, CT		
Litchfield, CT		
Middlesex, CT		
Tolland, CT		
3285 Hattiesburg, MS	0.7269	0.8038
Forrest, MS		
Lamar, MS		
3290 Hickory-Morganton-Lenoir, NC	0.7945	0.8542
Alexander, NC		
Burke, NC		
Caldwell, NC		
Catawba, NC		
3320 Honolulu, HI	1.1487	1.0996
Honolulu, HI		
3350 Houma, LA	0.7843	0.8467
Lafourche, LA		
Terrebonne, LA		
3360 *Houston, TX	0.9790	0.9856
Chambers, TX		
Fort Bend, TX		
Harris, TX		
Liberty, TX		
Montgomery, TX		
Waller, TX		
3400 Huntington-Ashland, WV-KY-OH	0.9194	0.9441
Boyd, KY		
Carter, KY		

TABLE 4a.—WAGE INDEX AND CAPITAL
GEOGRAPHIC ADJUSTMENT FACTOR
(GAF) FOR URBAN AREAS—Contin-
ued

Urban area (con- stituent counties or county equivalents)	Wage index	GAF
Greenup, KY Lawrence, OH Cabell, WV Wayne, WV	0.8145	0.8689
3440 Huntsville, AL Limestone, AL Madison, AL	0.9950	0.9966
3480 *Indianapolis, IN	0.9382	0.9573
Boone, IN Hamilton, IN Hancock, IN Hendricks, IN Johnson, IN Madison, IN Marion, IN Morgan, IN Shelby, IN	0.9066	0.9351
3500 Iowa City, IA Johnson, IA	0.7906	0.8514
3520 Jackson, MI Jackson, MI	0.8340	0.8831
3560 Jackson, MS Hinds, MS Madison, MS Rankin, MS	0.9018	0.9317
3580 Jackson, TN Madison, TN	0.7071	0.7887
3600 Jacksonville, FL	0.7679	0.8346
Clay, FL Duval, FL Nassau, FL St. Johns, FL	0.8664	0.9065
3605 Jacksonville, NC	1.1408	1.0944
Onslow, NC	0.8921	0.9248
3610 Jamestown, NY	0.8417	0.8887
Chautauqua, NY	0.7409	0.8144
3620 Janesville- Beloit, WI	1.0565	1.0384
Rock, WI		
3640 Jersey City, NJ		
Hudson, NJ		
3660 Johnson City- Kingsport-Bristol, TN-VA		
Carter, TN Hawkins, TN Sullivan, TN Unicoi, TN Washington, TN Bristol City, VA Scott, VA Washington, VA		
3680 Johnstown, PA		
Cambria, PA Somerset, PA		
3710 Joplin, MO ... Jasper, MO Newton, MO		
3720 Kalamazoo- Battlecreek, MI Calhoun, MI		

TABLE 4a.—WAGE INDEX AND CAPITAL
GEOGRAPHIC ADJUSTMENT FACTOR
(GAF) FOR URBAN AREAS—Contin-
ued

Urban area (con- stituent counties or county equivalents)	Wage index	GAF
Kalamazoo, MI Van Buren, MI	0.8998	0.9302
3740 Kankakee, IL Kankakee, IL	0.9522	0.9670
3760 *Kansas City, KS-MO	0.9166	0.9421
Johnson, KS Leavenworth, KS Miami, KS Wyandotte, KS Cass, MO Clay, MO Clinton, MO Jackson, MO Lafayette, MO Platte, MO Ray, MO	1.0415	1.0282
3800 Kenosha, WI Kenosha, WI	0.8520	0.8961
3810 Killeen-Tem- ple, TX	0.8609	0.9025
Bell, TX Coryell, TX	0.8638	0.9046
3840 Knoxville, TN Anderson, TN Blount, TN Knox, TN Loudon, TN Sevier, TN Union, TN	0.8183	0.8717
3850 Kokomo, IN Howard, IN Tipton, IN	0.8824	0.9179
3870 La Crosse, WI-MN	0.8052	0.8621
Houston, MN La Crosse, WI	0.8677	0.9074
3880 Lafayette, LA Acadia, LA Lafayette, LA St. Landry, LA St. Martin, LA	0.9605	0.9728
3920 Lafayette, IN Clinton, IN Tippecanoe, IN	1.0016	1.0011
3960 Lake Charles, LA	0.7092	0.79034100
Calcasieu, LA	0.8516	0.8958
3980 Lakeland- Winter Haven, FL Polk, FL	1.0894	1.0604
4000 Lancaster, PA		
Lancaster, PA		
4040 Lansing-East Lansing, MI		
Clinton, MI Eaton, MI Ingham, MI		
4080 Laredo, TX ... Webb, TX		
4100 Las Cruces, NM		
Dona Ana, NM		
4120 *Las Vegas, NV-AZ		
Mohave, AZ		

TABLE 4a.—WAGE INDEX AND CAPITAL
GEOGRAPHIC ADJUSTMENT FACTOR
(GAF) FOR URBAN AREAS—Contin-
ued

Urban area (con- stituent counties or county equivalents)	Wage index	GAF
Clark, NV Nye, NV	0.8616	0.9030
4150 Lawrence, KS	0.8339	0.8830
Douglas, KS	0.9431	0.9607
4200 Lawton, OK Comanche, OK	0.8387	0.8865
4243 Lewiston-Au- burn, ME	0.8752	0.9128
Androscoggin, ME	0.9193	0.9440
4280 Lexington, KY	0.8616	0.9030
Bourbon, KY Clark, KY Fayette, KY Jessamine, KY Madison, KY Scott, KY Woodford, KY	0.8633	0.9042
4320 Lima, OH Allen, OH Auglaize, OH	1.2396	1.1585
4360 Lincoln, NE Lancaster, NE	0.9445	0.9617
4400 Little Rock- North Little Rock, AR	0.8525	0.8965
Faulkner, AR Lonoke, AR Pulaski, AR Saline, AR	0.8036	0.8609
4420 Longview- Marshall, TX		
Gregg, TX Harrison, TX Upshur, TX		
4480 *Los Ange- les-Long Beach, CA		
Los Angeles, CA		
4520 Louisville, KY-IN		
Clark, IN Floyd, IN Harrison, IN Scott, IN Bullitt, KY Jefferson, KY Oldham, KY		
4600 Lubbock, TX Lubbock, TX		
4640 Lynchburg, VA		
Amherst, VA Bedford, VA Bedford City, VA Campbell, VA Lynchburg City, VA		
4680 Macon, GA Bibb, GA Houston, GA Jones, GA Peach, GA Twiggs, GA		
4720 Madison, WI Dane, WI		

TABLE 4a.—WAGE INDEX AND CAPITAL
GEOGRAPHIC ADJUSTMENT FACTOR
(GAF) FOR URBAN AREAS—Contin-
ued

Urban area (con- stituent counties or county equivalents)	Wage index	GAF
4800 Mansfield, OH	0.8543	0.8978
Crawford, OH Richland, OH		
4840 Mayaguez, PR	0.4186	0.5508
Anasco, PR Cabo Rojo, PR Hormigueros, PR Mayaguez, PR Sabana Grande, PR San German, PR		
4880 McAllen-Ed- inburg-Mission, TX Hidalgo, TX	0.8502	0.8948
4890 Medford-Ash- land, OR	1.0213	1.0145
Jackson, OR		
4900 Melbourne- Titusville-Palm Bay, FL	0.9089	0.9367
Brevard, FL		
4920 *Memphis, TN-AR-MS	0.8185	0.8718
Crittenden, AR DeSoto, MS Fayette, TN Shelby, TN Tipton, TN		
4940 Merced, CA Merced, CA	1.0684	1.0463
5000 *Miami, FL ... Dade, FL	0.9240	0.9473
5015 *Middlesex- Somerset- Hunterdon, NJ	1.0777	1.0526
Hunterdon, NJ Middlesex, NJ Somerset, NJ		
5080 *Milwaukee- Waukesha, WI	0.9667	0.9771
Milwaukee, WI Ozaukee, WI Washington, WI Waukesha, WI		
5120 *Minneapolis- St. Paul, MN-WI	1.0785	1.0531
Anoka, MN Carver, MN Chisago, MN Dakota, MN Hennepin, MN Isanti, MN Ramsey, MN Scott, MN Sherburne, MN Washington, MN Wright, MN Pierce, WI St. Croix, WI		
5160 Mobile, AL ... Baldwin, AL Mobile, AL	0.7999	0.8582
5170 Modesto, CA Stanislaus, CA	1.0135	1.0092

TABLE 4a.—WAGE INDEX AND CAPITAL
GEOGRAPHIC ADJUSTMENT FACTOR
(GAF) FOR URBAN AREAS—Contin-
ued

Urban area (con- stituent counties or county equivalents)	Wage index	GAF
5190 *Monmouth- Ocean, NJ	1.0842	1.0569
Monmouth, NJ Ocean, NJ		
5200 Monroe, LA Ouachita, LA	0.8234	0.8754
5240 Montgomery, AL	0.7949	0.8545
Autauga, AL Elmore, AL Montgomery, AL		
5280 Muncie, IN Delaware, IN	0.9736	0.9818
5330 Myrtle Beach, SC	0.7798	0.8434
Horry, SC		
5345 Naples, FL ... Collier, FL	1.0222	1.0151
5360 *Nashville, TN	0.9065	0.9350
Cheatham, TN Davidson, TN Dickson, TN Robertson, TN Rutherford, TN Sumner, TN Williamson, TN Wilson, TN		
5380 *Nassau-Suf- folk, NY	1.2852	1.1875
Nassau, NY Suffolk, NY		
5483 *New Haven- Bridgeport-Stam- ford-Waterbury	1.2778	1.1828
Danbury, CT Fairfield, CT New Haven, CT		
5523 New London- Norwich, CT	1.2345	1.1552
New London, CT		
5560 *New Orle- ans, LA	0.9434	0.9609
Jefferson, LA Orleans, LA Plaquemines, LA St. Bernard, LA St. Charles, LA St. James, LA St. John The Bap- tist, LA St. Tammany, LA		
5600 *New York, NY	1.4041	1.2616
Bronx, NY Kings, NY New York, NY Putnam, NY Queens, NY Richmond, NY Rockland, NY Westchester, NY		
5640 *Newark, NJ Essex, NJ Morris, NJ Sussex, NJ Union, NJ	1.1057	1.0712

TABLE 4a.—WAGE INDEX AND CAPITAL
GEOGRAPHIC ADJUSTMENT FACTOR
(GAF) FOR URBAN AREAS—Contin-
ued

Urban area (con- stituent counties or county equivalents)	Wage index	GAF
Warren, NJ		
5660 Newburgh, NY-PA	1.0829	1.0561
Orange, NY Pike, PA		
5720 *Norfolk-Vir- ginia Beach-New- port News, VA- NC	0.8326	0.8821
Currituck, NC Chesapeake City, VA Gloucester, VA Hampton City, VA Isle of Wight, VA James City, VA Mathews, VA Newport News City, VA Norfolk City, VA Poquoson City, VA Portsmouth City, VA Suffolk City, VA Virginia Beach City, VA Williamsburg City, VA York, VA		
5775 *Oakland, CA Alameda, CA Contra Costa, CA	1.5113	1.3268
5790 Ocala, FL. Marion, FL	0.8999	0.9303
5800 Odessa-Mid- land, TX	0.8552	0.8984
Ector, TX Midland, TX		
5880 *Oklahoma City, OK	0.8463	0.8920
Canadian, OK Cleveland, OK Logan, OK McClain, OK Oklahoma, OK Pottawatomie, OK		
5910 Olympia, WA Thurston, WA	1.0713	1.0483
5920 Omaha, NE- IA	0.9425	0.9603
Pottawattamie, IA Cass, NE Douglas, NE Sarpy, NE Washington, NE		
5945 *Orange County, CA	1.1929	1.1284
Orange, CA		
5960 *Orlando, FL Lake, FL Orange, FL Osceola, FL Seminole, FL	0.9491	0.9649
5990 Owensboro, KY	0.7578	0.8270
Daviess, KY		

TABLE 4a.—WAGE INDEX AND CAPITAL
GEOGRAPHIC ADJUSTMENT FACTOR
(GAF) FOR URBAN AREAS—Contin-
ued

Urban area (con- stituent counties or county equivalents)	Wage index	GAF
6015 Panama City, FL	0.8080	0.8642
Bay, FL		
6020 Parkersburg- Marietta, WV—OH	0.7895	0.8506
Washington, OH		
Wood, WV		
6080 Pensacola, FL	0.8212	0.8738
Escambia, FL		
Santa Rosa, FL		
6120 Peoria-Pekin, IL	0.8923	0.9249
Peoria, IL		
Tazewell, IL		
Woodford, IL		
6160 *Philadelphia, PA—NJ	1.1197	1.0805
Burlington, NJ		
Camden, NJ		
Gloucester, NJ		
Salem, NJ		
Bucks, PA		
Chester, PA		
Delaware, PA		
Montgomery, PA		
Philadelphia, PA		
6200 *Phoenix- Mesa, AZ	0.9832	0.9885
Maricopa, AZ		
Pinal, AZ		
6240 Pine Bluff, AR	0.7904	0.8512
Jefferson, AR		
6280 *Pittsburgh, PA	0.9726	0.9812
Allegheny, PA		
Beaver, PA		
Butler, PA		
Fayette, PA		
Washington, PA		
Westmoreland, PA		
6323 Pittsfield, MA	1.0570	1.0387
Berkshire, MA		
6360 Ponce, PR ...	0.4500	0.5788
Guayanilla, PR		
Juana Diaz, PR		
Penuelas, PR		
Ponce, PR		
Villalba, PR		
Yauco, PR		
6403 Portland, ME	0.9615	0.9735
Cumberland, ME		
Sagadahoc, ME		
York, ME		
6440 *Portland- Vancouver, OR— WA	1.1267	1.0851
Clackamas, OR		
Columbia, OR		
Multnomah, OR		
Washington, OR		
Yamhill, OR		
Clark, WA		
6483 Providence- Warwick-Paw- tucket, RI	1.1116	1.0751

TABLE 4a.—WAGE INDEX AND CAPITAL
GEOGRAPHIC ADJUSTMENT FACTOR
(GAF) FOR URBAN AREAS—Contin-
ued

Urban area (con- stituent counties or county equivalents)	Wage index	GAF
Bristol, RI		
Kent, RI		
Newport, RI		
Providence, RI		
Washington, RI		
6520 Provo-Orem, UT	1.0139	1.0095
Utah, UT		
6560 Pueblo, CO	0.8302	0.8804
Pueblo, CO		
6580 Punta Gorda, FL	0.8284	0.8790
Charlotte, FL		
6600 Racine, WI ...	0.8855	0.9201
Racine, WI		
6640 Raleigh-Dur- ham-Chapel Hill, NC	0.9740	0.9821
Chatham, NC		
Durham, NC		
Franklin, NC		
Johnston, NC		
Orange, NC		
Wake, NC		
6660 Rapid City, SD	0.8493	0.8942
Pennington, SD		
6680 Reading, PA	0.9467	0.9632
Berks, PA		
6690 Redding, CA	1.1631	1.1090
Shasta, CA		
6720 Reno, NV	1.1043	1.0703
Washoe, NV		
6740 Richland- Kennewick-Pasco, WA	0.9993	0.9995
Benton, WA		
Franklin, WA		
6760 Richmond- Petersburg, VA	0.9189	0.9437
Charles City County, VA		
Chesterfield, VA		
Colonial Heights City, VA		
Dinwiddie, VA		
Goochland, VA		
Hanover, VA		
Henrico, VA		
Hopewell City, VA		
New Kent, VA		
Petersburg City, VA		
Powhatan, VA		
Prince George, VA		
Richmond City, VA		
6780 *Riverside- San Bernardino, CA	1.1251	1.0841
Riverside, CA		
San Bernardino, CA		
6800 Roanoke, VA	0.8721	0.9105
Botetourt, VA		
Roanoke, VA		

TABLE 4a.—WAGE INDEX AND CAPITAL
GEOGRAPHIC ADJUSTMENT FACTOR
(GAF) FOR URBAN AREAS—Contin-
ued

Urban area (con- stituent counties or county equivalents)	Wage index	GAF
Roanoke City, VA		
Salem City, VA		
6820 Rochester, MN	1.0452	1.0307
Olmsted, MN		
6840 *Rochester, NY	0.9611	0.9732
Genesee, NY		
Livingston, NY		
Monroe, NY		
Ontario, NY		
Orleans, NY		
Wayne, NY		
6880 Rockford, IL	0.9015	0.9315
Boone, IL		
Ogle, IL		
Winnebago, IL		
6895 Rocky Mount, NC	0.8951	0.9269
Edgecombe, NC		
Nash, NC		
6920 *Sacramento, CA	1.2382	1.1576
El Dorado, CA		
Placer, CA		
Sacramento, CA		
6960 Saginaw-Bay City-Midland, MI	0.9605	0.9728
Bay, MI		
Midland, MI		
Saginaw, MI		
6980 St. Cloud, MN	0.9478	0.9640
Benton, MN		
Stearns, MN		
7000 St. Joseph, MO	0.8570	0.8997
Andrews, MO		
Buchanan, MO		
7040 *St. Louis, MO—IL	0.8926	0.9251
Clinton, IL		
Jersey, IL		
Madison, IL		
Monroe, IL		
St. Clair, IL		
Franklin, MO		
Jefferson, MO		
Lincoln, MO		
St. Charles, MO		
St. Louis, MO		
St. Louis City, MO		
Warren, MO		
7080 Salem, OR ...	0.9749	0.9827
Marion, OR		
Polk, OR		
7120 Salinas, CA	1.3835	1.2489
Monterey, CA		
7160 *Salt Lake City-Ogden, UT ...	0.9677	0.9778
Davis, UT		
Salt Lake, UT		
Weber, UT		
7200 San Angelo, TX	0.7594	0.8282
Tom Green, TX		

TABLE 4a.—WAGE INDEX AND CAPITAL
GEOGRAPHIC ADJUSTMENT FACTOR
(GAF) FOR URBAN AREAS—Contin-
ued

Urban area (con- stituent counties or county equivalents)	Wage index	GAF
7240 *San Antonio, TX	0.8365	0.8849
Bexar, TX		
Comal, TX		
Guadalupe, TX		
Wilson, TX		
7320 *San Diego, CA	1.2183	1.1448
San Diego, CA		
7360 *San Fran- cisco, CA	1.4210	1.2720
Marin, CA		
San Francisco, CA		
San Mateo, CA		
7400 *San Jose, CA	1.4435	1.2858
Santa Clara, CA		
7440 *San Juan- Bayamon, PR	0.4616	0.5890
Aguas Buenas, PR		
Barceloneta, PR		
Bayamon, PR		
Canovanas, PR		
Carolina, PR		
Catano, PR		
Ceiba, PR		
Comerio, PR		
Corozal, PR		
Dorado, PR		
Fajardo, PR		
Florida, PR		
Guaynabo, PR		
Humacao, PR		
Juncos, PR		
Los Piedras, PR		
Loiza, PR		
Luguillo, PR		
Manati, PR		
Morovis, PR		
Naguabo, PR		
Naranjito, PR		
Rio Grande, PR		
San Juan, PR		
Toa Alta, PR		
Toa Baja, PR		
Trujillo Alto, PR		
Vega Alta, PR		
Vega Baja, PR		
Yabucoa, PR		
7460 San Luis Obispo- Atascadero-Paso Robles, CA	1.1587	1.1061
San Luis Obispo, CA		
7480 Santa Bar- bara-Santa Maria- Lompoc, CA	1.1267	1.0851
Santa Barbara, CA		
7485 Santa Cruz- Watsonville, CA ...	1.3551	1.2313
Santa Cruz, CA		
7490 Santa Fe, NM	1.0847	1.0573

TABLE 4a.—WAGE INDEX AND CAPITAL
GEOGRAPHIC ADJUSTMENT FACTOR
(GAF) FOR URBAN AREAS—Contin-
ued

Urban area (con- stituent counties or county equivalents)	Wage index	GAF
Los Alamos, NM		
Santa Fe, NM		
7500 Santa Rosa, CA	1.2558	1.1688
Sonoma, CA		
7510 Sarasota- Bradenton, FL	0.9770	0.9842
Manatee, FL		
Sarasota, FL		
7520 Savannah, GA	1.0089	1.0061
Bryan, GA		
Chatham, GA		
Effingham, GA		
7560 Scranton— Wilkes-Barre—Ha- zleton, PA	0.8767	0.9138
Columbia, PA		
Lackawanna, PA		
Luzerne, PA		
Wyoming, PA		
7600 *Seattle- Bellevue-Everett, WA	1.1410	1.0945
Island, WA		
King, WA		
Snohomish, WA		
7610 Sharon, PA	0.8764	0.9136
Mercer, PA		
7620 Sheboygan, WI	0.7782	0.8422
Sheboygan, WI		
7640 Sherman- Denison, TX	0.8650	0.9055
Grayson, TX		
7680 Shreveport- Bossier City, LA ...	0.9379	0.9570
Bossier, LA		
Caddo, LA		
Webster, LA		
7720 Sioux City, IA-NE	0.8331	0.8825
Woodbury, IA		
Dakota, NE 7760		
7760 Sioux Falls, SD	0.8606	0.9023
Lincoln, SD		
Minnehaha, SD		
7800 South Bend, IN	0.9957	0.9971
St. Joseph, IN		
7840 Spokane, WA	1.0548	1.0372
Spokane, WA		
7880 Springfield, IL	0.8783	0.9150
Menard, IL		
Sangamon, IL		
7920 Springfield, MO	0.7840	0.8465
Christian, MO		
Greene, MO		
Webster, MO		
8003 Springfield, MA	1.0609	1.0413
Hampden, MA		
Hampshire, MA		
8050 State Col- lege, PA	0.8875	0.9215

TABLE 4a.—WAGE INDEX AND CAPITAL
GEOGRAPHIC ADJUSTMENT FACTOR
(GAF) FOR URBAN AREAS—Contin-
ued

Urban area (con- stituent counties or county equivalents)	Wage index	GAF
Centre, PA		
8080 Steubenville- Weirton, OH—WV	0.8244	0.8761
Jefferson, OH		
Brooke, WV		
Hancock, WV		
8120 Stockton- Lodi, CA	1.1417	1.0950
San Joaquin, CA		
8140 Sumter, SC	0.7716	0.8373
Sumter, SC		
8160 Syracuse, NY	0.9406	0.9589
Cayuga, NY		
Madison, NY		
Onondaga, NY		
Oswego, NY		
8200 Tacoma, WA	1.0891	1.0602
Pierce, WA		
8240 Tallahassee, FL	0.8332	0.8825
Gadsden, FL		
Leon, FL		
8280 *Tampa-St. Petersburg-Clear- water, FL	0.9322	0.9531
Hernando, FL		
Hillsborough, FL		
Pasco, FL		
Pinellas, FL		
8320 Terre Haute, IN	0.8611	0.9027
Clay, IN		
Vermillion, IN		
Vigo, IN		
8360 Texarkana, AR-Texarkana, TX	0.8484	0.8935
Miller, AR		
Bowie, TX		
8400 Toledo, OH	1.0383	1.0261
Fulton, OH		
Lucas, OH		
Wood, OH		
8440 Topeka, KS	1.0108	1.0074
Shawnee, KS		
8480 Trenton, NJ	1.0572	1.0388
Mercer, NJ		
8520 Tucson, AZ	0.9050	0.9339
Pima, AZ		
8560 Tulsa, OK	0.8113	0.8666
Creek, OK		
Osage, OK		
Rogers, OK		
Tulsa, OK		
Wagoner, OK		
8600 Tuscaloosa, AL	0.7723	0.8378
Tuscaloosa, AL		
8640 Tyler, TX	1.0158	1.0108
Smith, TX		
8680 Utica-Rome, NY	0.8421	0.8890
Herkimer, NY		
Oneida, NY		
8720 Vallejo-Fair- field-Napa, CA	1.3483	1.2271
Napa, CA		
Solano, CA		

TABLE 4a.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
8735 Ventura, CA Ventura, CA	1.1169	1.0786
8750 Victoria, TX Victoria, TX	0.8478	0.8931
8760 Vineland-Millville-Bridgeton, NJ Cumberland, NJ	1.0015	1.0010
8780 Visalia-Tulare-Porterville, CA Tulare, CA	1.0174	1.0119
8800 Waco, TX McLennan, TX	0.7789	0.8427
8840 *Washington, DC—MD—VA—WV District of Columbia, DC Calvert, MD Charles, MD Frederick, MD Montgomery, MD Prince Georges, MD Alexandria City, VA Arlington, VA Clarke, VA Culpepper, VA Fairfax, VA Fairfax City, VA Falls Church City, VA Fauquier, VA Fredericksburg City, VA King George, VA Loudoun, VA Manassas City, VA Manassas Park City, VA Prince William, VA Spotsylvania, VA Stafford, VA Warren, VA Berkeley, WV Jefferson, WV	1.0842	1.0569
8920 Waterloo-Cedar Falls, IA Black Hawk, IA	0.8724	0.9108
8940 Wausau, WI Marathon, WI	1.0347	1.0236
8960 West Palm Beach-Boca Raton, FL Palm Beach, FL	1.0016	1.0011
9000 Wheeling, OH—WV Belmont, OH Marshall, WV Ohio, WV	0.7580	0.8272
9040 Wichita, KS Butler, KS Harvey, KS Sedgwick, KS	0.9447	0.9618
9080 Wichita Falls, TX	0.8070	0.8634

TABLE 4a.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
Archer, TX Wichita, TX		
9140 Williamsport, PA Lycoming, PA	0.8487	0.8937
9160 Wilmington-Newark, DE—MD New Castle, DE Cecil, MD	1.1341	1.0900
9200 Wilmington, NC New Hanover, NC Brunswick, NC	0.9072	0.9355
9260 Yakima, WA Yakima, WA	1.0049	1.0034
9270 Yolo, CA Yolo, CA	1.1470	1.0985
9280 York, PA York, PA	0.9124	0.9391
9320 Youngstown-Warren, OH Columbiana, OH Mahoning, OH Trumbull, OH	0.9764	0.9838
9340 Yuba City, CA Sutter, CA Yuba, CA	1.0437	1.0297
9360 Yuma, AZ Yuma, AZ	0.9518	0.9667

* Large Urban Area

4. On pages 27527 to 27528, Table 4b—Wage Index and Capital Geographic Adjustment Factor (GAF) for Rural Areas is corrected by replacing the table with the following table:

TABLE 4B.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR RURAL AREAS

Nonurban Area	Wage index	GAF
Alabama	0.7160	0.7955
Alaska	1.2472	1.1633
Arizona	0.7946	0.8543
Arkansas	0.7000	0.7833
California	0.9991	0.9994
Colorado	0.8156	0.8697
Connecticut	1.2788	1.1834
Delaware	0.9464	0.9630
Florida	0.8677	0.9074
Georgia	0.7659	0.8331
Hawaii	1.0268	1.0183
Idaho	0.8356	0.8843
Illinois	0.7567	0.8262
Indiana	0.8119	0.8670
Iowa	0.7394	0.8132
Kansas	0.7113	0.7919
Kentucky	0.7772	0.8415
Louisiana	0.7284	0.8049
Maine	0.8335	0.8827
Maryland	0.8446	0.8908

TABLE 4B.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR RURAL AREAS—Continued

Nonurban Area	Wage index	GAF
Massachusetts	1.0794	1.0537
Michigan	0.8837	0.9188
Minnesota	0.8161	0.8701
Mississippi	0.6808	0.7685
Missouri	0.7249	0.8023
Montana	0.8137	0.8683
Nebraska	0.7245	0.8020
Nevada	0.8795	0.9158
New Hampshire	0.9776	0.9846
New Jersey ¹		
New Mexico	0.7873	0.8489
New York	0.8565	0.8994
North Carolina	0.7945	0.8542
North Dakota	0.7370	0.8114
Ohio	0.8349	0.8838
Oklahoma	0.6963	0.7805
Oregon	0.9715	0.9804
Pennsylvania	0.8480	0.8932
Puerto Rico	0.4182	0.5505
Rhode Island ¹		
South Carolina	0.7679	0.8346
South Dakota	0.7085	0.7898
Tennessee	0.7372	0.8116
Texas	0.7430	0.8159
Utah	0.8854	0.9200
Vermont	0.8941	0.9262
Virginia	0.7760	0.8406
Washington	0.9956	0.9970
West Virginia	0.7943	0.8541
Wisconsin	0.8449	0.8910
Wyoming	0.8202	0.8731

¹ All counties within the State are classified urban.

5. On page 27544, top of the page, the title of table 6c is corrected to read as follows: "TABLE 6C—INVALID DIAGNOSIS CODES."

6. On page 27590, column two, between the end of the fifth paragraph and the beginning of the letter to The Honorable Albert Gore, Jr., the following text should be inserted: "Appendix D: Report to Congress on the Update Factor for Prospective Payment Hospitals and Hospitals Excluded from the Prospective Payment System."

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 24, 1996.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resource Management.

[FR Doc. 96-16568 Filed 6-28-96; 8:45 am]

BILLING CODE 4120-01-P

National Institutes of Health**Proposed Collection, Comment Request; "Alcoholism Prevalence and Gene/Environment Interactions in Native America Tribes (a 10 Tribe Study)" and "A Native American Tribe With Low Alcoholism Prevalence: Transmission Analysis, Linkage Analysis and Gene/Environment Interactions (a 1 Tribe Study)"**

SUMMARY: In compliance with Section 3506 (c) (2) (A) of the Paperwork Reduction Act of 1995, which provides for an opportunity for public comment on proposed data collection projects, the National Institute on Alcohol Abuse and Alcoholism (NIAAA), National Institutes of Health (NIH) will publish periodic summaries of proposed

projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

PROPOSED COLLECTION: The Laboratory of Neurogenetics (LN), Division of Intramural Clinical and Biological Research, NIAAA, intends to conduct the study for "Alcoholism Prevalence and Gene/Environment Interactions in Native American Tribes (a 10 tribe study)" and "A Native American Tribe with Low Alcoholism Prevalence: Transmission Analysis, Linkage and Gene/Environment Interactions (a 1 tribe study)."

The LN is authorized by Section 452 of Part G of Title IV of the Public Health Service Act (42 USC 288) as amended by the NIH Revitalization Act of 1993 (Pub. Law 103-43). The information proposed for collection in both studies

will be used by the NIAAA to define the prevalence in alcoholism and associated problems in tribes in which the rates of alcoholism have been reported to be widely divergent. Additional information will be collected on severe trauma and stress, alcohol availability and socioeconomic factors to identify how these variables interact with hereditary factors in the development of alcoholism and related problems. In the single tribe study, a large pedigree (or a few large pedigrees) will be constructed in order to address issues of transmission of alcoholism vulnerability, linkage to chromosomally mapped DNA markers, and the issues of mutations in candidate genes.

The annual burden estimates are as follows:

Type and number of respondents	Responses per respondent	Total responses	Hours	Total hours
Clients 3300	1	3300	6.0	19,800

Total Number of Respondents: 3,300
(1,100 per year)

Total Number of Responses: 3,300
(1,100 per year)

Total Hours: 19,800 (6,600 per year)

REQUEST FOR COMMENTS: Comments are invited on: (a) whether the proposed collection is necessary, including whether the information has practical use; (b) ways to enhance the clarity, quality, and use of the information to be collected; (c) the accuracy of the agency estimate of burden of the proposed collection; and (d) ways to minimize the collection burden of the respondents. Send written comments to Ms. Ronni Nelson, Laboratory of Neurogenetics, Division of Intramural Clinical and Biological Research, NIAAA, NIH, DANAC4 (Flow Labs), 12501 Washington Ave., Rockville, Maryland 20852.

FOR FURTHER INFORMATION : To request more information on the proposed project or to obtain a copy of the data collection plans, contact Ms. Ronni Nelson, Laboratory of Neurogenetics, Division of Intramural Clinical and Biological Research, NIAAA, DANAC4 (Flow Labs), 12501 Washington Ave., Rockville, Maryland 20852, or call non-toll-free number (301) 443-5781.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received on or before August 30, 1996.

Dated: June 20, 1996.

Martin K. Trusty,

Executive Officer, NIAAA.

[FR Doc. 96-16720 Filed 6-28-96; 8:45 am]

BILLING CODE 4140-01-M

National Eye Institute; 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 National Eye Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: Institutional National Research Service Awards.

Date: July 19, 1996.

Time: 9:00 a.m.

Place: National Eye Institute, Executive Plaza South, Suite 350, 6120 Executive Blvd., Bethesda, MD 20892-7164.

Contact Person: Andrew P. Mariani, Ph.D., Executive Plaza South, Suite 350, 6120 Executive Blvd., Bethesda, MD 20892-7164, (301) 496-5561.

Purpose/Agenda: Review of Grant Applications.

The meeting will be closed in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.867, Vision Research: National Institutes of Health.)

Dated: June 24, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96-16715 Filed 6-28-96; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; 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 Heart, Lung, and Blood Special Emphasis Panel (SEP) meetings:

Name of SEP: Modeling DNA Diversity in Cardiovascular Health/Disease.

Date: July 22-23, 1996.

Time: 7:30 p.m.

Place: Holiday Inn, Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland.

Contact Person: Anthony M. Coelho, Jr., Ph.D., Rockledge II, Room 7182, 6701 Rockledge Drive, Bethesda, Maryland 20892-7924, (301) 435-0277.

Purpose/Agenda: To review and evaluate grant applications.

Name of SEP: Historically Black Colleges and Universities Research Scientist Award.

Date: August 5, 1996.

Time: 8:00 a.m.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Contact Person: Joyce A. Hunter, Ph.D., Rockledge II, Room 7192, 6701 Rockledge Drive, Bethesda, Maryland 20892-7924, (301) 435-0287.

Purpose/Agenda: To review and evaluate cooperative agreement grant applications.

These meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. (Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: June 24, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96-16717 Filed 6-28-96; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; 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 Heart, Lung, and Blood Special Emphasis Panel (SEP) meetings:

Name of SEP: Pathways—Full Scale Study (Telephone Conference Call).

Date: July 18, 1996.

Time: 10:00 a.m.

Place: Two Rockledge Center, 6701 Rockledge Drive, Rm. 7220, Bethesda, Maryland 20892.

Contact Person: C. James Scheirer, Ph.D., Two Rockledge Center, Room 7220, 6701 Rockledge Drive, Bethesda, MD 20892-7924, (301) 435-0266.

Purpose/Agenda: To review and evaluate grant applications.

This notice is being published less than fifteen days prior to this meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of SEP: Regulation of Human Immunodeficiency Virus in the Lung.

Date: July 22-23, 1996.

Time: 8:00 a.m.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Contact Person: Deborah P. Beebe, Ph.D., Two Rockledge Center, Room 7206, 6701 Rockledge Drive, Bethesda, MD 20892-7924, (301) 435-0303.

Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as

patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: June 24, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96-16718 Filed 6-28-96; 8:45 am]

BILLING CODE 4140-01-M

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 National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: Master Agreement for HIV Preclinical Vaccine Development Category B: Evaluation of AIDS Vaccines in Non-Human Primates (Telephone Conference Call).

Date: July 3, 1996.

Time: 12:00 p.m.

Place: Telephone Conference Call, 6003 Executive Blvd., Solar Bldg., Room 4C03, Bethesda, MD 20892-7610, (301) 402-4596.

Contact Person: Dr. Christopher E. Beisel, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C03, Bethesda, MD 20892-7610, (301) 402-4596.

Purpose/Agenda: To evaluate contract proposals.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: June 24, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96-16719 Filed 6-28-96; 8:45 am]

BILLING CODE 4140-01-M

Division of Research Grants; 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 Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Clinical Sciences.

Date: July 10, 1996.

Time: 3:00 p.m.

Place: NIH, Rockledge 2, Room 4126, Telephone Conference.

Contact Person: Dr. Jerrold Fried, Scientific Review Administrator, 6701 Rockledge Drive, Room 4126, Bethesda, Maryland 20892, (301) 435-1777.

Name of SEP: Biological and Physiological Sciences.

Date: July 15, 1996.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 5122, Telephone Conference.

Contact Person: Dr. Michael Lang, Scientific Review Administrator, 6701 Rockledge Drive, Room 5122, Bethesda, Maryland 20892, (301) 435-1265.

Name of SEP: Biological and Physiological Sciences.

Date: July 16, 1996.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 5122, Telephone Conference.

Contact Person: Dr. Michael Lang, Scientific Review Administrator, 6701 Rockledge Drive, Room 5122, Bethesda, Maryland 20892, (301) 435-1265.

Name of SEP: Biological and Physiological Sciences.

Date: July 17, 1996.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 5122, Telephone Conference.

Contact Person: Dr. Michael Lang, Scientific Review Administrator, 6701 Rockledge Drive, Room 5122, Bethesda, Maryland 20892, (301) 435-1265.

Name of SEP: Multidisciplinary Sciences.

Date: July 17, 1996.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 5208, Telephone Conference.

Contact Person: Dr. Houston Baker, Scientific Review Administrator, 6701 Rockledge Drive, Room 5208, Bethesda, Maryland 20892, (301) 435-1175.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of SEP: Biological and Physiological Sciences.

Date: July 18, 1996.

Time: 9:00 a.m.

Place: One Washington Circle Hotel, Washington, DC.

Contact Person: Dr. Anita Sostek, Scientific Review Administrator, 6701 Rockledge Drive,

Room 5202, Bethesda, Maryland 20892, (301) 435-1260.

Name of SEP: Microbiological and Immunological Sciences.

Date: July 23, 1996.

Time: 10:00 a.m.

Place: NIH, Rockledge 2, Room 4180, Telephone Conference.

Contact Person: Dr. Tim Henry, Scientific Review Administrator, 6701 Rockledge Drive, Room 4180, Bethesda, Maryland 20892, (301) 435-1147.

Name of SEP: Microbiological and Immunological Sciences.

Date: July 23, 1996.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4180, Telephone Conference.

Contact Person: Dr. Tim Henry, Scientific Review Administrator, 6701 Rockledge Drive, Room 4180, Bethesda, Maryland 20892, (301) 435-1147.

Name of SEP: Biological and Physiological Sciences.

Date: July 24, 1996.

Time: 3:00 p.m.

Place: NIH, Rockledge 2, Room 5196, Telephone Conference.

Contact Person: Ms. Carol Campbell, Scientific Review Administrator, 6701 Rockledge Drive, Room 5196, Bethesda, Maryland 20892, (301) 435-1257.

Name of SEP: Microbiological and Immunological Sciences.

Date: July 24, 1996.

Time: 10:00 a.m.

Place: NIH, Rockledge 2, Room 4180, Telephone Conference.

Contact Person: Dr. Tim Henry, Scientific Review Administrator, 6701 Rockledge Drive, Room 4180, Bethesda, Maryland 20892, (301) 435-1147.

Name of SEP: Microbiological and Immunological Sciences.

Date: July 24, 1996.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4180, Telephone Conference.

Contact Person: Dr. Tim Henry, Scientific Review Administrator, 6701 Rockledge Drive, Room 4180, Bethesda, Maryland 20892, (301) 435-1147.

Name of SEP: Microbiological and Immunological Sciences.

Date: July 25, 1996.

Time: 10:00 a.m.

Place: NIH, Rockledge 2, Room 4180, Telephone Conference.

Contact Person: Dr. Tim Henry, Scientific Review Administrator, 6701 Rockledge Drive, Room 4180, Bethesda, Maryland 20892, (301) 435-1147.

Name of SEP: Microbiological and Immunological Sciences.

Date: July 25, 1996.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4180, Telephone Conference.

Contact Person: Dr. Tim Henry, Scientific Review Administrator, 6701 Rockledge Drive, Room 4180, Bethesda, Maryland 20892, (301) 435-1147.

Purpose/Agenda: To review Small Business Innovation Research.

Name of SEP: Biological and Physiological Sciences.

Date: July 18-19, 1996.

Time: 11:00 a.m.

Place: One Washington Circle Hotel, Washington, DC.

Contact Person: Dr. Anita Sostek, Scientific Review Administrator, 6701 Rockledge Drive, Room 5202, Bethesda, Maryland 20892, (301) 435-1260.

Name of SEP: Microbiological and Immunological Sciences.

Date: July 24-26, 1996.

Time: 8:30 a.m.

Place: Holiday Inn, Chevy Chase, MD.

Contact Person: Dr. Martin Slater, Scientific Review Administrator, 6701 Rockledge Drive, Room 4184, Bethesda, Maryland 20892, (301) 435-1149.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 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: June 24, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96-16714 Filed 6-28-96; 8:45 am]

BILLING CODE 4140-01-M

Division of Research Grants; 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 Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Biological and Physiological Sciences.

Date: July 19, 1996.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 5196, Telephone Conference.

Contact Person: Ms. Carol Campbell, Scientific Review Administrator, 6701 Rockledge Drive, Room 5196, Bethesda, Maryland 20892, (301) 435-1257.

Name of SEP: Biological and Physiological Sciences.

Date: July 30, 1996.

Time: 11:30 a.m.

Place: NIH, Rockledge 2, Room 4150, Telephone Conference.

Contact Person: Dr. Marcia Litwack, Scientific Review Administrator, 6701 Rockledge Drive, Room 4150, Bethesda, Maryland 20892, (301) 435-1719.

Name of SEP: Biological and Physiological Sciences.

Date: July 31, 1996.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 4150, Telephone Conference.

Contact Person: Dr. Marcia Litwack, Scientific Review Administrator, 6701 Rockledge Drive, Room 4150, Bethesda, Maryland 20892, (301) 435-1719.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. (Catalog of Federal Domestic Assistance Program Nos. 93.306, 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: June 24, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96-16716 Filed 6-28-96; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-3960-N-05]

Office of the Assistant Secretary for Policy Development and Research; Announcement of Funding Award for the Education Component of the Community Renaissance Fellows Program (CRFP)

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding award.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of the funding award for the education component of the Community Renaissance Fellows Program. This award will be used to develop and offer an education component as part of the Department's new Community Renaissance Fellows Program. Under this program, HUD will create fellowships to foster a cadre of community building professionals who apply the practical experience gained in working on public housing transformation projects and apply this knowledge to other complex neighborhood revitalization projects. The purpose of this document is to

announce the name and address of the awardee and the amount of the award.

FOR FURTHER INFORMATION CONTACT:

Marcia Marker Feld, Ph.D., Director, Office of University Partnerships, U.S. Department of Housing and Urban Development, room 8130, 451 Seventh Street, S.W., Washington, DC 20410, telephone (202) 708-3061. (This is not a toll free number.) A telecommunications device for hearing- and speech-impaired individuals (TTY) is available at 1-800-877-8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: The Community Renaissance Fellows Program (CRFP) is authorized by the Department's FY 1995 Appropriation Act (Pub. L. 103-327, approved September 28, 1994). A notice published in the Federal Register on November 30, 1995 (60 FR 61634) announced the Department's funding of at least 20 Fellows to assist in distressed public housing developments undergoing conversion to mixed-income communities. The Fellows will be trained to become community building experts through on-the-job training with Public Housing Authorities or their private development partners, and through seminars. The curriculum of these seminars must be specially designed for the kinds of experiences the Fellows will have and the expertise they will need. In addition, the faculty and "best practices" professionals brought in to teach the seminars are expected to be on the "cutting edge" of their fields.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989), the Department is publishing details concerning the recipient, as follows:

Award for the Development of the Education Component for the Community Renaissance Fellows Program

Professor Douglas Rae, Yale University, 71 Livingston, New Haven, CT 06511, (203) 432-9899, Amount: \$657,458.

Dated: June 24, 1996.

Michael A. Stegman,
Assistant Secretary for Policy Development
and Research.

[FR Doc. 96-16713 Filed 6-28-96; 8:45 am]

BILLING CODE 4210-62-P

DEPARTMENT OF THE INTERIOR

**Proposed Agency Information
Collection Activities; Comment
Request**

AGENCY: Bureau of Indian Affairs.

ACTION: Notice.

SUMMARY: The Department of the Interior (Department) announces that an information collection request has been submitted to the Office of Management and Budget as required by the Paperwork Reduction Act of 1995. The information collection will be used by tribes to conduct background investigations of individuals whose duties and responsibilities allow them regular contact with or control over Indian children, and to process contracts, grants or compacts for award of funds as mandated by the Indian Child Protection and Family Violence Prevention Act (Act), Pub. L. 101-630, 25 U.S.C. 3201-3211. The Department invites comment on the information collection described below.

DATES: Interested persons are invited to submit comments on or before August 30, 1996.

FOR FURTHER INFORMATION CONTACT:

Contact Bettie Rushing, Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW, Room 4629 Main Interior Building, Washington, DC 20240, or (202) 208-3463.

SUPPLEMENTARY INFORMATION:

1. Information Collection Request

The Department is seeking comments on the following Information Collection Request.

Type of review: New.

Title: (1) Background Investigations of Individuals Whose Duties and Responsibilities Allow Them Regular Contact With or Control Over Indian Children, 25 CFR § 63.15.

(2) Indian Child Protection and Family Violence Prevention Program Awards, 25 CFR § 63.33 and 25 CFR § 63.34.

Effected Entities: Tribal Governments; Tribal Organizations.

Abstract: The Bureau of Indian Affairs (BIA) is establishing regulations as mandated by the Indian Child Protection and Family Violence Prevention Act. The regulations prescribe minimum standards of character and suitability for employment of individuals whose duties and responsibilities allow them regular contact with or control over Indian children as required by Title IV, Section 408 of the Act, 25 U.S.C. 3207, and establish the method for

distribution of funds to support tribally operated programs to protect Indian children and reduce the incidents of family violence in Indian country as authorized by Title IV, Section 411 of the Act, 25 U.S.C. 3210(f)(3).

The Bureau of Indian Affairs developed the regulations in consultation with tribes. A working group of tribal and BIA representatives developed a draft of each section that was then presented to participants at a national tribal consultation meeting in Oklahoma City, Oklahoma, August 31 through September 1, 1994. The Notice of Proposed Rulemaking was published in the Federal Register on September 1, 1995.

Background Investigations of Individuals Whose Duties and Responsibilities Allow Them Regular Contact With or Control Over Indian Children. Indian tribes and tribal organizations receiving funds under the authority of the Indian Self-Determination and Education Assistance Act or the Tribally Controlled Schools Act of 1988 must conduct a background investigation for individuals whose duties and responsibilities would allow them regular contact with or control over Indian children, and employ only individuals who meet standards of character that are no less stringent than those prescribed for the Bureau of Indian Affairs. Indian tribes and tribal organizations may conduct their own background investigations, contract with private firms, or request the Office of Personnel Management to conduct an investigation. Third party notification or public disclosure is associated with this collection.

Indian Child Protection and Family Violence Prevention Program Awards. The Bureau of Indian Affairs will use the application for funding to determine applicant eligibility, scope of service population, safeguard Federal funds and other resources, and administer and evaluate programs. Tribal governments or tribal organizations provide the information by submitting Indian Self-determination and Education Assistance Act, Pub. L. 93-638, as amended, 25 U.S.C. § 450 *et seq.*, contract, compact, or grant proposals to the Bureau of Indian Affairs. No third party notification or public disclosure burden is associated with this collection.

In addition to the Indian Self-Determination and Education Assistance Act requirements, each applicant must provide the name and address of the agency or official to be responsible for the investigation of reported cases of child abuse and child neglect, the treatment and prevention of

incidents of family violence, and the provision of immediate shelter and related assistance for victims of family violence and their dependents; the projected service population of the program; the projected service area of the program; and the projected number of cases per month.

Funds will be distributed, subject to the availability of appropriations. In any fiscal year that the appropriation exceeds 50 percent of the level of funding authorized by the Act, 49 percent must be distributed equally to all tribes and tribal organizations and 49 percent must be distributed on a per capita basis according to the population of children residing in the service area. Two percent of the annual appropriation will be set aside for distribution to tribes demonstrating

special circumstances. Special circumstances include but are not limited to a high incidence of child sexual abuse, a high incidence of violent crimes, a high incidence of violent crimes against women, or the existence of a significant victim population within the community.

Any tribe not wishing to receive Indian child protection and family violence prevention funds must inform its respective area office in writing within 90 days after receiving notice of the allocation from the area office. Each area office may reallocate unused Indian child protection and family violence prevention program funds as provided in this section.

Burden Statement: Section 63.15 Background Investigations, as mandated by statute, require an average 40 hours per employee, with an estimated

employee base of 10,000, a total burden of 400,000 hours. Funding information is to be collected annually from each applicant. It is anticipated that the number of third party collection (background investigations) will be less in subsequent years.

Sections 63.33 and 63.34 Funding Applications require an annual reporting and record keeping burden of 30 hours for each response for 554 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and review collection of information. Thus, the total annual reporting and recordkeeping burden for this collection is estimated to be 16,620 hours, which is in addition to the background investigation burden.

CFR section	Number of respondents	Third party collection	Frequency of response	Total annual responses	Burden hours per response	Annual burden hours	Cost to respondents
63.15	554	10,000	1	10,000	40	400,000	\$8,000,000
63.33	554	0	1	554	20	11,080	221,600
63.34	554	0	1	554	10	5,540	110,800

The Bureau of Indian Affairs will not conduct or require tribes and tribal organizations to respond to a collection of information until 25 CFR 63.4, Information Collection, references a currently valid Office of Management and Budget control number.

2. Request for Comments

The Department solicits comments to:

(a) 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.

(b) Evaluate the accuracy of the agencies' estimates of burden of the proposed collection of information, including the methodology and assumptions used.

(c) Enhance the quality, utility, and clarity of the information to be collected.

(d) 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 collection techniques or other forms of information technology.

Tribes, organizations and individuals desiring to submit comments on the information collection requirement should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10202, New Executive Office Building, Washington, D.C.

20503; Attention: Desk Officer for the U.S. Department of the Interior.

Dated: June 17, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96-16671 Filed 6-28-96; 8:45 am]

BILLING CODE 4310-02-P

Bureau of Indian Affairs

The Confederated Tribes of the Grand Ronde; Community of Oregon Liquor Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. I certify that the Confederated Tribes of the Grand Ronde Community of Oregon Liquor Ordinance was duly adopted by Resolution No. 022-96 of the Confederated Tribes of the Grand Ronde Community of Oregon on April 10, 1996. The Ordinance provides for the regulation, sale, possession and use of alcoholic liquor on the Grand Ronde Reservation and other lands subject to Tribal jurisdiction.

DATES: This Ordinance is effective as of July 1, 1996.

FOR FURTHER INFORMATION CONTACT:

Chief, Branch of Judicial Services, Division of Tribal Government Services, 1849 C Street, N.W., MS 4603 MIB, Washington, D.C. 20240-4001; telephone (202) 208-4401.

SUPPLEMENTARY INFORMATION: The Confederated Tribes of the Grand Ronde Community of Oregon Liquor Ordinance is to read as follows:

(a) Authority and Purpose

(1) The authority for the Ordinance and its adoption by Tribal Council is found in the Tribal Constitution under Article III, Section 1, and in the Act of August 15, 1953, Public Law 83-277, 18 U.S.C. § 1161.

(2) This Ordinance is for the purpose of regulating the sale, possession and use of alcoholic liquor on the Grand Ronde Reservation and other lands subject to Tribal jurisdiction.

(b) Definitions

To the extent that definitions are consistent with tribal or federal law, terms used herein shall have the same meaning as defined in Oregon Revised Statutes Chapter 471, and in Oregon Administrative Rules Chapter 845.

(1) "Alcoholic liquor" shall mean any alcoholic beverage containing more than one-half of one percent alcohol by volume, and every liquid or solid, patented or not, containing alcohol and capable of being consumed by a human being.

(2) "Grand Ronde Reservation" shall mean all lands held in trust by the United States for the Tribe or its members and all lands owned by the Tribe, wherever located.

(3) Whenever the words "sell" or "to sell" refer to anything forbidden by this Chapter and related to alcoholic liquor, they include:

(A) To solicit or receive an order.

(B) To keep or expose for sale.

(C) To deliver for value or in any way other than purely gratuitously.

(D) To peddle.

(E) To keep with intent to sell.

(F) To traffic in.

(G) For any consideration, promise or obtained directly or indirectly under any pretext or by any means or procure or allow to be procured for any other person.

(4) The word "sale" includes every act of selling as defined in subsection 2 of this section.

(c) Prohibited Activity

(1) It shall be unlawful for any person to sell, trade or manufacture any alcoholic liquor on the Grand Ronde Reservation except as provided for in this Ordinance.

(2) It shall be unlawful for any business establishment or person on the Grand Ronde Reservation to possess, transport or keep with intent to sell, barter or trade to another, any liquor, except for those commercial liquor establishments on the Grand Ronde Reservation licensed by the Tribe, provided, however, that a person may transport liquor from a licensed establishment consistent with the terms of the license.

(3) It shall be unlawful for any person to consume alcoholic liquor on a public highway.

(4) It shall be unlawful for any person to publicly consume any alcoholic liquor at any community function, or at or near any place of business, Indian celebration grounds, recreational areas, including ballparks, and public camping areas, the Tribal Headquarters area and any other area where minors gather for meetings or recreation, except within a tribally licensed establishment where alcohol is sold.

(5) It shall be unlawful for any person under the age of 21 years to buy, attempt to buy or to misrepresent their age in attempting to buy, alcoholic liquor. It shall be unlawful for any person under the age of 21 years to transport, possess or consume any alcoholic liquor on the Grand Ronde Reservation, or to be under the influence of alcohol or to be at an established commercial liquor establishment, except as authorized under Section (e) of this Ordinance. No

person shall sell or furnish alcoholic liquor to any minor.

(6) Alcoholic liquor may not be given as a prize, premium or consideration for a lottery, contest, game of chance or skill, or competition of any kind.

(d) Procedure for License

(1) Any request for a license under this Ordinance must be presented to the Tribal Council at least 30 days prior to the requested effective date. Tribal Council shall set license conditions at least as strict as those required by federal law, including at a minimum:

(A) Liquor may only be served and handled in a manner no less strict than allowed under Oregon Revised Statutes Chapter 471.

(B) Liquor may only be served by staff of the licensee; and

(C) Liquor may only be served in rooms where gambling is not taking place.

(2) Council action on a license request must be taken at a regular or special meeting. Unless the request is for a special event license, the Council shall give at least 14 days notice of the meeting at which the request will be considered. Notice shall be posted at the Tribal Council offices and at the establishment requesting the license, and will be sent by Certified Mail to the Oregon Liquor Control Commission.

(e) Sale or Service of Liquor by Licensee's Minor Employees

(1) The holder of a license issued under this Ordinance or Oregon Revised Statutes Chapter 472 may employ persons 18, 19 and 20 years of age who may take orders for, serve and sell alcoholic liquor in any part of the licensed premises when that activity is incidental to the serving of food except in those areas classified by the Oregon Liquor Control Commission as being prohibited to the use of minors. However, no person who is 18, 19 or 20 years of age shall be permitted to mix, pour or draw alcoholic liquor except when pouring is done as a service to the patron at the patron's table or drawing is done in a portion of the premises not prohibited to minors.

(2) Except as stated in this section, it shall be unlawful to hire any person to work in connection with the sale and service of alcoholic beverages in a tribally licensed liquor establishment if such person is under the age of 21 years.

(f) Warning Signs Required

(1) Any person in possession of a valid retail liquor license, who sells liquor by the drink for consumption on the premises or sells for consumption off the premises, shall post a sign

informing the public of the effects and risks of alcohol consumption during pregnancy.

(2) The sign shall:

(A) Contain the message: "Pregnancy and alcohol do not mix. Drinking alcoholic beverages, including wine, coolers and beer, during pregnancy can cause birth defects."

(B) Be either:

(i) A large sign, no smaller than eight and one-half inches by 11 inches in size with lettering no smaller than five-eighths of an inch in height; or

(ii) A reduced sign, five by seven inches in size with lettering of the same proportion as the large sign described in paragraph (a) of this subsection.

(C) Contain a graphic depiction of the message to assist nonreaders in understanding the message. The depiction of a pregnant female shall be universal and shall not reflect a specific race or culture.

(D) Be in English unless a significant number of the patrons of the retail premises use a language other than English as a primary language. In such cases, the sign shall be worded both in English and the primary language or languages of the patrons.

(E) Be displayed on the premises of all licensed retail liquor premises as either a large sign at the point of entry, or a reduced sized sign at points of sale.

(3) The person described in subsection (1) of this section shall also post signs of any size at places where alcoholic beverages are displayed.

(g) Civil Penalty

(1) Any person who violates the provisions of this Ordinance is deemed to have consented to the jurisdiction of the Tribal Court and may be subject to a civil penalty in Tribal Court for a civil infraction. Such civil penalty shall not exceed the sum of \$1,000 for each such infraction, provided, however, that the penalty shall not exceed \$5,000 if it involves minors.

(2) The procedures governing the adjudication in Tribal Court of such civil infractions shall be those set out in the Tribal Court rules.

(3) The Tribal Council hereby specifically finds that such civil penalties are reasonably necessary and are related to the expense of governmental administration necessary in maintaining law and order and public safety on the Reservation and in managing, protecting and developing the natural resources on the Reservation. It is the legislative intent of the Tribal Council that all violations of this Chapter, whether committed by tribal members, non-member Indians, or

non-Indians, be considered civil in nature rather than criminal.

(h) Severability

(1) If a court of competent jurisdiction finds any provision of this Ordinance to be invalid or illegal under applicable Federal or Tribal law, such provision shall be severed from this Ordinance and the remainder of this Ordinance shall remain in full force and effect.

(i) Consistency With State Law

(1) The Confederated Tribes of Grand Ronde agrees to perform in the same manner as any other Oregon business entity for the purpose of liquor licensing and regulations, including but not limited to licensing, compliance with the regulations of the Oregon Liquor Control Commission, maintenance of liquor liability insurance, as more specifically set forth in a certain "Memorandum of Understanding Governing Liquor Licensing and Regulation," negotiated under the approved terms of the Tribal/State Compact for the regulation of Class III gaming, entered into between The Confederated Tribes of Grand Ronde and the State of Oregon, which is incorporated as if specifically set forth herein, as it may be amended from time to time.

(j) Effective Date

(1) This Ordinance shall be effective upon publication in the Federal Register after approval by the Secretary of the Interior or his designee.

Dated: June 25, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96-16635 Filed 6-28-96; 8:45 am]

BILLING CODE 4310-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-378]

Certain Asian-Style Kamaboko Fish Cakes; Notice of Commission Determinations Not To Review Two Initial Determinations Finding a Violation of Section 337 and Two Respondents in Default, and of the Schedule for Filing Written Submissions on Remedy, the Public Interest, and Bonding

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to

review two initial determinations (IDs) issued in Order No. 15 on May 21, 1996, by the presiding administrative law judge (ALJ) in the above-captioned investigation. The first found a violation of section 337 of the Tariff Act of 1930 in the importation and sale of certain Asian-style kamaboko fish cakes and the second found two respondents in default.

FOR FURTHER INFORMATION CONTACT: Jay H. Reiziss, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-3116. Copies of the nonconfidential versions of the IDs and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on September 12, 1995, based on a complaint filed by Yamasa Enterprises of Los Angeles, California. 60 *Fed Reg.* 48722. The following six firms were names as respondents: Yamasa Kamaboko Co., Ltd. (YKCL); Alpha Oriental Foods, Inc. (Alpha); N.A. Sales, Inc.; New Japan Food Corp.; Rhee Brothers, Inc.; and Rokko Trading Co., Inc. Respondents N.A. Sales and Rokko Trading Co. were subsequently terminated from the investigation on the basis of a settlement agreement. Respondent Alpha is believed to have gone out of business.

On May 21, 1996, the presiding ALJ issued Order No. 15 which included two IDs. In one ID the ALJ granted complainant's motion for summary determination on each substantive issue in the investigation. In the other ID the ALJ granted complainant's motion that respondents New Japan Food Corp. and Rhee Brothers be found in default. Respondent YKCL filed a petition for review of the IDs, and complainant and the Commission investigative attorney filed oppositions to YKCL's petition. On June 6, 1996, the ALJ also issued a recommended determination on the issues of remedy and bonding.

In connection with final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/

or (2) cease and desist orders that could result in respondents New Japan Food Corp. and Rhee Brothers being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background, see the Commission Opinion, *In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed, if remedial orders are issued.

WRITTEN SUBMISSIONS: The parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the June 6, 1996, recommended determination by the ALJ. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than the close of business on July 15, 1996. Reply submissions must be filed no later than the close of

business on July 8, 1996. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and rules 210.42 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR §§ 210.42 and 210.50).

Issued: June 21, 1996.

By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 96-16613 Filed 6-28-96; 8:45 am]

BILLING CODE 7020-01-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980, as Amended

Notice is hereby given that a proposed consent decree in the action entitled *United States v. A & N Cleaners & Launderers, Inc., et al.*, Civil Action No. 89-6865 (S.D.N.Y.), was lodged on June 20, 1996, with the United States District Court for the Southern District of New York. The proposed consent decree resolves the United States' claims under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, on behalf of the U.S. Environmental Protection Agency ("EPA") and the U.S. Department of the Interior ("DOI"), against the defendants—A & N Cleaners & Launderers, Inc.; Ben Forcucci; Marine Midland Bank, N.A.; Jordan W. Berkman; John A. Petrillo; Joseph Curto; and Mario Cuot—for response costs

incurred and to be incurred in connection with the Brewster Well Field Superfund Site ("Site") in Putnam County, New York, and for damages for injury to, destruction of, or loss of natural resources as a result of the release of hazardous substances at or from the Site. Under the proposed consent decree, the United States and its co-plaintiff the State of New York will receive \$2.3 million from the defendants in reimbursement of response costs. The United States will also receive \$20,000 from defendants as damages for injury to, or destruction or loss of, natural resources, to be spent only for natural resources restoration and reimbursement of assessment costs incurred by the natural resource trustees.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. In addition, since the United States is further providing defendants with a covenant not to sue under the Resources Conservation & Recovery Act, 42 U.S.C. 6901, *et seq.*, the United States will also provide an opportunity for a public meeting in the affected area, if requested within the thirty (30) day public comment period. See 42 U.S.C. § 6973(d). Any comments and/or request for a public meeting should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. A & N Cleaners & Launderers, Inc., et al.*, Civil Action No. 89-6865, DOJ Ref. Number 90-11-2-311.

The proposed consent decree may be examined at the Office of the United States Attorney, 100 Church Street, 19th Floor, New York, New York 10007; the Region II Office of the Environmental Protection Agency, 290 Broadway, New York, New York 10278; and the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624-0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of \$9.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,
Section Chief, Environmental Enforcement
Section, Environment and Natural Resources
Division.

[FR Doc. 96-16707 Filed 6-28-96; 8:45 am]

BILLING CODE 4410-01-M

Membership of the 1996 Senior Executive Service Performance Review Boards

AGENCY: Department of Justice.

ACTION: Notice of Department of Justice's 1996 Senior Executive Service Performance Review Boards.

SUMMARY: Pursuant to the requirements of 5 U.S.C. 4314(c)(4), the Department of Justice announces the membership of its Senior Executive Service (SES) Performance Review Boards (PRBs). The purpose of the PRBs is to provide fair and impartial review of SES performance appraisals and bonus recommendations. The PRBs will make recommendations to the Deputy Attorney General regarding the final performance ratings to be assigned and SES bonuses to be awarded.

FOR FURTHER INFORMATION CONTACT: Henry Romero, Director, Personnel Staff, Justice Management Division, Department of Justice, Washington, D.C. 20530; (202) 514-6788.

Valerie M. Willis,
Executive Secretary, Senior Executive
Resources Board.

Department of Justice, 1996 Senior
Executive Service Performance Review
Board Members

Antitrust Division

John F. Greaney, Chief, Computers and
Finance Section
Mary Jean Moltenbrey, Chief, Civil Task
Force

Civil Division

David J. Anderson, Director, Federal
Programs Branch
James G. Bruen, Jr., Special Litigation
Counsel, Commercial Litigation
Branch
John L. Euler, Deputy Director, Torts
Branch

Civil Rights Division

Katherine A. Baldwin, Chief,
Employment Litigation Section
David K. Flynn, Chief, Appellate
Section

Criminal Division

Joshua R. Hochberg, Deputy Chief for
Litigation, Public Integrity Section
Eli H. Rosenbaum, Director, Office of
Special Investigations
Jan M. Stromsem, Director, International
Criminal Investigative Training
Assistance Program

Environment and Natural Resources Division

Bruce S. Gelber, Principal Deputy Chief,
Environmental Enforcement Section

James C. Kilbourne, Chief, Appellate Section
 Pauline H. Milius, Chief, Policy, Legislation, and Special Litigation Section

Justice Management Division

Mary Ellen Condon, Director, Information Management and Security Staff
 Theodius McBurrows, Director, Equal Employment Opportunity Staff
 Daphne B. Sampson, Director, Library Staff

Tax Division

Stanley F. Krysa, Chief, Criminal Section
 E. Ralph Pierce, Chief, Criminal Enforcement Section, Northern Region
 Steven Shapiro, Chief, Civil Trial Section, Southern Region

Bureau of Prisons

Wallace H. Cheney, General Counsel
 Thomas R. Kane, Assistant Director, Information, Policy, and Public Affairs Division
 Ira B. Kirschbaum, General Counsel for Federal Prison Industries (UNICOR)
 Ronald G. Thompson, Assistant Director, Human Resource Management Division

Executive Office for Immigration Review

Neil P. Miller, Chief Attorney-Examiner

Immigration and Naturalization Service

John P. Chase, Director of Internal Audit
 Joan C. Higgins, Assistant Commissioner for Detention and Deportation
 John R. Schroeder, Assistant Commissioner for Administrative Centers
 Jeffrey L. Weiss, Director, Asylum Division

United States Marshals Service

Kenneth C. Holecko, Assistant Director for Business Services

[FR Doc. 96-16706 Filed 6-28-96; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of Labor-Management Standards

Proposed Collection; Comment Request

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 Office of Labor-Management Standards (OLMS) is soliciting comments concerning the proposed extension of the collection of information requirements of Labor Organization and Auxiliary Reports. A copy of the proposed information collection request (ICR) and/or the reporting forms can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before August 30, 1996. The Department of Labor 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 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.

ADDRESSEE: John Kotch, Deputy Assistant Secretary, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5605, Washington, DC 20210, (202) 219-7337 (this is not a toll-free number). Fax number: (202) 219-6459.

SUPPLEMENTARY INFORMATION:

I

Background: Congress enacted the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), to provide for the disclosure

of information on the financial transactions and administrative practices of labor organizations. The statute also provides, under certain circumstances, for reporting by labor organization officers and employees, employers, labor relations consultants, and surety companies. Section 208 of the LMRDA authorizes the Secretary to issue rules and regulations prescribing the form of the required reports. The reporting provisions were devised to implement a basic tenet of the LMRDA: the guarantee of democratic procedures and safeguards within labor organizations that are designed to protect the basic rights of union members. Section 205 of the LMRDA provides that the reports are public information.

II

Current Actions: The Department of Labor is seeking extension of the current approval of the collection of information with the minor modification of reducing the total burden hours by 61 due to the elimination of Form LM-6 (a signature sheet for labor organizations held in trusteeship). An extension is necessary because the LMRDA explicitly requires the reporting and establishes the frequency of the required filings. The information collected by OLMS is used by union members to help self-govern their unions, by the general public, and as research material for both outside researchers and within the Department of Labor. The information is also used to assist DOL and other government agencies in detecting improper practices on the part of labor organizations, their officers and/or representatives, and is used by Congress in oversight and legislative functions. OLMS receives approximately 800 requests per month for public disclosure of reports.

III

Type of Review: Extension.

IV

Agency: Office of Labor-Management Standards.

V

Title: Labor Organization and Auxiliary Reports.

VI

OMB Number: 1214-0001.

VII

Agency Number: 1294.

VIII

Reporting and Recordkeeping Burden Summary:

Cite/reference	Total respondents	Frequency	Total responses	Average time per response	Burden hours
Form LM-1	330	Annually	330	55 minutes	302
Form LM-2	5,096	Annually	5,096	15.25 hours	77,714
Form LM-3	16,275	Annually	16,275	6.75 hours	109,857
Form LM-4	14,000	Annually	14,000	.86 hours	12,086
Form LM-10	177	Annually	177	35 minutes	104
Form LM-15	732	As Necessary	732	1.83 hours	1,342
Form LM-15A	61	Semi-Annually	61	22 minutes	22
Form LM-16	224	As Necessary	224	21 minutes	78
Form LM-20	168	As Necessary	168	22 minutes	61
Form LM-21	50	Annually	50	35 minutes	29
Form LM-30	78	Annually	78	35 minutes	46
Form S-1	200	Annually	200	35 minutes	117
Simplified Annual Report Format	3,298	Annually	3,298	12 minutes	671
Total	40,689	.....	40,689	.....	202,429

Total Burden Cost (capital/startup): There are no capital/startup costs. Any capital investments including computers and software are excluded from the regulatory definition of burden as capital investments which are usual and customary expenses incurred by persons in the normal course of their business.

Total Burden Cost (operating/maintaining): Total burden costs to respondents and recordkeepers is estimated to be \$3,844,296. The cost estimates are based on wage rate data obtained from the Bureau of Labor Statistics for personnel employed in service industries (i.e., accountant, accounting clerk, attorney, personnel, manager/supervisor, etc.). The estimates used for labor union officials were obtained from the annual financial reports filed with OLMS.

Comments submitted in response to this comment request 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: June 25, 1996.

John Kotch,

Deputy Assistant Secretary.

[FR Doc. 96-16704 Filed 6-28-96; 8:45 am]

BILLING CODE 4510-86-P

MERIT SYSTEMS PROTECTION BOARD

Privacy Act of 1974; Amendment System of Records Notice

AGENCY: Merit Systems Protection Board.

ACTION: Notice of amendment to existing system of records.

SUMMARY: The Merit Systems Protection Board (MSPB) publishes this document pursuant to the requirements of the

Privacy Act of 1974 at 5 U.S.C. 552a(e)(4) to update the existence and character of its government-wide system of records, MSPB/GOVT-1, Appeal and Case Records.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Michael H. Hoxie, Office of the Clerk of the Board, (202) 653-7200.

SUPPLEMENTARY INFORMATION: This notice amends the text of MSPB/GOVT-1, Appeal and Case Records to reflect changes in the Board's organization, office locations, telephone and fax numbers and the extension of the approved records disposition schedule from six to seven years.

Dated: June 26, 1996.

Robert E. Taylor,
Clerk of the Board.

MSPB/GOVT-1

SYSTEM NAME:

Appeals and Case Records.

SYSTEM LOCATIONS:

Office of the Clerk of the Board, Merit System Protection Board (MSPB), Information Resources Management Division, 1120 Vermont Avenue, NW., Washington, DC 20419, and the MSPB regional and field offices (see list of Office addresses in the Appendix).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Current and former Federal employees, applicants for employment, annuitants, and other individuals who have filed appeals with MSPB or its predecessor agency, or with respect to whom the Special Counsel or a Federal agency has petitioned MSPB concerning any matter over which MSPB has jurisdiction.

b. Current and former employees of state and local governments who have been investigated by the Special Counsel and have had a hearing before

MSPB concerning possible violation of the Hatch Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

a. These records contain information or documents such as briefs, pleadings, motions, exhibits, hearing transcripts, and MSPB decisions, which comprise the administrative records of appeals and other matters arising under the adjudicatory authority of MSPB. These records also contain individual appellant's names, social security numbers, home addresses, veterans status, race, sex, national origin and disability status data.

b. This system also includes the Board's automated Case Management System. The system, resident on MSPB headquarter's minicomputer, which contains information from the above records, is used to record the location, history, status, and case processing information on cases brought before the Board for adjudication.

Note.—This system includes records and documents compiled by Federal agencies in processing adverse actions and actions based on unacceptable performance, covered by OPM/GOVT-3, when such actions are appealed to the MSPB.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1205, 1206, 1207, 1208, 7701, 7702.

PURPOSE:

a. These records are used to document and adjudicate appeals and other matters arising under the MSPB original and appellate jurisdiction.

b. These records also serve a management information function by providing statistical data for reports, physical file location and staff productivity.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information from the record may be disclosed:

a. To officials of the Equal Employment Opportunity Commission or the Special Panel convened under authority of 5 U.S.C. 7702 when requested in connection with the performance of their authorized duties;

b. To officials of the Office of Personnel Management, the Federal Labor Relations Authority, the Equal Employment Opportunity Commission, and the Office of Special Counsel in connection with the performance of their authorized duties;

c. To the Government Accounting Office in response to an official inquiry or investigation;

d. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual;

e. To an appropriate Federal or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order where there is an indication of a violation or potential violation of civil or criminal law or regulation;

f. To the Office of Management and Budget at any stage in the legislative process in connection with private relief legislation as set forth in OMB Circular No. A-19;

g. To the Department of Justice when:

- (1) The Board, or any component thereof; or

- (2) Any employee of the Board in the employee's official capacity; or

- (3) Any employee of the Board in the employee's individual capacity where the Department of Justice has agreed to represent the employee; or

- (4) The United States is a party to litigation or has an interest in such litigation and the use of such records is deemed to be relevant and necessary to the litigation, providing that the disclosure of the records is a use of the information contained in the records that is compatible with the purpose for which the records were collected, or approval or consultation is required.

h. In any proceeding before a court or adjudicative body before which the Board is authorized to appear, when:

- (1) The Board, or any component thereof;

- (2) Any employee of the Board in the employee's official capacity; or

- (3) Any employee of the Board in the employee's individual capacity where the agency has agreed to represent the employee; or

- (4) The United States is a party to litigation or has an interest in such litigation and the use of such records is deemed to be relevant and necessary to the litigation, providing that the disclosure of the records is a use of the

information contained in the records that is compatible with the purpose for which the records were collected, or approval or consultation is required.

- i. To any person making a status inquiry regarding a proceeding before the MSPB;

- j. To the National Archives and Records Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906;

- k. In response to a request for discovery or for appearance of a witness, if the requested information is relevant to the subject matter involved in a pending judicial or administrative proceeding;

- l. To Federal and state agencies for the purpose of providing MSPB with information concerning MSPB appellants, which information will be used, absent personal identifiers, in the MSPB research projects mandated by 5 U.S.C. 1205(a)(3), or

- m. To officials of the U.S. Court of Appeals for the Federal Circuit in connection with the performance of their judicial functions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and binders and in computer processible storage media.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom they are maintained, by social security numbers and by MSPB docket numbers.

SAFEGUARDS:

Access to these records is limited to persons whose official duties require such access. Personal screening is employed to prevent unauthorized disclosure. Automated records in this system are maintained in a secure computer room in a building with restricted access. Automated records are protected from unauthorized access through password identification procedures and other system-based protection methods.

RETENTION AND DISPOSAL:

Paper records are maintained for up to one year after a final determination by MSPB or, in some instances, other administrative authorities or the courts. Thereafter, they are transferred to Regional Federal Records Centers or other appropriate facilities. Paper records are destroyed by the Federal Records Centers when the records are seven years old. Electronic records of

the Case Management System may be maintained indefinitely, or until the Board no longer needs them.

SYSTEM MANAGER(S) AND ADDRESS:

The Clerk of the Board, and the Information Resources Management Division, 1120 Vermont Avenue, NW., Washington, DC 20419, and the MSPB regional and field offices (see list of regional office addresses in the Appendix).

NOTIFICATION PROCEDURES:

Individuals wishing to inquire whether this system of records contains information about them should contact the Clerk of the Board and must follow the MSPB Privacy Act regulations at 5 CFR 1205.11 regarding such inquiries.

RECORD ACCESS PROCEDURES:

Individuals requesting access to their records should contact the Clerk of the Board. If the requester has reason to believe the records in question are located in a regional or field office, it is appropriate to submit the request to that office. Such requests should be addressed to the regional director or chief administrative judge (See the list of office addresses in the appendix). Requests for access to records must follow the MSPB Privacy Act regulations at 5 CFR 1205.11.

CONTESTING RECORD PROCEDURES:

Individuals requesting amendment should write the Clerk of the Board. If the requester has reason to believe the records in question are located in a regional or field office, it is appropriate to submit the request to that office. Requests to the regions should be addressed to the regional director or chief administrative judge (See the list of office addresses in the appendix). Requests for amendment of records must follow the MSPB Privacy Act regulations at 5 CFR 1205.21.

These provisions for amendment of the record are not intended to permit the alternation of evidence presented in the course of adjudication before the MSPB either before or after the MSPB has rendered a decision on the appeal.

RECORD SOURCE CATEGORIES:

The sources of these records are:

- a. The individual to whom the record pertains;

- b. The agency employing the above individual;

- c. The Merit Systems Protection Board, the Office of Personnel Management, the Equal Employment Opportunity Commission, the Office of the Special Counsel; and

- d. Other individuals or organizations from whom the MSPB has received

testimony, affidavits or other documents.

APPENDIX

Regional and Field Offices of the Merit Systems Protection Board

1. Atlanta Regional Office, Merit Systems Protection Board, 401 W. Peachtree Street, N.E., Suite 1050, Atlanta, Georgia 30308-3519
2. Boston Field Office, Merit Systems Protection Board, 99 Summer Street, Suite 1810, Boston, Massachusetts 02110-1200
3. Central Regional Office, Merit Systems Protection Board, 230 South Dearborn Street, 31st Floor, Chicago, Illinois 60604-1669
4. Dallas Field Office, Merit Systems Protection Board, 1100 Commerce Street, Room 6F20, Dallas, Texas 75242-0102.
5. Denver Field Office, Merit Systems Protection Board, 12567 W. Cedar Dr. Suite 100, Lakewood, Colorado 80228
6. New York Field Office, Merit Systems Protection Board, 26 Federal Plaza, Room 3137-A, New York, New York 10278-0022
7. Northeastern Regional Office, U.S. Customhouse, Room 501, Second and Chestnut Streets, Philadelphia, Pennsylvania 19106-2904
8. Western Regional Office, Merit Systems Protection Board, 250 Montgomery, Suite 400, San Francisco, California 94104-3401
9. Seattle Field Office, Merit Systems Protection Board, 915 Second Avenue, Room 1840, Seattle, Washington 98174-1056
10. Washington, D.C. Regional Office, Merit Systems Protection Board, 5203 Leesburg Pike Suite, 1109, Falls Church, Virginia 22041-3401

[FR Doc. 96-16751 Filed 6-28-96; 8:45am]

BILLING CODE 7400-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Office of the Federal Register

Agreements Between the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office in the United States

AGENCY: Office of the Federal Register, NARA.

ACTION: Notice of availability of agreements.

SUMMARY: The American Institute in Taiwan has concluded a number of agreements with the Taipei Economic and Cultural Representative Office in the United States (formerly the Coordination Council for North American Affairs) in order to maintain cultural, commercial and other unofficial relations between the American people and the people on Taiwan. The Director of the Federal Register is publishing the list of these

agreements on behalf of the American Institute in Taiwan in the public interest.

SUPPLEMENTARY INFORMATION: Cultural, commercial and other unofficial relations between the American people and the people on Taiwan are maintained on a nongovernmental basis through the American Institute in Taiwan (AIT), a private nonprofit corporation created under the Taiwan Relations Act (Pub. L. 96-8; 93 Stat. 14). The Coordination Council for North American Affairs (CCNAA) was established as its nongovernmental Taiwan counterpart. On October 10, 1994, the Coordination Council for North American Affairs was renamed the Taipei Economic and Cultural Representative Office in the United States (TECRO).

Under section 1(a) of the Act, agreements concluded between the AIT and the TECRO (CCNAA) are transmitted to the Congress, and according to sections 6 and 10(a) of the Act, such agreements have full force and effect under the law of the United States.

The texts of the agreements are available from the American Institute in Taiwan, 1700 North Moore Street, 17th Floor, Arlington, Virginia 22209. For further information contact the Corporate Secretary of AIT at this address, telephone: (703)525-8474, fax: (703)841-1385.

Following is a list of agreements between AIT and TECRO (CCNAA) which were in force as of January 1, 1996.

Dated: June 14, 1996.

J. Richard Bock,
Deputy Managing Director and Corporate Secretary.

Dated: June 25, 1996.

Richard L. Claypoole,
Director, Office of the Federal Register.

AIT-TECRO Agreements

Status of TECRO

The Exchange of Letters concerning the change in the name of the Coordination Council for North American Affairs (CCNAA) to the Taipei Economic and Cultural Representative Office in the United States (TECRO). Signed December 27, 1994 and January 3, 1995. Entered into force January 3, 1995.

Agriculture

1. Guidelines for a cooperative program in the agriculture sciences. Signed January 15 and 28, 1986. Entered into force January 28, 1986.

2. Amendment to the 1986 guidelines for a cooperative program in the

agricultural sciences. Effected by exchange of letters September 1 and 11, 1989. Entered into force September 11, 1989.

3. Memorandum on cooperation in enhancing commodity situation and outlook reporting. Signed February 7, 1991. Entered into force February 7, 1991.

4. Agreement amending and extending the memorandum of February 7, 1991 on cooperation in enhancing commodity situation and outlook reporting. Signed November 22, 1993. Entered into force November 22, 1993.

5. Cooperative service agreement to facilitate fruit and vegetable inspection through their designated representatives, the United States Department of Agriculture Animal and Plant Health Inspection Service (APHIS) and the Taiwan Provincial Fruit Marketing Cooperative (TPFMC) supervised by the Taiwan Council of Agriculture (COA). Signed April 28, 1993. Entered into force April 28, 1993.

6. Memorandum of agreement between the American Institute in Taiwan and the Coordination Council for North American Affairs (Sanitary/Phytosanitary and Agricultural Standards). Signed November 4, 1993. Entered into force November 4, 1993.

Aviation

1. Air transport agreement, with annexes and exchanges of letters. Signed at Washington, March 5, 1980. Entered into force March 5, 1980.

2. Agreement implementing the air transport agreement of March 5, 1980. Effected by exchange of letters at Arlington and Washington March 31, 1981. Entered into force March 31, 1981.

3. Memorandum of understanding for consultations relating to the air transport agreement of March 5, 1980. Signed at Taipei October 15, 1981. Entered into force October 15, 1981.

4. Agreement amending Article 6 of the air transport agreement of March 5, 1980. Effected by exchange of letters at Taipei May 8 and July 28, 1985. Entered into force July 28, 1986.

5. Memorandum of agreement concerning the arrangement for certain aeronautical equipment and services relating to civil aviation, with annexes. Signed September 24 and October 23, 1981. Entered into force October 23, 1981.

6. Amendment 1 to memorandum of agreement concerning aeronautical equipment and services of September 24 and October 23, 1981. Signed September 18 and 23, 1985. Entered into force September 23, 1985.

7. Amendment 2 to memorandum of agreement of September 24 and October

23, 1981, concerning aeronautical equipment and services. Signed September 23 and October 17, 1991. Entered into force October 17, 1991.

Conservation

1. Memorandum on cooperation in forestry and natural resources conservation. Signed May 23 and July 4, 1991. Entered into force July 4, 1991.

2. Memorandum on cooperation in soil and water conservation under the guidelines for a cooperative program in the agricultural sciences. Signed at Washington on October 5, 1992. Entered into force October 5, 1992.

3. Agreement on technical cooperation in conservation of flora and fauna. Signed February 24 and March 6, 1995. Entered into force March 6, 1995.

Customs

1. Agreement for technical assistance in customs operations and management, with attachment. Signed May 14 and June 4, 1991. Entered into force June 4, 1991.

Education and Culture

1. Agreement amending the agreement for financing certain educational and cultural exchange programs of April 23, 1964. Effected by exchange of letters at Taipei on April 14 and June 4, 1979. Entered into force June 4, 1979.

2. Agreement concerning the Taipei American School, with annex. Signed at Taipei February 3, 1983. Entered into force February 3, 1983.

Energy

1. Agreement relating to the establishment of a joint standing committee on civil nuclear cooperation. Signed at Taipei October 3, 1984. Entered into force October 3, 1984.

2. Agreement amending and extending the agreement of October 3, 1984, relating to the establishment of a joint standing committee on civil nuclear cooperation. Signed October 19, 1989. Entered into force October 19, 1989.

3. Agreement Amending and Extending the Agreement between the American Institute in Taiwan and the Coordination Council for North American Affairs Relating to the Establishment of a Joint Standing Committee on Civil Nuclear Cooperation. Signed October 3, 1994. Entered into force October 3, 1994.

4. Agreement abandoning in place in Taiwan the Argonaut Research Reactor loaned to National Tsing Hua University. Signed November 28, 1990.

5. Agreement concerning safeguards arrangements for nuclear materials transferred from France to Taiwan.

Effected by exchange of letters of February 12 and May 13, 1993. Entered into force May 13, 1993.

6. Agreement relating to participation in the USNRC program of severe accident research, with appendix. Signed February 18 and June 24, 1993. Entered into force June 24, 1993; effective January 1, 1993.

7. Agreement regarding participation in the Second USNRC International Piping Integrity Research Group Program, with addendum. Signed at Arlington and Washington February 7 and June 30, 1994. Entered into force June 30, 1994.

8. Agreement relating to participation in the USNRC program of Thermal-Hydraulic Code applications and maintenance, with addendum. Signed at Arlington and Washington February 7 and June 30, 1994. Entered into force June 30, 1994.

9. Memorandum of Agreement for release of an Energy and Power Evaluation Program (ENPEP) computer software package. Signed January 25 and February 27, 1995. Entered into force February 27, 1995.

Environment

1. Agreement for Technical Cooperation in the field of Environmental Protection. Signed June 21, 1993. Entered into force June 21, 1993.

Health

1. Guidelines for a cooperative program in the biomedical sciences. Signed May 21, 1984. Entered into force May 21, 1984.

2. Amendment No. 1 to the 1984 guidelines for a cooperative program in the biomedical sciences, with attachment. Signed April 20, 1989. Entered into force April 20, 1989.

3. Amendment No. 2 to the 1984 guidelines for a cooperative program in the biomedical sciences, with attachment. Signed August 24, 1989. Entered into force August 24, 1989.

4. Guidelines for a cooperative program in food hygiene. Signed January 15 and 28, 1985. Entered into force January 28, 1985.

5. Guidelines for a cooperative program in public health and preventive medicine. Signed at Arlington and Washington June 30 and July 19, 1994. Entered into force July 19, 1994.

6. Agreement for Technical Cooperation in Vaccine and Immunization-related Activities. Signed at Washington October 6 and 7, 1994. Entered into force October 7, 1994.

Intellectual Property

1. Agreement concerning the protection and enforcement of rights in

audiovisual works. Effected by exchange of letters at Arlington and Washington June 6 and June 27, 1989. Entered into force June 27, 1989.

2. Understanding concerning the protection of intellectual property rights. Signed at Washington June 5, 1992. Entered into force June 5, 1992.

3. Agreement for the protection of copyright, with appendix. Signed July 16, 1993. Entered into force July 16, 1993.

Judicial Procedure

1. Memorandum of understanding on cooperation in the field of criminal investigations prosecutions. Signed at Taipei October 5, 1992. Entered into force October 5, 1992.

Labor

1. Guidelines for a cooperative program in labor affairs. December 6, 1991. Entered into force December 6, 1991.

2. Guidelines for a cooperative program in labor mediation and alternative dispute resolution. Signed April 7, 1995. Entered into force April 7, 1995.

Mapping

1. Agreement concerning mapping, charting, and geodesy cooperation. Signed November 28, 1995. Entered into force November 28, 1995.

Maritime

1. Agreement concerning mutual implementation of the 1974 Convention for the safety of life at sea. Effected by exchange of letters at Arlington and Washington August 17 and September 7, 1982. Entered into force September 7, 1982.

2. Agreement concerning mutual implementation of the 1969 international convention on tonnage measurement. Effected by exchange of letters at Arlington and Washington May 13 and 26, 1983. Entered into force May 26, 1983.

3. Agreement concerning mutual implementation of the protocol of 1978 relating to the 1974 international convention for the safety of life at sea. Effected by exchange of letters at Arlington and Washington January 22 and 31, 1985. Entered into force January 31, 1985.

4. Agreement concerning mutual implementation of the protocol of 1978 relating to the international convention for the prevention of pollution from ships, 1973. Effected by exchange of letters at Arlington and Washington January 22 and 31, 1985. Entered into force January 31, 1985.

5. Agreement concerning mutual implementation of the 1966

international convention on load lines. Effected by exchange of letters at Arlington and Washington March 26 and April 10, 1985. Entered into force April 10, 1985.

6. Agreement concerning the operating environment for ocean carriers. Effected by exchange of letters at Washington and Arlington October 25 and 27, 1989. Entered into force October 27, 1989.

Postal

1. Agreement concerning establishment of INTELPOST service. Effected by exchange of letters at Arlington and Washington April 19 and November 26, 1990. Entered into force November 26, 1990.

2. International business reply service agreement, with detailed regulations. Signed at Washington February 7, 1992. Entered into force February 7, 1992.

Privileges and Immunities

1. Agreement on privileges, exemptions and immunities, with addendum. Signed at Washington October 2, 1980. Entered into force October 2, 1980.

2. Agreement governing the use and disposal of vehicles imported by the American Institute in Taiwan and its personnel. Signed at Taipei April 21, 1986. Entered into force April 21, 1986.

Scientific & Technical Cooperation

1. Agreement on scientific cooperation. Effected by exchange of letters at Arlington and Washington on September 4, 1980. Entered into force September 4, 1980.

2. Agreement concerning renewal & extension of the 1980 agreement on scientific cooperation. Signed and accepted March 10, 1987. Entered into force March 10, 1987.

3. Contract relating to provision to the AIT of ionospheric weather observations by the CCNAA, with attachments, as extended. Signed November 26, 1980. Entered into force November 26, 1980.

4. Agreement for technical assistance in dam design and construction, with appendices. Signed August 24, 1987. Entered into force August 24, 1987.

5. Agreement amending and extending the agreement of August 24, 1987, for technical assistance in dam design and construction. Signed May 11 and June 9, 1992. Entered into force June 9, 1992.

6. Agreement for a cooperative program in the sale and exchange of technical, scientific, and engineering information. Signed November 17, 1987. Entered into force November 17, 1987.

7. Agreement renewing and extending the agreement of November 17, 1987, for

a cooperative program in the sale and exchange of technical, scientific and engineering information. Signed and accepted August 8, 1990. Entered into force August 8, 1990.

8. Cooperative program on Hualien soil-structure interaction experiment. Signed and accepted September 28, 1990.

9. Guidelines for a cooperative program in the physical sciences. Signed March 10, 1987. Entered into force March 10, 1987.

10. Amendment No. 1 to the guidelines of March 10, 1987, for a cooperative program in the physical sciences. Signed on January 26, 1989. Entered into force January 26, 1989.

11. Amendment No. 2 to the guidelines of March 10, 1987, for a cooperative program in the physical sciences. Signed October 25, 1990 and March 22, 1991. Entered into force March 22, 1991.

12. Guidelines for a cooperative program in atmospheric research. Signed May 4, 1987. Entered into force May 4, 1987.

13. Agreement for procurement of equipment for the Taiwan Synchrotron Radiation Research Laboratory, with appendices. Signed April 20, 1988. Entered into force April 20, 1988.

14. Agreement for technical cooperation in meteorology and forecast systems development, with implementing arrangements. Signed June 5 and 28, 1990. Entered into force June 28, 1990.

15. Agreement for technical cooperation in energy and water resources, with annex. Signed December 21, 1990 and February 13, 1991. Entered into force February 13, 1991.

16. Agreement for technical cooperation in geodetic research and use of advanced geodetic technology, with implementing arrangement. Signed January 11 and February 21, 1991. Entered into force February 21, 1991.

17. Cooperative program in highway-related sciences. Signed October 30, 1990 and January 7, 1992. Entered into force January 7, 1992.

18. Agreement for technical cooperation in seismology and earthquake monitoring systems development, with implementing arrangement. Signed July 22 and 24, 1992. Entered into force July 24, 1992.

Security of Information

1. Protection of information agreement. Signed September 15, 1981. Entered into force September 15, 1981.

Taxation

1. Agreement concerning the reciprocal exemption from income tax

of income derived from the international operation of ships and aircraft. Effected by exchange of letters at Taipei May 31, 1988. Entered into force May 31, 1988.

2. Agreement for technical assistance in tax administration, with appendices. Signed August 1, 1989. Entered into force August 1, 1989.

Trade

1. Agreement concerning trade matters, with annexes. Effected by exchange of letters at Arlington and Washington October 24, 1979. Entered into force October 24, 1979; effective January 1, 1980.

2. Agreement concerning trade matters. Effected by exchange of letters at Arlington and Washington December 31, 1981. Entered into force December 31, 1981.

3. Agreement concerning measures that the CCNAA will undertake in connection with implementation of the GATT Customs Valuation Code. Effected by exchange of letters at Bethesda and Arlington August 22, 1986. Entered into force August 22, 1986.

4. Agreement concerning the export performance requirement affecting investment in the automotive sector. Effected by exchange of letters at Washington and Arlington of October 9, 1986. Entered into force October 9, 1986.

5. Agreement concerning beer, wine and cigarettes. Signed at Washington December 12, 1986. Entered into force December 12, 1986; effective January 1, 1987.

6. Agreement implementing the 1986 beer, wine and cigarettes agreement. Effected by exchange of letters at Taipei April 29, 1987. Entered into force April 29, 1987; effective January 1, 1987.

7. Agreement regarding new requirements for health warning legends on cigarettes sold in the territory represented by CCNAA. Effected by exchange of letters at Washington and Arlington October 7 and 16, 1991. Entered into force October 16, 1991.

8. Agreement concerning trade in whole turkeys, turkey parts, processed turkey products and whole ducks, with memorandum of understanding. Effected by exchange of letters at Arlington and Washington of March 16, 1989. Entered into force March 16, 1989.

9. Agreement concerning the protection of trade in strategic commodities and technical data, with memorandum of understanding. Effected by exchange of letters at Arlington and Washington December 4, 1990 and April 8, 1991. Entered into force April 8, 1991.

10. Administrative arrangement concerning the textile visa system. Effected by exchange of letters at Arlington and Washington April 18 and May 1, 1991. Entered into force May 1, 1991.

11. Memorandum of understanding concerning a new quota arrangement for cotton and man-made fiber trousers. Signed at Washington December 18, 1992. Entered into force December 18, 1992.

12. Memorandum of understanding on the exchange of information concerning commodity futures and options matters, with appendix. Signed January 11, 1993. Entered into force January 11, 1993.

13. Agreement concerning a framework of principles and procedures for consultations regarding trade and investment, with annex. Signed at Washington September 19, 1994. Entered into force September 19, 1994.

14. Memorandum of understanding to amend and extend the Bilateral Textile Agreement of June 4 and 24, 1993 (Relating to trade in cotton, wool, man-made fiber, silk blend and Other non-cotton vegetable fiber textile products.) Signed December 29, 1995. Entered into force December 29, 1995.

[FR Doc. 96-16621 Filed 6-28-96; 8:45 am]

BILLING CODE 1505-02-M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: Generic Letter 91-02, "Reporting Mishaps Involving LLW Forms Prepared for Disposal."

2. Current OMB approval number: 3150-0156.

3. How often the collection is required: Reports are made only when the licensee or waste processor experiences a mishap that is reportable

under the guidelines described in the Generic Letter.

4. Who is required or asked to report: Nuclear power reactor licensees and Agreement State and non-Agreement State waste processors and disposal site operators.

5. The number of annual respondents: 34.

6. The number of hours needed annually to complete the requirement or request: 272 hours (an average of 8 hours per response).

7. Abstract: Generic Letter 91-02 encourages voluntary reporting (by both waste form generators and processors) of information concerning mishaps to low-level radioactive waste (LLW) forms prepared for disposal. The information is used by NRC to determine whether followup action is necessary to assure protection of public health and safety.

Submit, by August 30, 1996, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW., (lower level), Washington, DC. Members of the public who are in the Washington, DC, area can access this document via modem on the Public Document Room Bulletin Board (NRC's Advance Copy Document Library), NRC subsystem at FedWorld, 703-321-3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1-800-303-9672, or use the FedWorld Internet address:

fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703-487-4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1-800-397-4209, or within the Washington, DC, area at 202-634-3273.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T-6 F33,

Washington, DC 20555-0001, by telephone at (301) 415-7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 20th day of June, 1996.

For the Nuclear Regulatory Commission.
Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 96-16741 Filed 6-28-96; 8:45 am]

BILLING CODE 7590-01-P

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR Part 73—Physical Protection of Plants and Materials

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* On occasion. Required reports are collected and evaluated on a continuing basis as events occur.

5. *Who will be required or asked to report:* Persons who possess, use, import, export, transport, or deliver to a carrier for transport, special nuclear material.

6. *An estimate of the number of responses:* 68,643.

7. *The estimated number of annual respondents:* 76.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 410,602.

9. *An indication of whether Section 3507(d), Pub. L. 104-13 applies:* Not applicable.

10. *Abstract:* 10 CFR Part 73 prescribes requirements for establishment and maintenance of a physical protection system with capabilities for protection of special nuclear material at fixed sites and in transit and of plants in which special

nuclear material is used. The revision reflects an increase in burden because of requirements for the physical fitness, day firing, and vehicle bomb rulemakings that were previously approved by OMB. There was also an adjustment to the burden because of the elimination of the requirement to have licensees submit quarterly log reports.

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC. Members of the public who are in the Washington, DC, area can access the submittal via modem on the Public Document Room Bulletin Board (NRC's Advance Copy Document Library) NRC subsystem at FedWorld, 703-321-3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1-800-303-9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703-487-4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1-800-397-4209, or within the Washington, DC, area at 202-634-3273.

Comments and questions should be directed to the OMB reviewer by (July 31, 1996): Peter Francis, Office of Information and Regulatory Affairs (3150-0002), NEOB-10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395-3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415-7233.

Dated at Rockville, Maryland, this 21st day of June, 1996.

For the Nuclear Regulatory Commission,
Gerald F. Cranford,
Designated Senior Official for Information Resources Management.

[FR Doc. 96-16742 Filed 6-28-96; 8:45 am]

BILLING CODE 7590-01-P

[Docket No. 55-21849-OT, ASLBP No. 96-716-01-OT]

Emrick S. McDaniel, (Denial of Application for Reactor Operator License); Notice of Hearing

June 25, 1996.

Notice is hereby given that, by Memorandum and Order dated June 25, 1996, the Presiding Officer in this proceeding has granted the April 28, 1996 request for a hearing of Emerick S. McDaniel. On April 4, 1996, the Nuclear Regulatory Commission Staff denied Mr. McDaniel's application for a reactor operator's license. The hearing will involve Mr. McDaniel's appeal from this denial.

This proceeding will be conducted under the Commission's Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings, set forth in 10 CFR Part 2, Subpart L. Documents relating to this proceeding are available for public inspection and copying at the Commission's Public Document Room, Gelman Building, 2120 L Street, N.W., Washington, D.C.

Mr. McDaniel and the NRC Staff are parties to this proceeding. In accordance with 10 CFR 2.1205(I)(4), any person whose interest may be affected by this proceeding may, within 30 days of publication of this Notice, file a petition for leave to intervene. The petition must identify: (1) the interest of the petitioner in the proceeding; (2) how that interest may be affected by the results of the proceeding with particular reference to the factors set out in 10 CFR 2.1205(g) (1996) (especially, whether the petitioner's specified areas of concern are germane to the subject matter of the proceeding); (3) the petitioner's area of concern about the licensing activity that is the subject matter of the proceeding; and (4) the circumstances establishing that the request is timely in accordance with the standards set forth in this Notice.

Each petition must be submitted to the Secretary of the Commission, ATTN: Chief, Docketing and Service Branch, U.S. Nuclear Regulatory Commission, Washington D.C. 20555. Copies should be served upon the Presiding Officer, the Special Assistant, the Assistant General Counsel for Hearings and Enforcement, Mr. McDaniel (who resides at 417 McIntosh Drive,

Waynesboro, GA 30830), and the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Pursuant to 10 CFR 2.1205(j)(2)(1996), any party may file an answer to a petition to intervene within 10 days of service of such petition.

Pursuant to 10 CFR 2.1211(a)(1996), any member of the public who is not a party to the proceeding may make a limited appearance in order to state his or her views on the issues involved in this license-renewal proceeding. These statements are not evidence and do not become part of the decisional record under 10 CFR 1251(c)(1996). Written statements, and requests to make oral statements, should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of statements and requests should be forwarded to the Presiding Officer.

Dated: June 25, 1996, Rockville, Maryland.
B. Paul Cotter, Jr.,
Presiding Officer, Chief Administrative Judge.
[FR Doc. 96-16721 Filed 6-28-96; 8:45 am]

BILLING CODE 7590-01-P

Governors' Designees Receiving Advance Notification of Transportation of Nuclear Waste

On January 6, 1982 (47 FR 596 and 47 FR 600), the Nuclear Regulatory Commission (NRC) published in the Federal Register final amendments to 10 CFR Parts 71 and 73 (effective July 6, 1982), that require advance notification to Governors or their designees by NRC licensees prior to transportation of certain shipments of nuclear waste and spent fuel. The advance notification covered in Part 73 is for spent nuclear reactor fuel shipments and the notification for Part 71 is for large quantity shipments of radioactive waste (and of spent nuclear reactor fuel not covered under the final amendment to 10 CFR Part 73).

The following list updates the names, addresses and telephone numbers of those individuals in each State who are responsible for receiving information on nuclear waste shipments. The list will be published annually in the Federal Register on or about June 30, to reflect any changes in information.

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS

State	Part 71	Part 73
Alabama	Col. Gene Mitchell, Director, Alabama Department of Public Safety, P.O. Box 1511, Montgomery, AL 36102-1511; (334) 242-4378.	Same

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS—Continued

State	Part 71	Part 73
Alaska	Doug Dasher, Alaska Department of Environmental Conservation, Northern Regional Office, 610 University Avenue, Fairbanks, AK 99709-3643; (907) 451-2184.	Same
Arizona	Aubrey V. Godwin, Director, Arizona Radiation Regulatory Agency, 4814 South 40th Street, Phoenix, AZ 85040; (602) 255-4845 24 hours: (602) 223-2212.	Same
Arkansas	Bernard R. Beville, Acting Director, Division of Radiation Control and Emergency Management Programs, Arkansas Department of Health, 4815 West Markham Street, Little Rock, AR 72205-3867; (501) 661-2301. 24 hours: (501) 661-2136 or 661-2000.	Same
California	L. Denno, Chief Enforcement Services Division, California Highway Patrol, 444 North Third Street, Suite 310 Sacramento, CA 95814; (916) 445-3253.	Same
Colorado	Captain Allan M. Turner, Hazardous Materials Section, Colorado State Patrol, 700 Kipling Street, Suite 1000, Denver, CO 80215-5865; (303) 239-4546. 24 hours: (303) 239-4501.	Same
Connecticut	Commissioner Sidney J. Holbrook, Department of Environmental Protection, 79 Elm Street, Hartford, CT 06106-5127; (860) 424-3001. 24 hours: (860) 424-3333.	Same
Delaware	Karen L. Johnson, Secretary, Department of Public Safety, P.O. Box 818, Dover, DE 19903; (302) 739-4321. 24 hours: (302) 739-5851.	Same
Florida	Harlan Keaton, Manager, Environmental Radiation Program, Office of Radiation Control, Department of Health & Rehabilitative Services, P.O. Box 680069, Orlando, FL 32868-0069; (407) 297-2095.	Same
Georgia	Al Hatcher, Director, Transportation Division, Public Service Commission, 1007 Virginia Avenue, Suite 310, Hapeville, GA 30354; (404) 559-6600.	Same
Hawaii	Bruce S. Anderson, Ph.D., Deputy Director for Environmental Health, State of Hawaii Department of Health, P.O. Box 3378, Honolulu, HI 96813; (808) 586-4424.	Same
Idaho	Captain David C. Rich, Department of Law Enforcement, Idaho State Police, 700 South Stratford Drive, P.O. Box 700, Meridian, ID 83680-0700; (208) 884-7206. 24 hours: (208) 334-3731.	Same
Illinois	Thomas W. Orciger, Director, Illinois Department of Nuclear Safety, 1035 Outer Park Drive, 5th Floor, Springfield, IL 62704; (217) 785-9868. 24 hours: (217) 785-9900.	Same
Indiana	Lloyd R. Jennings, Superintendent, Indiana State Police, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, IN 46204; (317) 232-8248.	Same
Iowa	Ellen M. Gordon, Administrator, Emergency Management Division, Hoover State Office Building, Des Moines, IA 50319-0113; (515) 281-3231.	Same
Kansas	Frank H. Moussa, M.S.A., Technological Hazards Administrator, Department of the Adjutant General, Division of Emergency Management, 2800 S.W. Topeka Boulevard, Topeka, KS 66611-1287; (913) 274-1409. 24 hours: (913) 296-3176.	Same
Kentucky	John A. Volpe, Ph.D., Manager, Radiation Control Division, Cabinet for Human Resources, 275 East Main Street, Frankfort, KY 40621-0001; (502) 564-3700.	Same
Louisiana	Lt. Russell R. Robinson, Louisiana State Police, 7901 Independence Boulevard, P.O. Box 66614 (#21), Baton Rouge, LA 70896; (504) 925-6113.	Same
Maine	Chief of the State Police, Maine Dept. of Public Safety, 36 Hospital Street, Augusta, ME 04333; (207) 624-7074.	Same
Maryland	Captain Guy E. Guyton, Jr., Commander, Communications Services Division, Maryland State Police, 1201 Reisterstown Road, Pikesville, MD 21208; (410) 653-4229. 24 hours: (410) 653-4200.	Same
Massachusetts	Robert M. Hallisey, Director, Radiation Control Program, Massachusetts Department of Public Health, State Laboratory Institute, 305 South Street, 7th Floor, Jamaica Plain, MA 02130; (617) 727-6214.	Same
Michigan	Captain Allen L. Byam, Commanding Officer, Special Operations Division, Michigan Department of State Police, 714 S. Harrison Road, East Lansing, MI 48823; (517) 336-6263. 24 hours: (517) 336-6100.	Same
Minnesota	John R. Kerr, Assistant Director, Planning Branch, Minnesota Division of Emergency Management, B5—State Capitol, 75 Constitution Avenue, St. Paul, MN 55155; (612) 296-0481. 24 hours: (612) 649-5451.	Same
Mississippi	James E. Maher, Director, Emergency Management Agency, P.O. Box 4501, Fondren Station, Jackson, MS 39296-4501; (601) 352-9100.	Same
Missouri	Jerry B. Uhlmann, Director, Emergency Management Agency, 2302 Militia Drive, P.O. Box 116, Jefferson City, MO 65102; (314) 526-9101. 24 hours: (314) 751-2748.	Same

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS—Continued

State	Part 71	Part 73
Montana	George Eicholtz, Coordinator, Radiation Control Section, DEQ/AQD, 1520 East Sixth Avenue, P.O. Box 200901, Helena, MT 59620-0901; (406) 444-5246.	Jim Greene, Administrator, Disaster & Emergency Services, P.O. Box 4789, Helena, MT 59604; (406) 444-6911.
Nebraska	Colonel Ron Tussing, Superintendent, Nebraska State Patrol, P.O. Box 94907, Lincoln, NE 68509-4907; (402) 479-4931. 24 hours: (402) 471-4545.	Same
Nevada	Stanley R. Marshall, Supervisor, Radiological Health Section, Bureau of Health Protection Services, Nevada Division of Health, 505 East King Street, Carson City, NV 89710; (702) 687-5394. 24 hours: (702) 687-5300.	Same
New Hampshire	Richard M. Flynn, Commissioner, New Hampshire Dept. of Safety, James H. Hayes Building, 10 Hazen Drive, Concord, NH 03305; (603) 271-3636 (24 hours).	Same
New Jersey	Kent Tosch, Manager, Bureau of Nuclear Engineering, Department of Environmental Protection, CN 415, Trenton, NJ 08625-0415; (609) 984-7701.	Same
New Mexico	Max D. Johnson, Bureau Chief, Technological Hazards Bureau, Department of Public Safety, P.O. Box 1628, Santa Fe, NM 87504-1628; (505) 827-9223. 24 hours: (505) 827-9126.	Same
New York	Edward F. Jacoby, Jr., Director, State Emergency Management Office, 1220 Washington Avenue, Building 22—Suite 101, Albany, NY 12226-2251; (518) 457-2222.	Same
North Carolina	First Sergeant T. C. Stroud, Hazardous Materials Coordinator, North Carolina Highway Patrol Headquarters, 512 N. Salisbury St., P.O. Box 27687, Raleigh, NC 27611-7687; (919) 733-5282. After hours: (919) 733-3861.	Same
North Dakota	Dana K. Mount, Director, Division of Environmental Engineering, North Dakota Department of Health, 1200 Missouri Avenue, Box 5520, Bismarck, ND 58506-5520; (701) 328-5188. After hours: (701) 328-2121.	Same
Ohio	Maj. Gen. James R. Williams, Chief of Staff, Ohio Emergency Management Agency, 2855 W. Dublin-Granville Road, Columbus, OH 43235-2206; (614) 889-7150.	Same
Oklahoma	Bob A. Ricks, Commissioner of Public Safety, Oklahoma Department of Public Safety, P.O. Box 11415, Oklahoma City, OK 73136-0145; (405) 425-2001. 24 hours: (405) 425-2424.	Same
Oregon	David Stewart-Smith, Administrator, Energy Resources Division, Oregon Office of Energy, 625 Marion Street, N.E., Salem, OR 97310; (503) 378-6469.	Same
Pennsylvania	John Bahnweg, Director of Operations, Pennsylvania Emergency Management Agency, P.O. Box 3321, Harrisburg, PA 17105-3321; (717) 783-8150.	Same
Rhode Island	William A. Maloney, Associate Administrator, Motor Carriers Section, Division of Public Utilities and Carriers, 100 Orange Street, Providence, RI 02903; (401) 277-3500; ext. 150.	Same
South Carolina	Virgil R. Autry, Director, Division of Radioactive Waste Management, South Carolina Department of Health & Environmental Control, 2600 Bull Street, Columbia, SC 29201; (803) 896-4244. Emergency: (803) 253-6488.	Same
South Dakota	Gary N. Whitney, Division Director, Emergency Management, 500 E. Capitol Avenue, Pierre, SD 57501-5060; (605) 773-3231.	Same
Tennessee	John White, Director, Tennessee Emergency Management Agency, State Emergency Operations Center, 3041 Sidco Drive, Nashville, TN 37204; (615) 741-0001. After hours: (Inside TN) 1-800-262-3300 (Outside TN) 1-800-258-3300.	Same
Texas	Richard A. Ratliff, Chief, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, TX 78756; (512) 834-6688.	Col. James Wilson, Director, Texas Department of Public Safety, 5805 N. Lamar Blvd, Austin, TX 78752; (512) 424-2000
Utah	William J. Sinclair, Director, Division of Radiation Control, 168 North 1950 West, P.O. Box 144850, Salt Lake City, UT 84114-4850; (801) 536-4250. After hours: (801) 536-4123.	Same
Vermont	Patrick J. Garahan, Secretary, Vermont Transportation Agency, 133 State Street, Montpelier, VT 05633-5001; (802) 828-2657.	Same
Virginia	L. Ralph Jones, Jr., Director, Technological Hazards Division, Department of Emergency Services, Commonwealth of Virginia, 310 Turner Road, Richmond, VA 23225; (804) 674-2400.	Same
Washington	Commander Maurice C. King, Washington State Patrol, General Administration Building, P.O. Box 42613, Olympia, WA 98504-2613; (360) 586-2340.	Same
West Virginia	Colonel Thomas L. Kirk, Superintendent, Division of Public Safety, West Virginia State Police, 725 Jefferson Road, South Charleston, WV 25309; (304) 746-2111.	Same
Wisconsin	Steven D. Sell, Administrator, Wisconsin Division of Emergency Management, P.O. Box 7865, Madison, WI 53707-7865; (608) 242-3232.	Same
Wyoming	Captain L. S. Gerard, Motor Carrier Officer, Wyoming Highway Patrol, 5300 Bishop Boulevard, P.O. Box 1708, Cheyenne, WY 82003-1708; (307) 777-4317. 24 hours: (307) 777-4323.	Same

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS—Continued

State	Part 71	Part 73
District of Columbia	Norma J. Stewart, Program Manager, Pharmaceutical, Radiological, and Medical Devices Control Division, Department of Consumer and Regulatory Affairs, 614 H Street, NW, Washington, DC 20001; (202) 727-7218. After hours: (202) 727-6161.	Same
Puerto Rico	Hector Russe Martinez, Chairman, Environmental Quality Board, P.O. Box 11488, San Juan, PR 00910; (809) 767-8056 or (809) 725-5140.	Same
Guam	Fred M. Castro, Administrator, Environmental Protection Agency, P.O. Box 2999, Agana, Guam 96910; (671) 646-8863/64/65.	Same
Virgin Islands	Roy L. Schneider, Governor, Governor's Office, 21-22 Kongens Gade, St. Thomas, Virgin Islands 00802; (809) 774-0001.	Same
American Samoa	Pati Faiai, Government Ecologist, Environmental Protection Agency, Office of the Governor, Pago Pago, American Samoa 96799; (684) 633-2304.	Same
Commonwealth of the Northern Mariana Islands.	Nicolas M. Leon Guerrero, Director, Department of Natural Resources, Commonwealth of Northern, Mariana Islands Government, Capitol Hill, Saipan, MP 96950; (670) 322-9830 or (670) 322-9834.	Same

Questions regarding this matter should be directed to Spiros Droggitis, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (INTERNET Address: SCD@NRC.GOV) or at (301) 415-2367.

Dated at Rockville, Maryland this 20th day of June, 1996.

For the Nuclear Regulatory Commission.
Richard L. Bangart,
Director, Office of State Programs.
[FR Doc. 96-16740 Filed 6-28-96; 8:45 am]
BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22038; 811-7147]

Emerging Americas Fund, Inc.; Notice of Application

June 24, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Emerging Americas Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on June 11, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by

mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 17, 1996, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, P.O. Box 9011, Princeton, New Jersey 08543-9011.

FOR FURTHER INFORMATION CONTACT:

Diane L. Titus, Paralegal Specialist, at (202) 942-0584, or Alison E. Baur, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a non-diversified, closed-end management investment company organized as a corporation under the laws of Maryland. On March 9, 1994, applicant filed a notification of registration on Form N-8A and a registration statement on Form N-2. Applicant's registration statement has not been declared effective and was declared abandoned by order of the Commission on March 7, 1996.

2. Applicant has not issued or sold any securities. Applicant has no shareholders, liabilities or assets. Applicant is not a party to any litigation or administrative proceeding.

3. Applicant intends to terminate its existence under Maryland law as soon as practicable after its deregistration.

4. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary to wind up its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 96-16625 Filed 6-28-96; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending June 21, 1996

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST-96-1461.

Date filed: June 18, 1996.

Parties: Members of the International Air Transport Association.

Subject: COMP Reso/C 0664 dated May 31, 1996, Expedited Cargo Resolution (Summary attached), Intended effective date: August 1, 1996.

Docket Number: OST-96-1462.

Date filed: June 18, 1996.

Parties: Members of the International Air Transport Association.

Subject: TC2 Reso/P 1960 dated June 14, 1996 r1, TC2 Reso/P 1961 dated June 14, 1996 r-7, TC2 Reso/P 1962 dated June 14, 1996 r8, Within Middle East Expedited Resos (Summary attached), Intended effective date: July 31/August 1, 1996.

Docket Number: OST-96-1463.

Date filed: June 18, 1996.

Parties: Members of the International Air Transport Association.

Subject: TC3 Telex Mail Vote 808, Osaka-Ulan Bator fare decrease, Intended effective date: July 1, 1996.

Docket Number: OST-96-1471.

Date filed: June 20, 1996.

Parties: Members of the International Air Transport Association.

Subject: TC3 Telex Mail Vote 807, Japan-China fares, Intended effective date: July 1, 1997.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 96-16641 Filed 6-28-96; 8:45 am]

BILLING CODE 4910-62-P

Office of the Secretary

Fitness Redetermination of Merlin Express, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of Commuter Air Carrier Fitness Redetermination—Order 96-6-46 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 that Merlin Express, Inc., continues to be fit, willing, and able to conduct scheduled passenger operations as a commuter air carrier.

DATES: Persons wishing to file objections should do so no later than July 9, 1996.

ADDRESSES: Objections and answers to objections should be filed with the Air Carrier Fitness Division, X-56, Room 6401, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Janet A. Davis, Air Carrier Fitness Division (X-56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590, (202) 366-9721.

Dated: June 24, 1996.

Patrick V. Murphy,

Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 96-16618 Filed 6-28-96; 8:45 am]

BILLING CODE 4910-62-P

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Air Carrier/General Aviation Maintenance Issues

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss air carrier/general aviation maintenance issues.

DATES: The meeting will be held on July 18 and 19, 1996, beginning at 8:30 both days. The meeting is expected to last 1½ days. Arrange for oral presentations by July 11, 1996.

ADDRESSES: The meeting will be held at the General Aviation Manufacturers Association, Suite 801, 1400 K St. NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Brenda Courtney, Office of Rulemaking, (ARM-200), 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-3327.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on July 18 and 19, 1996, at the General Aviation Manufacturers Association, Suite 801, 1400 D St. NW., Washington, DC 20005. The agenda for the meeting will include:

- Opening Remarks
- Working Group Reports

Part 65—The working group will present to ARAC an NPRM and 3 Advisory circulars for ARAC's consideration for recommendation to the FAA. These documents can be obtained by contacting Phaneuf Associates at (202) 898-1455.

General Aviation Maintenance International Airworthiness Communications Maintenance Training—prolonged discussion anticipated Major/Minor Repair Definitions Maintenance Recordkeeping—prolonged discussion anticipated

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements by July 11, 1996, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director for Aircraft Certification Procedures or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if

requested 10 calendar days before the meeting.

Issued in Washington, DC, on June 24, 1996.

Richard C. Berg,

Air Carrier/General Aviation Maintenance Issues, Acting Assistant Executive Director.

[FR Doc. 96-16737 Filed 6-28-96; 8:45 am]

BILLING CODE 4910-13-M

RTCA, Inc., Special Committee 185; Aeronautical Spectrum Planning Issues

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 185 meeting to be held on July 17-19, 1996, starting at 9:00 a.m. The meeting will be held at NBAA Conference Room, 1200 Eighteenth Street, N.W., Washington, DC 20036 on July 17 and at RTCA, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC 20036, on July 18-19.

The agenda will be as follows: (1) Administrative Remarks; (2) General Introductions; (3) Approval of the Agenda; (4) Review and Approval of the Summary of the Previous Meeting; (5) Review and Resolve Comments on Draft Version 9 of SC-185 Report; (6) Consider/Approve Version 9 with Corrections for Distribution for Ballot; (7) Other Business; (8) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC 20036; (202) 833-9339 (phone) or (202) 833-9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 24, 1996.

Janice L. Peters,

Designated Official.

[FR Doc. 96-16735 Filed 6-28-96; 8:45 am]

BILLING CODE 4810-13-M

RTCA, Inc. Special Committee 186; Automatic Dependent Surveillance—Broadcast (ADS-B)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 186 meeting to be held July 15-16, 1996, beginning at 9:00 a.m. The meeting will

be held at RTCA, Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will include: (1) Chairman's Introductory Remarks/ Review of Meeting Agenda; (2) Review and Approval of Minutes of the Previous Meeting; (3) Report of Working Group Activities: a. Working Group 1 Report (Operations Working Group); b. Working Group 2 Report (Technical Working Group); c. Working Group 3 Report (CDTI Working Group); (4) Review of Open Items in Chapter 1 of the MASPS; (5) Review of Chapter 2 of the MASPS; (6) Other Business; (7) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833-9339 (phone) or (202) 833-9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 24, 1996.

Janice L. Peters,

Designated Official.

[FR Doc. 96-16736 Filed 6-28-96; 8:45 am]

BILLING CODE 4810-13-M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Daytona Beach International Airport, Daytona Beach, FL

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 Daytona Beach International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before July 31, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Dennis R. McGee, Airport Director, of the Daytona Beach International Airport at the following address: County of Volusia, 700 Catalina Drive, Suite 300, Daytona Beach Int'l Airport, FL 32114.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Volusia, Florida, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT:

Richard M. Owen, Program Manager, 9677 Tradeport Drive, Suite 130, Orlando, Florida, 32827, 407-648-6586. 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 Daytona Beach International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On June 24, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by the County of Volusia, Florida, 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 October 5, 1996.

The following is a brief overview of PFC Application No. 96-02-C-00-DAB.

Level of the proposed PFC: \$3.00.

Proposed charge effective date: February 1, 2001.

Proposed charge expiration date: January 31, 2005.

Total estimated PFC revenue: \$4,318,671.00.

Brief description of proposed project: Reduction of debt service for the eligible portions of the 175,000 square foot passenger terminal facility expansion project completed in October, 1992.

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 Daytona Beach International Airport.

Issued in Orlando, Florida on June 24, 1996.

Charles E. Blair,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 96-16738 Filed 6-28-96; 8:45 am]

BILLING CODE 4910-13-M

Notice of Intent To Rule on Application To Impose a Passenger Facility Charge (PFC) at Duluth International Airport and Use the Revenue From a Passenger Facility Charge at Duluth International Airport and Sky Harbor Airport, Duluth, MN

AGENCY: Department of Transportation (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 a PFC at Duluth International Airport and use the revenue from a PFC at Duluth International Airport and Sky Harbor 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: Comments must be received on or before July 31, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450-2706.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. John C. Grinden, Executive Director, Duluth Airport Authority, at the following address: Duluth Airport Authority, Duluth International Airport, Duluth, MN 55811.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Duluth Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT:

Mr. Gordon Nelson, Program Manager, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450-2706, telephone (612) 725-4358. 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 a PFC at Duluth International Airport and use the revenue from a PFC at Duluth International Airport and Sky Harbor 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 June 17, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Duluth Airport Authority was substantially complete with 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 October 1, 1996.

The following is a brief overview of the application.

PFC application number: 96-02-C-00-DLH

Level of the proposed PFC: \$3.00

Proposed charge effective date:

December 1, 1996

Proposed charge expiration date: July 1, 1999

Total estimated PFC revenue: \$784,268

Brief description of proposed project(s):

PFC Projects Duluth International

1. Complete Phase I construction (approximately 2,575'x75' for Taxiway "B" (previously identified as Taxiway "K") including paving, marking, installation of Medium Intensity Taxiway Edge Lights, and airport guidance signs.

2. Rehabilitate Runway 9/27 and a portion of the edge lighting system for Runway 3/21.

3. Acquire snow removal equipment (high speed runway broom).

4. Extend Taxiway "B" by approximately 1,000' including grading, paving, and extension of Medium Intensity Taxiway Edge Lighting System.

5. Rehabilitate Runway 3/21 including rout, clean, and seal pavement cracks and seal coat.

6. Update Airport Master Plan.

7. Prepare PFC application and assist with PFC administration.

PFC Project at Sky Harbor

8. Rehabilitate Runway 14/32.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: non-scheduled Part 135 Air Taxi/Commercial Operators (ATCO).

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 Duluth Airport Authority Office.

Issued in Des Plaines, Illinois, on June 25, 1996.

Benito DeLeon,

Manager, Airports Planning/Programming Branch, Great Lakes Region.

[FR Doc. 96-16739 Filed 6-28-96; 8:45 am]

BILLING CODE 4910-13-M

Surface Transportation Board¹

[STB Docket No. AB-55 (Sub-No. 530)]

**CSX Transportation, Inc.—
Abandonment—in Vermilion County, IL**

AGENCY: Surface Transportation Board.

ACTION: Notice of findings.

SUMMARY: The Board has found that the public convenience and necessity require or permit the abandonment by CSX Transportation, Inc. (CSXT) of its 7.15-mile line of railroad from milepost ZE-113.0 at Henning, to milepost ZE-120.15 at Collison, in Vermilion County, IL, subject to a public use condition and a labor protective condition. The Board's decision will be effective 30 days after publication of this notice unless the Board finds that a financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to continue.

DATES: Any financial assistance offer must be filed with the Board and the railroad no later than July 11, 1996. Any offer previously made must be remade by the due date.

ADDRESSES: Send offers referring to STB Docket No. AB-55 (Sub-No. 530) to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, NW, Washington, DC 20423; and (2) CSXT's representative: Charles M. Rosenberger, Senior Counsel, CSX Transportation, Inc., 500 Water Street, J150, Jacksonville, FL 32202. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer mailed to the Board: "Office of Proceedings, AB-OFA."

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927-5660.

¹ The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10903.

(TDD for the hearing impaired: (202) 927-5721.)

SUPPLEMENTARY INFORMATION:

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10904 and 49 CFR 1152.27.

Decided: June 25, 1996.

By the Board, David M. Konschnik,
Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 96-16712 Filed 6-28-96; 8:45 am]

BILLING CODE 4915-00-P

[STB Docket No. AB-3 (Sub-No. 136X)]

**Missouri Pacific Railroad Company—
Abandonment Exemption—in
Shawnee County, KS**

Missouri Pacific Railroad Company (MP) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 1.81-mile portion of the Topeka Industrial Lead from milepost 404.72 at the end of the line to milepost 406.53, near Topeka, in Shawnee County, KS.

MP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic to be rerouted from the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial

¹ The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to the Board's jurisdiction pursuant to 49 U.S.C. 10903.

assistance (OFA) has been received, this exemption will be effective on July 31, 1996, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,² formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),³ and trail use/rail banking requests under 49 CFR 1152.29⁴ must be filed by July 11, 1996. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 22, 1996, with: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Joseph D. Anthofer, Missouri Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, NE 68179.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

MP has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by July 5, 1996. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Surface Transportation Board, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 25, 1996.

By the Board, David M. Konschnik,
Director, Office of Proceedings.
Vernon A. Williams,
Secretary.

[FR Doc. 96-16711 Filed 6-28-96; 8:45 am]

BILLING CODE 4915-00-P

² The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

³ See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

⁴ The Board will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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 proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application Permit For User Limited Special Fireworks (18 U.S.C. Chapter 40, Explosives).

DATES: Written comments should be received on or before August 30, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Robert Mosley, Chief, Firearms and Explosives Operations Branch, 650 Massachusetts Ave, NW., Washington, DC 20226.

SUPPLEMENTARY INFORMATION:

Title: Application Permit For User Limited Special Fireworks (18 U.S.C. Chapter 40, Explosives).

OMB Number: 1512-0399.

Form Number: ATF F 5400.21.

Abstract: ATF F 5400.21 is used to verify the eligibility of and grant permission to the holder to buy or transport explosives in interstate commerce on a one-time basis.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit, Individuals or households.

Estimated Number of Respondents: 1800.

Estimated Time Per Respondent: 18 minutes.

Estimated Total Annual Burden Hours: 540.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will

be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Also, ATF requests information regarding any monetary expenses you may incur while completing these forms.

Dated: June 24, 1996.

John W. Magaw,

Director.

[FR Doc. 96-16682 Filed 6-28-96; 8:45 am]

BILLING CODE 4810-31-P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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 proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Reporting of Plastic Explosives Pursuant to the Antiterrorism and Effective Death Penalty Act of 1996.

DATES: Written comments should be received on or before August 30, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Gail Hosey, Firearms and Explosives Operations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226.

SUPPLEMENTARY INFORMATION:

Title: Reporting of Plastic Explosives Pursuant to the Antiterrorism and Effective Death Penalty Act of 1996.

OMB Number: 1512-0535.

Abstract: Possession of plastic explosives by anyone on April 24, 1996, must be reported to the Secretary within 120 days of this date. The report must be submitted in writing by August 22, 1996, and shall describe the quantity, name of manufacturer or importer, marks of identification, and storage location. By statute, failure to report this information subjects the person to fine and or imprisonment under Title 18 U.S.C. Chapter 40.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 100.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Also, ATF requests information regarding any monetary expenses you may incur while completing these forms.

Dated: June 24, 1996.

John W. Magaw,
Director.

[FR Doc. 96-16683 Filed 6-28-96; 8:45 am]

BILLING CODE 4810-31-P

Fiscal Service**Proposed Collection of Information:
Trace Request for EFT Payment**

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the forms "Trace Request for EFT Payments."

DATES: Written comments should be received on or before August 30, 1996.

ADDRESSES: Direct all written comments to Financial Management Service, 3361-L 75th Avenue, Landover, Maryland 20785.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the form(s) and instructions should be directed to Dorothy Wilson, Financial Management Service, Room 357-D, 401 14th St., SW., Washington, DC 20227, (202) 874-7157.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below.

Title: Trace Request for EFT Payment.

OMB Number: 1510-0045.

Form Number: FMS-145.

Abstract: The purpose of the form is to notify the financial institution that a customer beneficiary has claimed non-receipt of credit for payment. The information is collected to identify the circumstances that results in the non-receipt claims and to keep the customer informed of all actions taken to resolve the claims.

Current Actions: There are no changes to this information collection. It is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business/Financial Institutions.

Estimated Number of Respondents: 80,775.

Estimated Time Per Respondent: 8 minutes.

Estimated Total Annual Burden Hours: 10,500.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the

agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (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.

Dated: June 24, 1996.

Mitchell A. Levine,

Assistant Commissioner.

[FR Doc. 96-16661 Filed 6-28-96; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1995—Rev., Supp. No 22]

Surety Companies Acceptable on Federal Bonds; Termination of Authority: Aetna Life and Casualty Company, Century American Casualty Company, Reliance National Insurance Company of New York, Titan Indemnity Company, United Pacific Insurance Company of New York

Notice is hereby given that the Certificates of Authority issued by the Treasury to the above listed companies, under the United States Code, Title 31, Sections 9304-9308, to qualify as acceptable sureties on Federal bonds are terminated effective June 30, 1996.

The Companies were last listed as acceptable sureties on Federal bonds at 60 FR 34436, June 30, 1995.

With respect to any bonds currently in force with the above listed companies, bond-approving officers may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from these Companies. In addition, bonds that are continuous in nature should not be renewed.

The Circular may be viewed and downloaded through the Internet (<http://www.ustreas.gov/treasury/bureaus/finman/c570.html>) or through our computerized public bulletin board system (FMS Inside Line) at (202) 874-6817/6872/6953/7034/8608. A hard copy may be purchased from the Government Printing Office (GPO), Washington, DC, telephone (202) 512-0132.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West highway, Room 6F04, Hyattsville, MD 20872, telephone (202/FTS) 874-6850.

Dated: June 25, 1996.
Charles F. Schwan III,
*Director, Funds Management Division,
Financial Management Service.*
[FR Doc. 96-16657 Filed 6-28-96; 8:45 am]
BILLING CODE 4810-35-M

[Dept. Circ. 570, 1995—Rev., Supp. No. 19]

Surety Companies Acceptable on Federal Bonds; Merger and Change of Name: Frankona America Reinsurance Company

Frankona America Reinsurance Company, a Missouri corporation, has formally merged with and into First Excess and Reinsurance Corporation, a Missouri corporation, effective January 2, 1996. Frankona America Reinsurance Company was last listed as an acceptable reinsurer on Federal bonds at 60 FR 34450, June 30, 1995.

A Certificate of Authority as an acceptable reinsurer on Federal bonds, dated March 11, 1996, is hereby issued under Sections 9304 to 9308 of Title 31 of the United States Code, to First Excess and Reinsurance Corporation, Kansas City, Missouri. This new certificate replaces the Certificate of Authority issued to the company under its former name. The underwriting limitation of \$11,214,000 previously established for Frankona America Reinsurance Company as of July 1, 1995, remains unchanged until June 30, 1996.

Certificates of Authority expire on June 30, each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the Company remains qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1, in Treasury Department Circular 570, which outlines details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1995 Revision, at page 34450 to reflect this change.

The Circular may be viewed or downloaded by calling the U.S. Department of the Treasury, Financial Management Service, computerized public bulletin board system (FMS Inside Line) at (202) 874-6817/7034/6953/6872. A hard copy may be purchased from the Government Printing Office (GPO), Washington, DC, telephone (202) 512-0132. When ordering the Circular from GPO, use the following stock number: 048-000-00489-0.

Questions concerning this notice may be directed to the U.S. Department of

the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6F04, Hyattsville, MD 20782, telephone (202) 874-6602.

Dated: June 24, 1996.
Charles F. Schwan III,
*Director, Funds Management Division,
Financial Management Services.*
[FR Doc. 96-16659 Filed 6-28-96; 8:45 am]
BILLING CODE 4810-35-M

[Dept. Circ. 570, 1995—Rev., Supp. No. 20]

Survey Companies Acceptable on Federal Bonds; Change of Name and Underwriting Limitation: Signet Star Reinsurance Company

Signet Star Reinsurance Company, a Delaware corporation, has formally changed its name to North Star Reinsurance Corporation, effective December 18, 1995. The Company was last listed as an acceptable surety on Federal bonds at 60 FR 34447, June 30, 1995.

A Certificate of Authority as an acceptable surety on Federal bonds, dated today, is hereby issued under Sections 9304 to 9308 of Title 31 of the United States Code, to North Star Reinsurance Corporation, Wilmington, Delaware. This new Certificate replaces the Certificate of Authority issued to the Company under its former name. The previous underwriting limitation \$22,507,000 established for Signet Star Reinsurance Company as of July 1, 1995 is no longer in effect. The new underwriting limit for North Star Reinsurance Corporation of \$1,000,000 is effective immediately, and will remain unchanged until June 10, 1996.

Certificates of Authority expire on June 30, each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the Company remains qualified (31 CFR, Part 223). A list of qualified companies is published annually as of July 1, in the Department Circular 570, which outlines details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1995 Revision, to reflect this change of name and underwriting limit.

The Circular may be viewed or downloaded by calling the U.S. Department of the Treasury, Financial Management Service, computerized public bulletin board system (FMS Inside Line) at (202) 874-6817/7034/6953/6872. A hard copy may be purchased from the Government

Printing Office (GPO), Washington, DC, telephone (202) 512-0132. When ordering the Circular from GPO, use the following stock number: 048-000-00489-0.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6F04, Hyattsville, MD 20782, telephone (202) 874-6696.

Dated: June 25, 1996.
Charles F. Schwan III,
*Director, Funds Management Division,
Financial Management Service.*
[FR Doc. 96-16656 Filed 6-28-96; 8:45 am]
BILLING CODE 4810-35-M

[Dept. Circ. 570, 1995—Rev., Supp. No. 21]

Surety Companies Acceptable on Federal Bonds; Signet Star Reinsurance Company (formerly signet Reinsurance Company)

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued effective December 28, 1995, to the following company under Sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1995 Revision, on page 34447 to reflect this addition:

Signet Star Reinsurance Company.
BUSINESS ADDRESS; 100 Campus Drive, P.O. Box 853, Florham Park, New Jersey, 07932-0853, Phone: (201) 301-8000. UNDERWRITING LIMITATION b/: \$10,902,000. SURETY LICENSES c/: AK, CA, CO, DE, DC, FL, ID, IL, IA, LA, MD, MI, MN, NE, OH, OK, OR, SD, TN, TX, UT, WA. INCORPORATED IN: Delaware.

This Signet Star Reinsurance Company should not be confused with Signet Star Reinsurance Company previously listed on 60 FR 34447, June 30, 1995, which changed its name to North Star Reinsurance Corporation effective December 18, 1995 (Please see Supplement No. ___ published on ____). Subsequent to that event, but also on December 18, 1995, Signet Reinsurance Company changed its name to Signet Star Reinsurance Corporation.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR, Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to

transact surety business and other information.

Copies of the Circular may be obtained by calling the U.S. Department of the Treasury, Financial Management Service, computerized public bulletin board system (FMS Inside Line) at (202) 874-6817/7034/6953/6872 or by purchasing a hard copy from the

Government Printing Office (GPO), Washington, DC, telephone (202) 512-0132. When ordering the Circular from GPO, use the following stock number: 048-000-00489-0.

For further assistance, contact the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond

Branch, 3700 East-West Highway, Room 6F04, Hyattsville, MD 20782, telephone (202) 874-6775.

Dated: June 25, 1996.

Charles F. Schwan III,

*Director, Funds Management Division,
Financial Management Service.*

[FR Doc. 96-16658 Filed 6-28-96; 8:45 am]

BILLING CODE 4810-35-M

Corrections

Federal Register

Vol. 61, No. 127

Monday, July 1, 1996

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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 29

[Docket No. 24802; Amendment No. 29-40]
RIN 2120-AB36

Airworthiness Standards; Transport Category Rotorcraft Performance

Correction

In rule document 96-11494 beginning on page 21894 in the issue of Friday, May 10, 1996, make the following corrections:

1. On page 21895, in the 3d column, in the 25th line from the top, “fee” should read “feet”.

2. On page 21896, in the 1st column, in the 12th line from the bottom, “fee” should read “feet”.

3. On the same page, in the same column, in the 8th through the 10th lines from the bottom, “Thus, the takeoff distance will be shorter for rotorcraft that take off from an elevated heliport.” should not have appeared.

4. On the same page, in the same column, in the fifth line from the bottom, “that” should read “than”.

5. On the same page, in the second column, under 14 CFR 29.65 *Climb: All Engines Operating*, in the second line, “Category a” should read “Category A”.

6. On page 21897, in the 1st column, in the 18th line from the bottom, “working” should read “wording”.

§ 29.1 [Corrected]

7. On page 21898, in the third column, in § 29.1(e), in the third line,

“passengers” should read “passenger”; and in the fourth line, “category” should be capitalized.

§ 29.49 [Corrected]

8. On page 21899, in the first column, in § 29.49(b), in the fifth line, “certificate” should read “certification”.

§ 29.53 [Corrected]

9. On the same page, in the same column, in § 29.53, in the third line, insert “after” after “time”; and in the fourth line, “rotocraft” should read “rotorcraft”.

§ 29.59 [Corrected]

10. On the same page, in the second column, in § 29.59(a)(2), in the first line, “rotocraft” should read “rotorcraft”; and in § 29.59(a)(5), in the second line, insert “rate of” after “positive”.

11. On the same page, in the same column, in § 29.59(b), in the seventh line, “rotocraft” should read “rotorcraft”.

§ 29.60 [Corrected]

12. On the same page, in the third column, in § 29.60(a)(2), in the second and fifth lines, respectively, “rotocraft” should read “rotorcraft”.

§ 29.65 [Corrected]

13. On page 21900, in the first column, in § 29.65(a)(3), in the first line, “A” should read “At”.

§ 29.67 [Corrected]

14. On the same page, in the same column, the section heading “§ Climb: one-engine-inoperative (OEI).” should read “§ 29.67 **Climb: one-engine-inoperative (OEI).**”

15. On the same page, in the second column, in § 29.67(a)(3), in the fourth line, “rotocraft” should read “rotorcraft”.

§ 29.83 [Corrected]

16. On page 21901, in the first column, in § 29.83(a)(1), in the second line, “rotocraft” should read “rotorcraft”.

§ 29.85 [Corrected]

17. On the same page, in the same column, in § 29.85, in the first line, “rotocraft” should read “rotorcraft”; and in § 29.85(c), in the first line, “rotocraft” should read “rotorcraft”.

§ 29.87 [Corrected]

18. On the same page, in the second column, in § 29.87(a)(2), in the first line, “Wright” should read “Weight”.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 29

[Docket No. 28008; Amendment No. 27-33, 29-39]

RIN 2120-AF65

Rotorcraft Regulatory Changes Based on European Joint Aviation Requirements

Correction

In rule document 96-11493 beginning on page 21904 in the issue of Friday, May 10, 1996, make the following corrections:

§ 29.610 [Corrected]

1. On page 21907, in the third column, § 29.610(d)(3) should read: “Provide and electrical return path, under both normal and fault conditions, on rotorcraft having grounded electrical systems; and”.

2. On the same page, in the same column, in § 29.610(d)(4), in the third line, insert “electrical and” after “essential”.

§ 29.631 [Corrected]

3. On the same page, in the same column, in § 29.631, in the first line, “designated” should read “designed”.

BILLING CODE 1505-01-D

Registered
Federal

Monday
July 1, 1996

Part II

**Pension Benefit
Guaranty
Corporation**

29 CFR Chapters XXVI and XL
Reorganization, Renumbering and
Reinvention of Regulations; Final Rule

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Chs. XXVI and XL

RIN 1212-AA75

Reorganization, Renumbering, and Reinvention of Regulations

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: In accordance with the President's Regulatory Reinvention Initiative, the Pension Benefit Guaranty Corporation is reorganizing, renumbering, and reinventing its regulations. The amendments will clarify and simplify the PBGC's regulations and make them easier to use.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT:

Harold J. Ashner, Assistant General Counsel, or Marc L. Jordan, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026, 202-326-4024 (202-326-4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: The PBGC is renumbering and reorganizing its regulations to make it easier for practitioners and the public to research and use the rules under Title IV of the Employee Retirement Income Security Act of 1974. Under the new approach, the regulations will be numbered to track the statutory sections they implement.

On July 8, 1994 (at 59 FR 35067), the PBGC published a notice in the Federal Register inviting public comment on a proposal to reorganize and renumber its regulations to track Title IV. No comments were received.

On March 4, 1995, the President issued his Regulatory Reinvention Initiative, directing Federal agencies to eliminate or revise those regulations that are outdated or otherwise in need of reform. The PBGC is reorganizing, renumbering, and reinventing its regulations. The reinvention is limited to nonsubstantive corrections and clarifications and deletion of material that is unnecessary or that has been substantially superseded (or is no longer applicable).

For example, the reinvented regulations omit existing provisions dealing with the allocation of residual assets (part 2618, subpart C) because these provisions were largely superseded by changes in section 4044(d) of ERISA made by the Pension Protection Act of 1987. Similarly, the provision regarding interest rate

assumptions for paying lump sums (existing § 2619.26(b)(2)) has been eliminated because of changes in section 417(e)(3) of the Internal Revenue Code and section 205(g)(3) of ERISA made by the Retirement Equity Act of 1984, the Tax Reform Act of 1986, and the Retirement Protection Act of 1994.

To clarify the rules on missing participants in terminating plans, nonsubstantive language changes have been made in the missing participants regulation (existing part 2629, new part 4050), related sections in the termination regulations (existing parts 2616 and 2617, new part 4041), and in the definition of "distribution date" in new § 4001.2.

The new regulation on premium rates (part 4006, which contains portions of existing part 2610) omits the variable-rate premium cap reduction rules (which have expired) and the cap rules themselves (repealed by the Retirement Protection Act of 1994). The rule reflects new provisions in the Retirement Protection Act of 1994 dealing with regulated public utility plans.

In some cases, provisions that may have been partially superseded by statutory changes have been retained pending revision—for example, the regulation on allocation of assets in terminating single-employer plans (renumbered part 4044). A note at the beginning of part 4044 and reminders within the part alert readers that some regulatory material republished in part 4044 must be read in the light of these other changes in the law.

The PBGC welcomes public comment on this rule to correct any editorial errors—*e.g.*, in cross-references—that may have been overlooked due to the magnitude of the revision project.

Under this final rule, the PBGC's regulations will be moved from chapter XXVI to chapter XL of title 29 of the CFR. Sections will be numbered in the 4000's. Part 4000 consists of finding aids—tables correlating provisions of old chapter XXVI and new chapter XL. Part 4001 contains definitions of terms used throughout the PBGC's regulations. A table of contents showing the rest of the new structure, along with the full text of the revised regulations, is set forth below.

Rulemaking Requirements and E.O. 12866

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

The PBGC has determined that the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b)) do not apply to this final rule.

The PBGC previously notified the public of the primary changes made by this rule and provided an opportunity for public comment. None of the amendments in this rule (including those that clarify the regulations or remove or replace provisions made obsolete by the passage of time or by subsequent statutory or regulatory changes) affects applicable substantive legal requirements. Therefore, the PBGC has, for good cause, found that further notice and public procedure thereon are unnecessary.

For the same reasons, the PBGC finds pursuant to section 553(d)(3) of the Administrative Procedure Act (5 U.S.C. 553(d)(3)) that there is good cause to make this rule effective less than 30 days from the date of its publication.

The PBGC also certifies that the amendments in this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, as provided in section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), sections 603 and 604 of the Regulatory Flexibility Act do not apply. None of the amendments in this rule affects applicable substantive legal requirements.

Issued in Washington, DC, on the 24th day of June 1996.

Robert B. Reich,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued on the date set forth above pursuant to a resolution of the Board of Directors authorizing its Chairman to issue this final rule.

James J. Keightley,

Secretary, Board of Directors Pension Benefit Guaranty Corporation.

List of Subjects in 29 CFR Chapters XXVI and XL

Parts 2601 and 4002

Authority delegations (Government agencies), Organization and functions (Government agencies).

Part 2602

Conflict of interests, Government employees, Penalties, Political activities (Government employees), Production and disclosure of information, Testimony.

Parts 2603 and 4901

Freedom of Information.

Parts 2604 and 4906

Administrative practice and procedure, Conflict of interests, Penalties.

Parts 2606 and 4003

Administrative practice and procedure, Organization and functions

(Government agencies), Pension insurance, Pensions.

Parts 2607 and 4902

Privacy.

Parts 2608 and 4907

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

Parts 2609 and 4903

Administrative practice and procedure, Claims, Organization and functions (Government agencies).

Part 2610 and 4007

Penalties, Pension insurance, Pensions, Reporting and recordkeeping requirements.

Parts 2611, 2615, 2616, 2617, 2623, 2642, 2674, 4022, 4041, 4041A, 4065, 4211, and 4245

Pension insurance, Pensions, Reporting and recordkeeping requirements.

Parts 2612 and 4068

Business and industry, Pension insurance, Pensions, Small businesses.

Parts 2613, 2618, 2619, 2620, 2621, 2640, 2670, 4006, 4022, 4022B, 4044, and 4061

Pension insurance, Pensions.

Parts 2622, 2643, 4062, 4063, 4064, and 4204

Business and industry, Pension insurance, Pensions, Reporting and recordkeeping requirements, Small businesses.

Parts 2641 and 4221

Business and industry, Pensions, Small businesses.

Parts 2644, 2645, 2647, 2649, 2676, 2677, 4203, 4206, 4207, and 4220

Pensions.

Parts 2627, 2628, 2629, 2646, 2648, 2672, 2675, 4001, 4010, 4050, 4208, 4219, 4231, 4261, and 4281

Pensions, Reporting and recordkeeping requirements.

Part 2673

Pension insurance.

Part 4000

Administrative practice and procedure, Authority delegations (Government agencies), Blind, Business and industry, Civil rights, Claims, Conflict of interests, Deaf, Disabled,

Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Freedom of Information, Government employees, Handicapped, Nondiscrimination, Organization and functions (Government agencies), Penalties, Pension insurance, Pensions, Physically handicapped, Political activities (Government employees), Privacy, Production and disclosure of information, Reporting and recordkeeping requirements, Small businesses, Testimony.

Part 4001

Business and industry, Organization and functions (Government agencies), Pension insurance, Pensions, Small businesses.

Part 4903

Conflict of interests, Government employees, Penalties, Political activities (Government employees).

Part 4904

Government employees, Penalties, Production and disclosure of information, Testimony.

For the reasons set forth above, the PBGC is amending subtitle B of title 29 of the Code of Federal Regulations as follows:

CHAPTER XXVI—[REMOVED]

1. Chapter XXVI is removed.
2. Chapter XL is added to read as follows:

CHAPTER XL—PENSION BENEFIT GUARANTY CORPORATION

SUBCHAPTER A—GENERAL

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- 4000.1 Distribution table.
- 4000.2 Derivation table.

Authority: 29 U.S.C. 1302(b)(3).

Part 4001—Terminology

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- 4001.1 Purpose and scope.
- 4001.2 Definitions.
- 4001.3 Trades or businesses under common control; controlled groups.

Authority: 29 U.S.C. 1301(a), 1301(b)(1), 1302(b)(3).

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- 4002.1 Name.
- 4002.2 Offices.
- 4002.3 Board of Directors.
- 4002.4 Chairman.
- 4002.5 Quorum.
- 4002.6 Meetings.
- 4002.7 Place of meetings; use of conference call communications equipment.
- 4002.8 Alternate voting procedure.
- 4002.9 Amendments.

Authority: 29 U.S.C. 1302(f).

Part 4003—Rules for Administrative Review of Agency Decisions

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- 4003.1 Purpose and scope.
- 4003.2 Definitions.
- 4003.3 PBGC assistance in obtaining information.
- 4003.4 Extension of time.
- 4003.5 Non-timely request for review.
- 4003.6 Representation.
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- 4003.21 Form and contents of initial determinations.
- 4003.22 Effective date of determinations.

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- 4003.31 Who may request reconsideration.
- 4003.32 When to request reconsideration.
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- 4003.52 When to file.
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- 4003.55 Opportunity to appear and to present witnesses.
- 4003.56 Consolidation of appeals.
- 4003.57 Appeals affecting third parties.
- 4003.58 Powers of the Appeals Board.
- 4003.59 Decision by the Appeals Board.
- 4003.60 Referral of appeal to the Executive Director.

Authority: 29 U.S.C. 1302(b)(3).

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 - 4006.2 Definitions.
 - 4006.3 Premium rate.
 - 4006.4 Determination of unfunded vested benefits.
 - 4006.5 Exemptions and special rules.
- Authority: 29 U.S.C. 1302(b)(3), 1306, 1307.

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- 4007.2 Definitions.
- 4007.3 Filing requirement and forms.
- 4007.4 Filing address.
- 4007.5 Date of filing.
- 4007.6 Computation of time.
- 4007.7 Late payment interest charges.
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- 4007.9 Coverage for guaranteed basic benefits.
- 4007.10 Recordkeeping requirements; PBGC audits.

- 4007.11 Due dates.
4007.12 Liability for single-employer premiums.

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307.

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Authority: 29 U.S.C. 1302(b)(3); 29 U.S.C. 1310.

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Authority: 29 U.S.C. 1302(b)(3), 1311.

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- 4022.81 General rules.
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Authority: 29 U.S.C. 1302(b)(3), 1322, 1322b, 1341(c)(3)(D), 1344.

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- 4022B.1 Aggregate payments limitation.

Authority: 29 U.S.C. 1302(b)(3).

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- 4041.46 Notices of benefit distribution.
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Authority: 29 U.S.C. 1302(b)(3), 1341, 1344.

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- 4041A.1 Purpose and scope.
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- 4041A.41 General rule.
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Authority: 29 U.S.C. 1302(b)(3), 1341a, 1441.

Part 4043—Reportable Events and Certain Other Notification Requirements

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Authority: 29 U.S.C. 1302(b)(3), 1343, 1365.

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Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

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Authority: 29 U.S.C. 1302(b)(3), 1347.

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4050.2 Definitions.

4050.3 Method of distribution for missing participants.

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4050.11 Limitations.

4050.12 Special rules.

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Sec.

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Authority: 29 U.S.C. 1302(b)(3).

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4062.2 Definitions.

4062.3 Amount and payment of section 4062(b) liability.

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Part 4063—Withdrawal Liability; Plans Under Multiple Controlled Groups

Sec.

4063.1 Cross-references.

Authority: 29 U.S.C. 1302(b)(3).

Part 4064—Liability on Termination of Single-Employer Plans Under Multiple Controlled Groups

Sec.

4064.1 Cross-references.

Authority: 29 U.S.C. 1302(b)(3).

SUBCHAPTER G—ANNUAL REPORTING REQUIREMENTS

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4065.2 Definitions.

4065.3 Filing requirement.

Authority: 29 U.S.C. 1302, 1365.

SUBCHAPTER H—ENFORCEMENT PROVISIONS

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4067.1 Cross-reference.

Authority: 29 U.S.C. 1302, 1367.

Part 4068—Lien for Liability

Sec.

4068.1 Purpose; cross-references.

4068.2 Definitions.

4068.3 Notification of and demand for liability.

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Authority: 29 U.S.C. 1302(b)(3), 1368.

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Authority: 29 U.S.C. 1302(b)(3), 1383(f), 1388(e)(3).

Part 4204—Variances for Sale of Assets

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4204.1 Purpose and scope.

4204.2 Definitions.

Subpart B—Variance of the Statutory Requirements

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Authority: 29 U.S.C. 1302(b)(3), 1384(c).

Part 4206—Adjustment of Liability for a Withdrawal Subsequent to a Partial Withdrawal

Sec.

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4206.2 Definitions.

4206.3 Credit against liability for a subsequent withdrawal.

4206.4 Amount of credit in plans using the presumptive method.

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4206.6 Amount of credit in plans using the rolling-5 method.

4206.7 Amount of credit in plans using the direct attribution method.

4206.8 Reduction of credit for abatement or other reduction of prior partial withdrawal liability.

4206.9 Amount of credit in plans using alternative allocation methods.

- 4206.10 Special rule for 70-percent decline partial withdrawals.
 Authority: 29 U.S.C. 1302(b)(3), 1386(b).

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 4207.1 Purpose and scope.
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 4207.3 Abatement.
 4207.4 Withdrawal liability payments during pendency of abatement determination.
 4207.5 Requirements for abatement.
 4207.6 Partial withdrawals after reentry.
 4207.7 Liability for subsequent complete withdrawals and related adjustments for allocating unfunded vested benefits.
 4207.8 Liability for subsequent partial withdrawals.
 4207.9 Special rules.
 4207.10 Plan rules for abatement.
 Authority: 29 U.S.C. 1302(b)(3), 1387.

Part 4208—Reduction or Waiver of Partial Withdrawal Liability

- Sec.
 4208.1 Purpose and scope.
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 4208.3 Abatement.
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 Authority: 29 U.S.C. 1302(b)(3), 1388 (c) and (e).

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 4211.2 Definitions.
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- 4211.11 Changes not subject to PBGC approval.
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- 4211.21 Changes subject to PBGC approval.
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- 4211.31 Allocation of unfunded vested benefits following the merger of plans.

- 4211.32 Presumptive method for withdrawals after the initial plan year.
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Authority: 29 U.S.C. 1302(b)(3), 1391 (c)(1), (c)(2)(D), (c)(5)(A), (c)(5)(B), (c)(5)(D), and (f).

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 4219.2 Definitions.

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- 4219.11 Withdrawal liability upon mass withdrawal.
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 4219.15 Determination of reallocation liability.
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 4219.31 Overdue and defaulted withdrawal liability; overpayment.
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Authority: 29 U.S.C. 1302(b)(3), 1389 (c) and (d), 1399 (c)(1)(D) and (c)(6).

Part 4220—Procedures for PBGC Approval of Plan Amendments

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 4220.2 Requests for PBGC approval.
 4220.3 PBGC action on requests.
 Authority: 29 U.S.C. 1302(b)(3), 1400.

Part 4221—Arbitration of Disputes in Multiemployer Plans

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 4221.1 Purpose and scope.
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 4221.3 Initiation of arbitration.
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Authority: 29 U.S.C. 1302(b)(3), 1401.

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Authority: 29 U.S.C. 1302(b)(3), 1411.

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 4245.4 Contents of notice of insolvency.
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 4245.7 PBGC address.

Authority: 29 U.S.C. 1302(b)(3), 1426(e).

Part 4261—Financial Assistance to Multiemployer Plans

- Sec.
 4261.1 Cross-reference.
 Authority: 29 U.S.C. 1302(b)(3).

Part 4281—Duties of Plan Sponsor Following Mass Withdrawal

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- 4281.11 Valuation dates.
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Appendix A to Part 4281—Interest Rates Used to Value Lump Sums and Annuities
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 Authority: 29 U.S.C. 1302(b)(3), 1341a, 1399(c)(1)(D), and 1441.

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 4901.3 Disclosure facilities.
 4901.4 Information maintained in public reference room.
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Subpart B—Procedure for Formal Requests
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 4901.12 Description of information requested.
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 4901.15 Appeals from denial of requests.
 4901.16 Extensions of time.
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 4901.22 Partial disclosure.
 4901.23 Records of concern to more than one agency.

4901.24 Special rules for trade secrets and confidential commercial or financial information submitted to the PBGC.

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4901.31 Charges for services.
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 Authority: 5 U.S.C. 552; 29 U.S.C. 1302(b)(3); E.O. 12600, 52 FR 23781.

Part 4902—Disclosure and Amendment of Records Under the Privacy Act

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 4902.2 Definitions.
 4902.3 Procedures for determining existence of and requesting access to records.
 4902.4 Disclosure of record to an individual.
 4902.5 Procedures for requesting amendment of a record.
 4902.6 Action on request for amendment of a record.
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 4902.8 Fees.
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 Authority: 5 U.S.C. 552a; 29 U.S.C. 1302(b)(3).

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Subpart B—Administrative Offset
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Subpart C—Tax Refund Offset
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Subpart D—Salary Offset [Reserved]
 Authority: 29 U.S.C. 1302(b); 31 U.S.C. 3701, 3711(f), 3720A; 4 CFR part 102; 26 CFR 301.6402–6.

Part 4904—Ethical Conduct of Employees

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 4904.1 Ethical conduct; standards and requirements.
 Authority: 29 U.S.C. 1302(b)(3).

Part 4905—Appearances in Certain Proceedings

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 4905.1 Purpose and scope.
 4905.2 Definitions.
 4905.3 General.
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 Authority: 29 U.S.C. 1302(b).

Part 4906—[Reserved]

Part 4907—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Pension Benefit Guaranty Corporation

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 4907.110 Self-evaluation.
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 4907.130 General prohibitions against discrimination.
 4907.140 Employment.
 4907.149 Program accessibility: Discrimination prohibited.
 4907.150 Program accessibility: Existing facilities.
 4907.151 Program accessibility: New construction and alterations.
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 4907.170 Compliance procedures.
 Authority: 29 U.S.C. 794, 1302(b)(3).

PART 4000—FINDING AIDS

Sec.
 4000.1 Distribution table.
 4000.2 Derivation table.
 Authority: 29 U.S.C. 1302(b)(3).

§ 4000.1 Distribution table.

The following table shows where in chapter XL of 29 CFR to find regulations previously codified in chapter XXVI.

Ch. XXVI Part Subpart(s)/Section(s)	Ch. XL Part(s)/Subpart(s) Subpart(s)/Section(s)
Subchapter A—Internal and Administrative Rules	
2601	4002
2602:	
Subpart A	4904
Subpart B	4905
2603	4901
2604	Repealed
2606	4003
2607	4902
2608	4907
2609	4903

Ch. XXVI Part Subpart(s)/Section(s)	Ch. XL Part(s)/Subpart(s) Subpart(s)/Section(s)
Subchapter B—Rules Applicable to Single-Employer and Multiemployer Plans	
2610	4006 & 4007
§§ 2610.1, 2610.21, 2610.31	§§ 4006.1 & 4007.1
§§ 2610.2	§§ 4006.2 & 4007.2
§§ 2610.3–2610.9 & 2610.11	4007
§ 2610.10	4006.5(e)
§§ 2610.22–2610.24 & 2610.33	4006
§§ 2610.25, 2610.26 & 2610.34	4007
2611	4065
2612	4001, Subpart B
2613	4022, Subpart A
Subchapter C—Single-Employer Plans	
2615	4043
2616	4041
Subpart A	Subpart A
Subpart B	Subpart C
2617	4041
Subpart A	Subpart A
Subpart B	Subpart B
2618	4044, Subpart A
2619	4044, Subpart B
2620	4044, Subpart B
2621 (except § 2621.23(b))	4022, Subpart B
2621.23(b)	4022B
2622 (except 2622.9)	4062
§ 2622.9	4068
2623	4022, Subparts D & E
2625	4047
2627	4011
2628	4010
2629	4050
Subchapter F—Withdrawal Liability in Multiemployer Plans	
2640:	
§ 2640.2	§ 4001.2
§ 2640.3	§ 4221.2
§ 2640.4	§ 4211.2
§ 2640.5	§ 4204.2
§ 2640.6	§ 4207.2, 4208.2
§ 2640.7	§ 4219.2
§ 2640.8	§ 4206.2
2641	4221
2642	4211
2643	4204
2644	4219, Subpart C
2645	4203
2646	4208
2647	4207
2648	4219, Subpart B
2649	4206
Subchapter H—Other Rules Applicable to Multiemployer Plans	
2670:	
§ 2670.2	§ 4001.2
§ 2670.3	§ 4231.2
§ 2670.4	§§ 4041A.2, 4245.2, & 4281.2
2672	4231
2673	4041A, Subpart B, & 4041A.3(a)
2674	4245
2675	4041A, Subparts C & D, & 4281, Subparts C & D
2676	4281, Subpart B
2677	4220

§ 4000.2 Derivation table.

The following table shows where in previous chapter XXVI of 29 CFR to find regulations now codified in chapter XL.

Ch. XL Part Subpart/Section(s)	Ch. XXVI Part(s) Subpart/Section(s)
Subchapter A—General	
4000	[tables]
4001:	
Subpart A	[various statutory and regulatory definitions]
Subpart B	2612
4002	2601
4003	2606
Subchapter B—Premiums	
4006	2610
4007	2610
Subchapter C—Certain Reporting and Disclosure Requirements	
4010	2628
4011	2627
Subchapter D—Coverage and Benefits	
4022:	
Subpart A	2613
Subpart B	2621 (except § 2621.23(b))
Subparts D & E	2623
4022B	§ 2621.23(b)
Subchapter E—Plan Terminations	
4041:	
Subpart A	§§ 2616 & 2617, Subparts A
Subpart B	2617, Subpart B
Subpart C	2616, Subpart B
4041A:	
Subpart A	§§ 2670.4, 2673.1, 2673.4, 2675.1 & 2675.2
Subpart B	§§ 2673.2 & .3
Subparts C & D	2675, Subparts B & E
4043	2615
4044	2618, 2619 & 2620
4047	2625
4050	2629
Subchapter F—Liability	
4061	[cross-references]
4062	2622 (except § 2622.9)
4063	[cross-references]
4064	[cross-references]
Subchapter G—Annual Reporting Requirements	
4065	2611
Subchapter H—Enforcement Provisions	
4067	[cross-reference]
4068	2622.9
Subchapter I—Withdrawal Liability in Multiemployer Plans	
4203	2645
4204	2643 & § 2640.5
4206	2649 & § 2640.8
4207	2647 & 2640.6
4208	2646 & 2640.6
4211	2642 & 2640.4
4219:	
Subpart A	§ 2640.7
Subpart B	2648
Subpart C	2644
4220	2677
4221	2641 & § 2640.3
Subchapter J—Insolvency, Reorganization, Termination, and Other Rules Applicable to Multiemployer Plans	
4231	2672 & § 2670.3

Ch. XL Part Subpart/Section(s)	Ch. XXVI Part(s) Subpart/Section(s)
4245	2674 & 2670.4
4261	[cross-reference]
4281:	
Subpart A	2675, Subpart A, & 2670.4
Subpart B	2676
Subpart C	2675, Subpart C
Subpart D	2675, Subpart D
Subchapter K—Internal Administrative Rules and Procedures	
4901	2603
4902	2607
4903	2609
4904	2602, Subpart A
4905	2602, Subpart B
4907	2608

PART 4001—TERMINOLOGY

Sec.

4001.1 Purpose and scope.

4001.2 Definitions.

4001.3 Trades or businesses under common control; controlled groups.

Authority: 29 U.S.C. 1301, 1302(b)(3).

§ 4001.1 Purpose and scope.

This part contains definitions of certain terms used in this chapter and the regulations under which the PBGC makes various controlled group determinations.

§ 4001.2 Definitions.

For purposes of this chapter (unless otherwise indicated or required by the context):

Affected party means, with respect to a plan—

- (1) Each participant in the plan;
- (2) Each beneficiary of a deceased participant;

(3) Each alternate payee under an applicable qualified domestic relations order, as defined in section 206(d)(3) of ERISA;

(4) Each employee organization that currently represents any group of participants;

(5) For any group of participants not currently represented by an employee organization, the employee organization, if any, that last represented such group of participants within the 5-year period preceding issuance of the notice of intent to terminate; and

(6) the PBGC. If an affected party has designated, in writing, a person to receive a notice on behalf of the affected party, any reference to the affected party (in connection with the notice) shall be construed to refer to such person.

Annuity means a series of periodic payments to a participant or surviving beneficiary for a fixed or contingent period.

Basic-type benefit means a benefit that is guaranteed under the provisions of part 4022, subpart A, of this chapter, or would be guaranteed if the guarantee limits in part 4022, subpart B, of this chapter did not apply.

Benefit liabilities means the benefits of participants and their beneficiaries under the plan (within the meaning of section 401(a)(2) of the Code).

Code means the Internal Revenue Code of 1986, as amended.

Complete withdrawal means a complete withdrawal as described in section 4203 of ERISA.

Contributing sponsor means a person who is a contributing sponsor as defined in section 4001(a)(13) of ERISA.

Controlled group means, in connection with any person, a group consisting of such person and all other persons under common control with such person, determined under section 4001.3 of this part. For purposes of determining the persons liable for contributions under section 412(c)(11)(B) of the Code or section 302(c)(11)(B) of ERISA, a controlled group also includes any group treated as a single employer under section 414 (m) or (o) of the Code.

Corporation means the Pension Benefit Guaranty Corporation, except where the context demonstrates that a different meaning is intended.

Defined benefit plan means a plan described in section 3(35) of ERISA.

Distress termination means the voluntary termination of a single-employer plan in accordance with

section 4041(c) of ERISA and part 4041, subpart C, of this chapter.

Distribution date means:

(1) Except as provided in paragraph (2)—

(i) For benefits provided through the purchase of irrevocable commitments, the date on which the obligation to provide the benefits passes from the plan to the insurer; and

(ii) For benefits provided other than through the purchase of irrevocable commitments, the date on which the benefits are delivered to the participant or beneficiary (or to another plan or benefit arrangement or other recipient authorized by the participant or beneficiary in accordance with applicable law and regulations) personally or by deposit with a mail or courier service (as evidenced by a postmark or written receipt); or

(2) Other than for purposes of determining the interest rate to be used in calculating the value of a benefit to be paid as a lump sum to a late-discovered participant, the deemed distribution date (as defined in § 4050.2) in the case of a designated benefit paid to the PBGC, a benefit provided after the deemed distribution date to a late-discovered participant, or an irrevocable commitment purchased from an insurer after the deemed distribution date for a recently-missing participant in accordance with part 4050 of this chapter (dealing with missing participants).

Employer means all trades or businesses (whether or not incorporated) that are under common

control, within the meaning of § 4001.3 of this chapter.

ERISA means the Employee Retirement Income Security Act of 1974, as amended.

Fair market value means the price at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts.

FOIA means the Freedom of Information Act, as amended (5 U.S.C. 552).

Funding standard account means an account established and maintained under section 302(b) of ERISA or section 412(b) of the Code.

Guaranteed benefit means a benefit under a single-employer plan that is guaranteed by the PBGC under section 4022(a) of ERISA and part 4022 of this chapter, or a benefit under a multiemployer plan that is guaranteed by the PBGC under section 4022A of ERISA.

Insurer means a company authorized to do business as an insurance carrier under the laws of a State or the District of Columbia.

Irrevocable commitment means an obligation by an insurer to pay benefits to a named participant or surviving beneficiary, if the obligation cannot be cancelled under the terms of the insurance contract (except for fraud or mistake) without the consent of the participant or beneficiary and is legally enforceable by the participant or beneficiary.

IRS means the Internal Revenue Service.

Mandatory employee contributions means amounts contributed to the plan by a participant that are required as a condition of employment, as a condition of participation in such plan, or as a condition of obtaining benefits under the plan attributable to employer contributions.

Mass withdrawal means the withdrawal of every employer from the plan, or the withdrawal of substantially all employers pursuant to an agreement or arrangement to withdraw.

Multiemployer Act means the Multiemployer Pension Plan Amendments Act of 1980.

Multiemployer plan means a plan that is described in section 4001(a)(3) of ERISA and that is covered by title IV of ERISA.

Multiple employer plan means a single-employer plan maintained by two or more contributing sponsors that are not members of the same controlled group, under which all plan assets are

available to pay benefits to all plan participants and beneficiaries.

Nonbasic-type benefit means any benefit provided by a plan other than a basic-type benefit.

Nonforfeitable benefit means a benefit described in section 4001(a)(8) of ERISA. Benefits that become nonforfeitable solely as a result of the termination of a plan will be considered forfeitable.

Normal retirement age means the age specified in the plan as the normal retirement age. This age shall not exceed the later of age 65 or the age attained after 5 years of participation in the plan. If no normal retirement age is specified in the plan, it is age 65.

Notice of intent to terminate means the notice of a proposed termination of a single-employer plan, as required by section 4041(a)(2) of ERISA and § 4041.21 (in a standard termination) or § 4041.41 (in a distress termination) of this chapter.

PBGC means the Pension Benefit Guaranty Corporation.

Person means a person defined in section 3(9) of ERISA.

Plan means a defined benefit plan within the meaning of section 3(35) of ERISA that is covered by title IV of ERISA.

Plan administrator means an administrator, as defined in section 3(16)(A) of ERISA.

Plan sponsor means, with respect to a multiemployer plan, the person described in section 4001(a)(10) of ERISA.

Plan year means the calendar, policy, or fiscal year on which the records of the plan are kept.

Proposed termination date means the date specified as such by the plan administrator of a single-employer plan in a notice of intent to terminate or, if later, in the standard or distress termination notice, in accordance with section 4041 of ERISA and part 4041 of this chapter.

Single-employer plan means any defined benefit plan (as defined in section 3(35) of ERISA) that is not a multiemployer plan (as defined in section 4001(a)(3) of ERISA) and that is covered by title IV of ERISA.

Standard termination means the voluntary termination, in accordance with section 4041(b) of ERISA and part 4041, subpart B, of this chapter, of a single-employer plan that is able to provide for all of its benefit liabilities when plan assets are distributed.

Substantial owner means a substantial owner as defined in section 4022(b)(5)(A) of ERISA.

Sufficient for benefit liabilities means that there is no amount of unfunded

benefit liabilities, as defined in section 4001(a)(18) of ERISA.

Sufficient for guaranteed benefits means that there is no amount of unfunded guaranteed benefits, as defined in section 4001(a)(17) of ERISA.

Termination date means the date established pursuant to section 4048(a) of ERISA.

Title IV benefit means the guaranteed benefit plus any additional benefits to which plan assets are allocated pursuant to section 4044 of ERISA and part 4044 of this chapter.

Voluntary employee contributions means amounts contributed by an employee to a plan, pursuant to the provisions of the plan, that are not mandatory employee contributions.

§ 4001.3 Trades or businesses under common control; controlled groups.

For purposes of title IV of ERISA:

(a)(1) The PBGC will determine that trades and businesses (whether or not incorporated) are under common control if they are “two or more trades or businesses under common control”, as defined in regulations prescribed under section 414(c) of the Code.

(2) The PBGC will determine that all employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer, and all such trades and businesses shall be treated as a single employer.

(3) An individual who owns the entire interest in an unincorporated trade or business is treated as his own employer, and a partnership is treated as the employer of each partner who is an employee within the meaning of section 401(c)(1) of the Code.

(b) In the case of a single-employer plan:

(1) In connection with any person, a controlled group consists of that person and all other persons under common control with such person.

(2) Persons are under common control if they are members of a “controlled group of corporations”, as defined in regulations prescribed under section 414(b) of the Code, or if they are “two or more trades or businesses under common control”, as defined in regulations prescribed under section 414(c) of the Code.

PART 4002—BYLAWS OF THE PENSION BENEFIT GUARANTY CORPORATION

Sec.	Name.
4002.1	Offices.
4002.2	Board of Directors.
4002.3	Chairman.
4002.4	Quorum.

4002.6 Meetings.

4002.7 Place of meetings; use of conference call communications equipment.

4002.8 Alternate voting procedure.

4002.9 Amendments.

Authority: 29 U.S.C. 1302(f).

§ 4002.1 Name.

The name of the Corporation is the Pension Benefit Guaranty Corporation.

§ 4002.2 Offices.

The principal office of the Corporation shall be in the Metropolitan area of the City of Washington, District of Columbia. The Corporation may have additional offices at such other places as the Board of Directors may deem necessary or desirable to the conduct of its business.

§ 4002.3 Board of Directors.

(a) The Board of Directors shall establish the policies of the Corporation and shall perform the other functions assigned to the Board of Directors in title IV of the Employee Retirement Income Security Act of 1974. The Board of Directors of the Corporation shall be composed of the Secretary of Labor, the Secretary of the Treasury, and the Secretary of Commerce. Members of the Board shall serve without compensation, but shall be reimbursed by the Corporation for travel, subsistence, and other necessary expenses incurred in the performance of their duties as members of the Board. A person at the time of a meeting of the Board of Directors who is serving as Secretary of Labor, Secretary of the Treasury or Secretary of Commerce in an acting capacity, shall serve as a member of the Board of Directors with the same authority and effect as the designated Secretary.

(b) The following powers are expressly reserved to the Board of Directors and shall not be delegated:

(1) Approval of all final substantive regulations prior to publication in the Federal Register, except for amendments to the regulations on Allocation of Assets in Single-employer Plans and Duties of Plan Sponsor Following Mass Withdrawal (parts 4044 and 4281 of this chapter) establishing new interest rates and factors, which may be approved by the Executive Director of the PBGC.

(2) Approval of all reports or recommendations to the Congress that are required by statute;

(3) Establishment from time to time of the Corporation's budget and debt ceiling up to the statutory limit;

(4) Determination from time to time of limits on advances to the revolving funds administered by the Corporation pursuant to section 4005(a) of ERISA;

(5) Final decision on any policy matter that would materially affect the rights of a substantial number of employers or covered participants and beneficiaries.

(c) Final non-substantive regulations and all proposed regulations shall be approved by the Executive Director prior to publication in the Federal Register; provided that all proposed substantive regulations shall first be circulated for review to the Board of Directors or their designees, and may thereafter be issued by the Executive Director after responding to any comments made within 21 days after circulation of the proposed regulation, or, if no comments are received, after expiration of the 21-day period.

§ 4002.4 Chairman.

The Secretary of Labor shall be the Chairman of the Board of Directors and he shall be the administrator of the Corporation with responsibility for its management, including overall supervision of the Corporation's personnel, organization, and budget practices, and shall exercise such incidental powers as may be necessary to carry out his administrative responsibilities. The Chairman may delegate his administrative responsibilities.

§ 4002.5 Quorum.

A majority of the Directors shall constitute a quorum for the transaction of business. Any act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board, except as may otherwise be provided in these bylaws.

§ 4002.6 Meetings.

Regular meetings of the Board of Directors shall be held at such times as the Chairman shall select. Special meetings of the Board of Directors shall be called by the Chairman on the request of any other Director. Reasonable notice of any meetings shall be given to each Director. The General Counsel of the Corporation shall serve as Secretary to the Board of Directors and keep its minutes. As soon as practicable after each meeting, a draft of the minutes of such meeting shall be distributed to each member of the Board for correction or approval.

§ 4002.7 Place of meetings; use of conference call communications equipment.

Meetings of the Board of Directors shall be held at the principal office of the Corporation unless otherwise determined by the Board of Directors or the Chairman. Any Director may participate in a meeting of the Board of

Directors through the use of conference call telephone or similar communications equipment, by means of which all persons participating in the meeting can simultaneously speak to and hear each other. Any Director so participating in a meeting shall be deemed present for all purposes. Actions taken by the Board of Directors at meetings conducted through the use of such equipment, including the votes of each member, shall be recorded in the usual manner in the minutes of the meetings of the Board of Directors. A resolution of the Board of Directors signed by each of its three members shall have the same force and effect as if agreed at a duly called meeting and shall be recorded in the minutes of the Board of Directors.

§ 4002.8 Alternate voting procedure.

(a) A Director shall be deemed to have participated in a meeting of the Board of Directors for all purposes if,

(1) That Director was represented at that meeting by an individual who was designated to act on his behalf, and

(2) That Director ratified in writing the actions taken by his designee at that meeting within a reasonable period of time after such meeting.

(b) For purposes of this section, a Director, including an individual serving as Acting Secretary, shall designate a representative at a level not below that of Assistant Secretary within his Department. Such designation shall be in writing and shall be effective until withdrawn or until a date specified therein.

(c) For purposes of this section, a Director's approval of the minutes of a meeting of the Board of Directors shall constitute ratification of the actions of his designee at such meeting.

§ 4002.9 Amendments.

These bylaws may be amended or new bylaws adopted by unanimous vote of the Board.

PART 4003—RULES FOR ADMINISTRATIVE REVIEW OF AGENCY DECISIONS**Subpart A—General Provisions**

Sec.

4003.1 Purpose and scope.

4003.2 Definitions.

4003.3 PBGC assistance in obtaining information.

4003.4 Extension of time.

4003.5 Non-timely request for review.

4003.6 Representation.

4003.7 Exhaustion of administrative remedies.

4003.8 Request for confidential treatment.

4003.9 Filing of documents.

4003.10 Computation of time.

Subpart B—Initial Determinations

- 4003.21 Form and contents of initial determinations.
 4003.22 Effective date of determinations.

Subpart C—Reconsideration of Initial Determinations

- 4003.31 Who may request reconsideration.
 4003.32 When to request reconsideration.
 4003.33 Where to submit request for reconsideration.
 4003.34 Form and contents of request for reconsideration.
 4003.35 Final decision on request for reconsideration.

Subpart D—Administrative Appeals

- 4003.51 Who may appeal or participate in appeals.
 4003.52 When to file.
 4003.53 Where to file.
 4003.54 Contents of appeal.
 4003.55 Opportunity to appear and to present witnesses.
 4003.56 Consolidation of appeals.
 4003.57 Appeals affecting third parties.
 4003.58 Powers of the Appeals Board.
 4003.59 Decision by the Appeals Board.
 4003.60 Referral of appeal to the Executive Director.

Authority: 29 U.S.C. 1302(b)(3).

Subpart A—General Provisions**§ 4003.1 Purpose and scope.**

(a) *Purpose.* This part sets forth the rules governing the issuance of all initial determinations by the PBGC on cases pending before it involving the matters set forth in paragraph (b) of this section and the procedures for requesting and obtaining administrative review by the PBGC of those determinations. Subpart A contains general provisions. Subpart B sets forth rules governing the issuance of all initial determinations of the PBGC on matters covered by this part. Subpart C establishes procedures governing the reconsideration by the PBGC of initial determinations relating to the matters set forth in paragraphs (b)(1) through (b)(4). Subpart D establishes procedures governing administrative appeals from initial determinations relating to the matters set forth in paragraphs (b)(5) through (b)(10).

(b) *Scope.* This part applies to the following determinations made by the PBGC in cases pending before it and to the review of those determinations:

- (1) Determinations that a plan is covered under section 4021 of ERISA;
- (2) Determinations with respect to premiums, interest and late payment penalties pursuant to section 4007 of ERISA;
- (3) Determinations with respect to voluntary terminations under section 4041 of ERISA, including—
 - (i) A determination that a notice requirement or a certification

requirement under section 4041 of ERISA has not been met,

(ii) A determination that the requirements for demonstrating distress under section 4041(c)(2)(B) of ERISA have not been met, and

(iii) A determination with respect to the sufficiency of plan assets for benefit liabilities or for guaranteed benefits;

(4) Determinations with respect to allocation of assets under section 4044 of ERISA, including distribution of excess assets under section 4044(d);

(5) Determinations that a plan is not covered under section 4021 of ERISA;

(6) Determinations under section 4022 (a) or (c) or section 4022A(a) of ERISA with respect to benefit entitlement of participants and beneficiaries under covered plans and determinations that a domestic relations order is or is not a qualified domestic relations order under section 206(d)(3) of ERISA and section 414(p) of the Code;

(7) Determinations under section 4022 (b) or (c), section 4022A (b) through (e), or section 4022B of ERISA of the amount of benefits payable to participants and beneficiaries under covered plans;

(8) Determinations of the amount of money subject to recapture pursuant to section 4045 of ERISA;

(9) Determinations of the amount of liability under section 4062(b)(1), section 4063, or section 4064 of ERISA;

(10) Determinations—
 (i) That the amount of a participant's or beneficiary's benefit under section 4050(a)(3) of ERISA has been correctly computed based on the designated benefit paid to the PBGC under section 4050(b)(2) of ERISA, or

(ii) That the designated benefit is correct, but only to the extent that the benefit to be paid does not exceed the participant's or beneficiary's guaranteed benefit.

(c) *Matters not covered by this part.*

Nothing in this part limits—

(1) The authority of the PBGC to review, either upon request or on its own initiative, a determination to which this part does not apply when, in its discretion, the PBGC determines that it would be appropriate to do so, or

(2) The procedure that the PBGC may utilize in reviewing any determination to which this part does not apply.

§ 4003.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: Code, contributing sponsor, controlled group, ERISA, multiemployer plan, PBGC, person, plan administrator, and single-employer plan.

In addition, for purposes of this part: *Aggrieved person* means any participant, beneficiary, plan

administrator, contributing sponsor of a single-employer plan or member of such a contributing sponsor's controlled group, plan sponsor of a multiemployer plan, or employer that is adversely affected by an initial determination of the PBGC with respect to a pension plan in which such person has an interest. The term "beneficiary" includes an alternate payee (within the meaning of section 206(d)(3)(K) of ERISA) under a qualified domestic relations order (within the meaning of section 206(d)(3)(B) of ERISA).

Appeals Board means a board consisting of three PBGC officials. The Executive Director shall appoint a senior PBGC official to serve as Chairperson and three or more other PBGC officials to serve as regular Appeals Board members. The Chairperson shall designate the three officials who will constitute the Appeals Board with respect to a case, provided that a person may not serve on the Appeals Board with respect to a case in which he or she made a decision regarding the merits of the determination being appealed. The Chairperson need not serve on the Appeals Board with respect to all cases.

Appellant means any person filing an appeal under subpart D of this part.

Director means the Director of any department of the PBGC and includes the Executive Director of the PBGC, Deputy Executive Directors, and the General Counsel.

§ 4003.3 PBGC assistance in obtaining information.

A person who lacks information or documents necessary to file a request for review pursuant to subpart C or D of this part, or necessary to a decision whether to seek review, or necessary to participate in an appeal pursuant to § 4003.57 of this part or necessary to a decision whether to participate, may request the PBGC's assistance in obtaining information or documents in the possession of a party other than the PBGC. The request shall state or describe the missing information or documents, the reason why the person needs the information or documents, and the reason why the person needs the assistance of the PBGC in obtaining the information or documents. The request may also include a request for an extension of time to file pursuant to § 4003.4 of this part.

§ 4003.4 Extension of time.

(a) *General rule.* When a document is required under this part to be filed within a prescribed period of time, an extension of time to file will be granted only upon good cause shown and only

when the request for an extension is made before the expiration of the time prescribed. The request for an extension shall be in writing and state why additional time is needed and the amount of additional time requested. The filing of a request for an extension shall stop the running of the prescribed period of time. When a request for an extension is granted, the PBGC shall notify the person requesting the extension, in writing, of the amount of additional time granted. When a request for an extension is denied, the PBGC shall so notify the requestor in writing, and the prescribed period of time shall resume running from the date of denial.

(b) *Disaster relief.* When the President of the United States declares that, under the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121, 5122(2), 5141(b)), a major disaster exists, the Executive Director of the PBGC (or his or her designee) may, by issuing one or more notices of disaster relief, extend the due date for filing a request for reconsideration under § 4003.32 or an appeal under § 4003.52 by up to 180 days.

(1) The due date extension or extensions shall be available only to an aggrieved person who is residing in, or whose principal place of business is within, a designated disaster area, or with respect to whom the office of the service provider, bank, insurance company, or other person maintaining the information necessary to file the request for reconsideration or appeal is within a designated disaster area; and

(2) The request for reconsideration or appeal shall identify the filing as one for which the due date extension is available.

§ 4003.5 Non-timely request for review.

The PBGC will process a request for review of an initial determination that was not filed within the prescribed period of time for requesting review (see §§ 4003.32 and 4003.52) if—

(a) The person requesting review demonstrates in his or her request that he or she did not file a timely request for review because he or she neither knew nor, with due diligence, could have known of the initial determination; and

(b) The request for review is filed within 30 days after the date the aggrieved person, exercising due diligence at all relevant times, first learned of the initial determination where the requested review is reconsideration, or within 45 days after the date the aggrieved person, exercising due diligence at all relevant times, first learned of the initial determination

where the request for review is an appeal.

§ 4003.6 Representation.

A person may file any document or make any appearance that is required or permitted by this part on his or her own behalf or he or she may designate a representative. When the representative is not an attorney-at-law, a notarized power of attorney, signed by the person making the designation, which authorizes the representation and specifies the scope of representation shall be filed with the PBGC in accordance with § 4003.9(b) of this part.

§ 4003.7 Exhaustion of administrative remedies.

Except as provided in § 4003.22(b), a person aggrieved by an initial determination of the PBGC covered by this part, other than a determination subject to reconsideration that is issued by a Department Director, has not exhausted his or her administrative remedies until he or she has filed a request for reconsideration under subpart C of this part or an appeal under subpart D of this part, whichever is applicable, and a decision granting or denying the relief requested has been issued.

§ 4003.8 Request for confidential treatment.

If any person filing a document with the PBGC believes that some or all of the information contained in the document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act, 5 U.S.C. 552, he or she shall specify the information with respect to which confidentiality is claimed and the grounds therefor.

§ 4003.9 Filing of documents.

(a) *Date of filing.* Any document required or permitted to be filed under this part is considered filed on the date of the United States postmark stamped on the cover in which the document is mailed, provided that—

(1) The postmark was made by the United States Postal Service; and

(2) The document was mailed postage prepaid, properly packaged and addressed to the PBGC.

If the conditions stated in both paragraphs (a)(1) and (a)(2) of this section are not met, the document is considered filed on the date it is received by the PBGC. Documents received after regular business hours are considered filed on the next regular business day.

(b) *Where to file.* Any document required or permitted to be filed under this part in connection with a request for reconsideration shall be submitted to

the Director of the department within the PBGC that issued the initial determination. Any document required or permitted to be filed under this part in connection with an appeal shall be submitted to the Appeals Board, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005-4026.

§ 4003.10 Computation of time.

In computing any period of time prescribed or allowed by this part, the day of the act, event, or default from which the designated period of time begins to run is not counted. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or a Federal holiday.

Subpart B—Initial Determinations

§ 4003.21 Form and contents of initial determinations.

All determinations to which this subpart applies shall be in writing, shall state the reason for the determination, and, except when effective on the date of issuance as provided in § 4003.22(b), shall contain notice of the right to request review of the determination pursuant to subpart C or subpart D of this part, as applicable, and a brief description of the procedures for requesting review.

§ 4003.22 Effective date of determinations.

(a) *General Rule.* Except as provided in paragraph (b) of this section, an initial determination covered by this subpart will not become effective until the prescribed period of time for filing a request for reconsideration under subpart C of this part or an appeal under subpart D of this part, whichever is applicable, has elapsed. The filing of a request for review under subpart C or D of this part shall automatically stay the effectiveness of a determination until a decision on the request for review has been issued by the PBGC.

(b) *Exception.* The PBGC may, in its discretion, order that the initial determination in a case is effective on the date it is issued. When the PBGC makes such an order, the initial determination shall state that the determination is effective on the date of issuance and that there is no obligation to exhaust administrative remedies with respect to that determination by seeking review of it by the PBGC.

Subpart C—Reconsideration of Initial Determinations**§ 4003.31 Who may request reconsideration.**

Any person aggrieved by an initial determination of the PBGC to which this subpart applies may request reconsideration of the determination.

§ 4003.32 When to request reconsideration.

Except as provided in §§ 4003.4 and 4003.5, a request for reconsideration must be filed within 30 days after the date of the initial determination of which reconsideration is sought or, when administrative review includes a procedure in § 4903.33 of this chapter, by a date 60 days (or more) thereafter that is specified in the PBGC's notice of the right to request review.

§ 4003.33 Where to submit request for reconsideration.

A request for reconsideration shall be submitted to the Director of the department within the PBGC that issued the initial determination, except that a request for reconsideration of a determination described in § 4003.1(b)(3)(ii) shall be submitted to the Executive Director.

§ 4003.34 Form and contents of request for reconsideration.

A request for reconsideration shall—

- (a) Be in writing;
- (b) Be clearly designated as a request for reconsideration;
- (c) Contain a statement of the grounds for reconsideration and the relief sought; and
- (d) Reference all pertinent information already in the possession of the PBGC and include any additional information believed to be relevant.

§ 4003.35 Final decision on request for reconsideration.

(a) Except as provided in paragraphs (a)(1) or (a)(2), final decisions on requests for reconsideration will be issued by the same department of the PBGC that issued the initial determination, by an official whose level of authority in that department is higher than that of the person who issued the initial determination.

(1) When an initial determination is issued by a Department Director, the Department Director (or an official designated by the Department Director) will issue the final decision on request for reconsideration of a determination other than one described in § 4003.1(b)(3)(ii).

(2) The Executive Director (or an official designated by the Executive Director) will issue the final decision on

a request for reconsideration of a determination described in § 4003.1(b)(3)(ii).

(b) The final decision on a request for reconsideration shall be in writing, specify the relief granted, if any, state the reason(s) for the decision, and state that the person has exhausted his or her administrative remedies.

Subpart D—Administrative Appeals**§ 4003.51 Who may appeal or participate in appeals.**

Any person aggrieved by an initial determination to which this subpart applies may file an appeal. Any person who may be aggrieved by a decision under this subpart granting the relief requested in whole or in part may participate in the appeal in the manner provided in § 4003.57.

§ 4003.52 When to file.

Except as provided in §§ 4003.4 and 4003.5, an appeal under this subpart must be filed within 45 days after the date of the initial determination being appealed or, when administrative review includes a procedure in § 4903.33 of this chapter, by a date 60 days (or more) thereafter that is specified in the PBGC's notice of the right to request review.

§ 4003.53 Where to file.

An appeal or a request for an extension of time to appeal shall be submitted to the Appeals Board, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026.

§ 4003.54 Contents of appeal.

(a) An appeal shall—

- (1) Be in writing;
- (2) Be clearly designated as an appeal;
- (3) Contain a statement of the grounds upon which it is brought and the relief sought;
- (4) Reference all pertinent information already in the possession of the PBGC and include any additional information believed to be relevant;
- (5) State whether the appellant desires to appear in person or through a representative before the Appeals Board; and
- (6) State whether the appellant desires to present witnesses to testify before the Appeals Board, and if so, state why the presence of witnesses will further the decision-making process.

(b) In any case where the appellant believes that another person may be aggrieved if the PBGC grants the relief sought, the appeal shall also include the name(s) and address(es) (if known) of such other person(s).

§ 4003.55 Opportunity to appear and to present witnesses.

(a) At the discretion of the Appeals Board, any appearance permitted under this subpart may be before a hearing officer designated by the Appeals Board.

(b) An opportunity to appear before the Appeals Board (or a hearing officer) and an opportunity to present witnesses will be permitted at the discretion of the Appeals Board. In general, an opportunity to appear will be permitted if the Appeals Board determines that there is a dispute as to a material fact; an opportunity to present witnesses will be permitted when the Appeals Board determines that witnesses will contribute to the resolution of a factual dispute.

(c) Appearances permitted under this section will take place at the main offices of the PBGC, 1200 K Street NW., Washington, DC 20005–4026, unless the Appeals Board, in its discretion, designates a different location, either on its own initiative or at the request of the appellant or a third party participating in the appeal.

§ 4003.56 Consolidation of appeals.

(a) *When consolidation may be required.* Whenever multiple appeals are filed that arise out of the same or similar facts and seek the same or similar relief, the Appeals Board may, in its discretion, order the consolidation of all or some of the appeals.

(b) *Representation of parties.* Whenever the Appeals Board orders the consolidation of appeals, the appellants may designate one (or more) of their number to represent all of them for all purposes relating to their appeals.

(c) *Decision by Appeals Board.* The decision of the Appeals Board in a consolidated appeal shall be binding on all appellants whose appeals were subject to the consolidation.

§ 4003.57 Appeals affecting third parties.

(a) Before the Appeals Board issues a decision granting, in whole or in part, the relief requested in an appeal, it shall make a reasonable effort to notify third persons who will be aggrieved by the decision of the following:

- (1) The pendency of the appeal;
- (2) The grounds upon which the appeal is based;
- (3) The grounds upon which the Appeals Board is considering reversing the initial determination;
- (4) The right to submit written comments on the appeal;
- (5) The right to request an opportunity to appear in person or through a representative before the Appeals Board and to present witnesses; and
- (6) That no further opportunity to present information to the PBGC with

respect to the determination under appeal will be provided.

(b) Written comments and a request to appear before the Appeals Board must be filed within 45 days after the date of the notice from the Appeals Board.

(c) If more than one third party is involved, their participation in the appeal may be consolidated pursuant to the provisions of § 4003.56.

§ 4003.58 Powers of the Appeals Board.

In addition to the powers specifically described in this part, the Appeals Board may request the submission of any information or the appearance of any person it considers necessary to resolve a matter before it and to enter any order it considers necessary for or appropriate to the disposition of any matter before it.

§ 4003.59 Decision by the Appeals Board.

(a) In reaching its decision, the Appeals Board shall consider those portions of the file relating to the initial determination, all material submitted by the appellant and any third parties in connection with the appeal, and any additional information submitted by PBGC staff.

(b) The decision of the Appeals Board constitutes the final agency action by the PBGC with respect to the determination which was the subject of the appeal and is binding on all parties who participated in the appeal and who were notified pursuant to § 4003.57 of their right to participate in the appeal.

(c) The decision of the Appeals Board shall be in writing, specify the relief granted, if any, state the bases for the decision, including a brief statement of the facts or legal conclusions supporting the decision, and state that the appellant has exhausted his or her administrative remedies.

§ 4003.60 Referral of appeal to the Executive Director.

The Appeals Board may, in its discretion, refer any appeal to the Executive Director of the PBGC for decision. In such a case, the Executive Director shall have all the powers vested in the Appeals Board by this subpart and the decision of the Executive Director shall meet the requirements of and have the effect of a decision issued under § 4003.59 of this part.

PART 4006—PREMIUM RATES

Sec.

4006.1 Purpose and scope.

4006.2 Definitions.

4006.3 Premium rate.

4006.4 Determination of unfunded vested benefits.

4006.5 Exemptions and special rules.

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307.

§ 4006.1 Purpose and scope.

This part, which applies to all plans covered by title IV of ERISA, provides rules for computing the premiums imposed by sections 4006 and 4007 of ERISA. (See part 4007 of this chapter for rules for the payment of premiums, including due dates and late payment charges.)

§ 4006.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: Code, contributing sponsor, ERISA, fair market value, insurer, irrevocable commitment, multiemployer plan, notice of intent to terminate, PBGC, plan administrator, plan, plan year, and single-employer plan.

In addition, for purposes of this part:

New plan means a plan that became effective within the premium payment year and includes a plan resulting from a consolidation or spinoff. A plan that meets this definition is considered to be a new plan even if the plan constitutes a successor plan within the meaning of section 4021(a) of ERISA.

Newly-covered plan means a plan that is not a new plan and that was not covered by title IV of ERISA immediately prior to the premium payment year.

Participant means any individual who is included in one of the categories below:

(a) *Active*. (1) Any individual who is currently in employment covered by the plan and who is earning or retaining credited service under the plan. This category includes any individual who is considered covered under the plan for purposes of meeting the minimum coverage requirements, but because of offset or other provisions (including integration with Social Security benefits), the individual does not have any accrued benefits.

(2) Any non-vested individual who is not currently in employment covered by the plan but who is earning or retaining credited service under the plan. This category does not include a non-vested former employee who has incurred a break in service the greater of one year or the break in service period specified in the plan.

(b) *Inactive*—(1) *Inactive receiving benefits*. Any individual who is retired or separated from employment covered by the plan and who is receiving benefits under the plan. This category does not include an individual to whom an insurer has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan.

(2) *Inactive entitled to future benefits*.

Any individual who is retired or separated from employment covered by the plan and who is entitled to begin receiving benefits under the plan in the future. This category does not include an individual to whom an insurer has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan.

(c) *Deceased*. Any deceased individual who has one or more beneficiaries who are receiving or entitled to receive benefits under the plan. This category does not include an individual if an insurer has made an irrevocable commitment to pay all the benefits to which the beneficiaries of that individual are entitled under the plan.

Premium payment year means the plan year for which the premium is being paid.

Short plan year means a plan year that is less than twelve full months.

§ 4006.3 Premium rate.

Subject to the provisions of § 4006.5 (dealing with exemptions and special rules), the premium paid for basic benefits guaranteed under section 4022(a) of ERISA shall equal the flat-rate premium under paragraph (a) of this section plus, in the case of a single-employer plan, the variable-rate premium under paragraph (b) of this section.

(a) *Flat-rate premium*. The flat-rate premium is equal to the number of participants in the plan on the last day of the plan year preceding the premium payment year, multiplied by—

- (1) \$19 for a single-employer plan, or
- (2) \$2.60 for a multiemployer plan.

(b) *Variable-rate premium*. The variable-rate premium is \$9 for each \$1,000 of a single-employer plan's unfunded vested benefits, as determined under § 4006.4.

§ 4006.4 Determination of unfunded vested benefits.

(a) *General rule*. Except as permitted by paragraph (c) of this section or as provided in the exemptions and special rules under § 4006.5, the amount of a plan's unfunded vested benefits (as defined in paragraph (b) of this section) shall be determined as of the last day of the plan year preceding the premium payment year, based on the plan provisions and the plan's population as of that date. The determination shall be made in accordance with paragraph (a)(1) or (a)(2), and shall be certified to in accordance with paragraph (a)(4).

(1) The unfunded vested benefits shall be determined using the actuarial assumptions and methods described in

paragraph (a)(3) for the plan year preceding the premium payment year (or, in the case of a new or newly-covered plan, for the premium payment year), except to the extent that other actuarial assumptions or methods are specifically prescribed by this section or are necessary to reflect the occurrence of a significant event described in paragraph (d) of this section between the date of the funding valuation and the last day of the plan year preceding the premium payment year. (If the plan does a valuation as of the last day of the plan year preceding the premium payment year, no separate adjustment for significant events is needed.)

(2) Under this rule, the determination of the unfunded vested benefits may be based on a plan valuation done as of the first day of the premium payment year, provided that—

(i) The actuarial assumptions and methods used are those described in paragraph (a)(3) for the premium payment year, except to the extent that other actuarial assumptions or methods are specifically prescribed by this section or are required to make the adjustment described in paragraph (a)(2)(ii) of this section; and

(ii) If an enrolled actuary determines that there is a material difference between the values determined under the valuation and the values that would have been determined as of the last day of the preceding plan year, the valuation results are adjusted to reflect appropriately the values as of the last day of the preceding plan year. (This adjustment need not be made if the unadjusted valuation would result in greater unfunded vested benefits.)

(3) For purposes of paragraphs (a)(1) and (a)(2), the actuarial assumptions and methods for a plan year are those used by the plan for purposes of determining the additional funding requirement under section 302(d) of ERISA and section 412(1) of the Code (or, in the case of a plan that is not required to determine such additional funding requirement, any assumptions and methods that would be permitted for such purpose if the plan were so required).

(4) In the case of any plan that determines the amount of its unfunded vested benefits under the general rule described in this paragraph, an enrolled actuary must certify, in accordance with the PBGC annual Premium Payment Package provided for in § 4007.3 of this part, that the determination was made in a manner consistent with generally accepted actuarial principles and practices.

(b) *Unfunded vested benefits.* The amount of a plan's unfunded vested

benefits under this section shall be the excess of the plan's vested benefits amount (determined under paragraph (b)(1) of this section) over the value of the plan's assets (determined under paragraph (b)(2) of this section).

(1) *Vested benefits amount.* A plan's vested benefits amount under this section shall be the plan's current liability (within the meaning of section 302(d)(7) of ERISA and section 412(1)(7) of the Code) determined by taking into account only vested benefits and by using an interest rate equal to the applicable percentage of the annual yield for 30-year Treasury constant maturities, as reported in Federal Reserve Statistical Release G.13 and H.15, for the calendar month preceding the calendar month in which the premium payment year begins. If the interest rate (or rates) used by the plan to determine current liability was (or were all) not greater than the required interest rate, the vested benefits need not be revalued if an enrolled actuary certifies that the interest rate (or interest rates) used was (or were all) not greater than the required interest rate. For purposes of this paragraph (b)(1) (subject to the provisions of § 4006.5(g), dealing with plans of regulated public utilities), the applicable percentage is—

(i) For a premium payment year that begins before July 1997, 80 percent;

(ii) For a premium payment year that begins after June 1997 and before the first premium payment year to which the first tables prescribed under section 302(d)(7)(C)(ii)(II) of ERISA and section 412(1)(7)(C)(ii)(II) of the Code apply, 85 percent; and

(iii) For the first premium payment year to which the first tables prescribed under section 302(d)(7)(C)(ii)(II) of ERISA and section 412(1)(7)(C)(ii)(II) of the Code apply and any subsequent plan year, 100 percent.

(2) *Value of assets.* (i) *Actuarial value.* For a premium payment year that is described in paragraph (b)(1)(i) or (b)(1)(ii) of this section, the value of the plan's assets shall be their actuarial value determined in accordance with section 302(c)(2) of ERISA and section 412(c)(2) of the Code.

(ii) *Fair market value.* For a premium payment year that is described in paragraph (b)(1)(iii) of this section, the value of the plan's assets shall be their fair market value.

(iii) *Use of credit balance.* The value of the plan's assets shall not be reduced by a credit balance in the funding standard account.

(iv) *Contributions.* Contributions owed for any plan year preceding the premium payment year shall be included for plans with 500 or more

participants and may be included for any other plan. Contributions may be included only to the extent such contributions have been paid into the plan on or before the earlier of the due date for payment of the variable-rate portion of the premium under § 4007.11 or the date that portion is paid. Contributions included that are paid after the last day of the plan year preceding the premium payment year shall be discounted at the plan asset valuation rate (on a simple or compound basis in accordance with the plan's discounting rules) to such last day to reflect the date(s) of payment. Contributions for the premium payment year may not be included for any plan.

(c) *Alternative method for calculating unfunded vested benefits.* In lieu of determining the amount of the plan's unfunded vested benefits pursuant to paragraph (a) of this section, a plan administrator may calculate the amount of a plan's unfunded vested benefits under this paragraph (c) using the plan's Form 5500, Schedule B, for the plan year preceding the premium payment year. Pursuant to this paragraph (c), unfunded vested benefits shall be determined, in accordance with the Premium Payment Package, from values for the plan's vested benefits and assets that are required to be reported on the plan's Schedule B. The value of the vested benefits shall be adjusted in accordance with paragraph (c)(1) of this section to reflect accruals during the plan year preceding the premium payment year and with paragraph (c)(2) of this section to reflect the interest rate prescribed in paragraph (b)(1) of this section, and the value of the assets shall be adjusted in accordance with paragraph (c)(4) of this section. (If the plan administrator certifies that the interest rate (or rates) used to determine the vested benefit values taken from the Schedule B was (or were all) not greater than the interest rate prescribed in paragraph (b)(1) of this section, the interest rate adjustment prescribed in paragraph (c)(2) of this section is not required.) The resulting unfunded vested benefits amount shall be adjusted in accordance with paragraph (c)(5) of this section to reflect the passage of time from the date of the Schedule B data to the last day of the plan year preceding the premium payment year.

(1) *Vested benefits adjustment for accruals.* The total value of the plan's current liability as of the first day of the plan year preceding the premium payment year for vested benefits of active and terminated vested participants not in pay status, computed in accordance with section 302(d)(7) of ERISA and section 412(l)(7) of the Code,

shall be adjusted to reflect the increase in vested benefits attributable to accruals during the plan year preceding the premium payment year by multiplying that value by 1.07.

(2) *Vested benefits interest rate adjustment.* The value of vested benefits as entered on the Schedule B shall be adjusted in accordance with the following formula (except as provided in paragraph (c)(3) of this section) to reflect the interest rate prescribed in paragraph (b)(1) of this section:

$$VB_{adj} = VB_{PAY} \times .94^{(RIR-BIR)} + VB_{NON-PAY} \times .94^{(RIR-BIR)} \times ((100+BIA) / (100+RIR))^{(ARA-50)};$$

where—

(i) VB_{adj} is the adjusted vested benefits amount (as of the first day of the plan year preceding the premium payment year) under the alternative calculation method;

(ii) VB_{PAY} is the plan's current liability as of the first day of the plan year preceding the premium payment year for vested benefits of participants and beneficiaries in pay status, computed in accordance with section 302(d)(7) of ERISA and section 412(l)(7) of the Code;

(iii) $VB_{NON-PAY}$ is the total of the plan's current liability as of the first day of the plan year preceding the premium payment year for vested benefits of active and terminated vested participants not in pay status, computed in accordance with section 302(d)(7) of ERISA and section 412(l)(7) of the Code, multiplied by 1.07 in accordance with paragraph (c)(1) of this section;

(iv) RIR is the required interest rate prescribed in paragraph (b)(1) of this section;

(v) BIR is the post-retirement current liability interest rate used to determine the pay-status current liability figure referred to in paragraph (c)(2)(ii) of this section;

(vi) BIA is the pre-retirement current liability interest rate used to determine the pre-pay-status current liability figures referred to in paragraph (c)(2)(iii) of this section; and

(vii) ARA is the plan's assumed weighted average retirement age.

(3) *Optional use of substitution factors in interest rate adjustment formula.* In lieu of the term, $.94^{(RIR-BIR)}$, in the formula prescribed by paragraph (c)(2) of this section, a plan administrator may use the optional substitution factor provided in the Premium Payment Package.

(4) *Adjusted value of plan assets.* The value of plan assets shall be the actuarial value of plan assets as of the first day of the plan year preceding the premium payment year, determined in

accordance with section 302(c)(2) of ERISA and section 412(c)(2) of the Code without reduction for any credit balance in the plan's funding standard account, unless that amount was determined as of a date other than the first day of the plan year preceding the premium payment year or the premium payment year is described in § 4006.4(b)(1)(iii). In either of those events, the value of plan assets shall be the current value of assets (as reported on Form 5500) as of that first day or (if Form 5500-EZ is filed) as of the last day of the plan year preceding the Schedule B year. The value of assets from the Schedule B shall be adjusted in accordance with paragraph (b)(2) of this section, except that the amount of all contributions that are included in the value of assets and that were made after the first day of the plan year preceding the premium payment year shall be discounted to such first day at the interest rate prescribed in paragraph (b)(1) of this section for the premium payment year, compounded annually except that simple interest may be used for any partial years.

(5) *Adjustment for passage of time.* The amount of the plan's unfunded vested benefits shall be adjusted to reflect the passage of time between the date of the Schedule B data (the first day of the plan year preceding the premium payment year) and the last day of the plan year preceding the premium payment year in accordance with the following formula:

$$UVB_{adj} = (VB_{adj} - A_{adj}) \times (1 + RIR/100)^Y;$$

where—

(i) UVB_{adj} is the amount of the plan's adjusted unfunded vested benefits;

(ii) VB_{adj} is the value of the adjusted vested benefits calculated in accordance with paragraphs (c)(1) and (c)(2) of this section;

(iii) A_{adj} is the adjusted asset amount calculated in accordance with paragraph (c)(3) of this section; (iv) RIR is the required interest rate prescribed in paragraph (b)(1) of this section; and

(v) Y is deemed to be equal to 1 (unless the plan year preceding the premium payment year is a short plan year, in which case Y is the number of years between the first day and the last day of the short plan year, expressed as a decimal fraction of 1.0 with two digits to the right of the decimal point).

(d) *Restrictions on alternative calculation method for large plans.*

(1) The alternative calculation method described in paragraph (c) of this section may be used for a plan with 500 or more participants as of the last day of the plan year preceding the premium payment year only if—

(i) No significant event, as described in paragraph (d)(2) of this section, has occurred between the first day and the last day of the plan year preceding the premium payment year, and an enrolled actuary so certifies in accordance with the Premium Payment Package; or

(ii) An enrolled actuary makes an appropriate adjustment to the value of unfunded vested benefits to reflect the occurrence of significant events that have occurred between those dates and certifies to that fact in accordance with the Premium Payment Package.

(2) The significant events described in this paragraph are—

(i) An increase in the plan's actuarial costs (consisting of the plan's normal cost under section 302(b)(2)(A) of ERISA and section 412(b)(2)(A) of the Code, amortization charges under section 302(b)(2)(B) of ERISA and section 412(b)(2)(B) of the Code, and amortization credits under section 302(b)(3)(B) of ERISA and section 412(b)(3)(B) of the Code) attributable to a plan amendment, unless the cost increase attributable to the amendment is less than 5 percent of the actuarial costs determined without regard to the amendment;

(ii) The extension of coverage under the plan to a new group of employees resulting in an increase of 5 percent or more in the plan's liability for accrued benefits;

(iii) A plan merger, consolidation or spinoff that is not *de minimis* pursuant to the regulations under section 414(l) of the Code;

(iv) The shutdown of any facility, plant, store, etc., that creates immediate eligibility for benefits that would not otherwise be immediately payable for participants separating from service;

(v) The offer by the plan for a temporary period to permit participants to retire at benefit levels greater than that to which they would otherwise be entitled;

(vi) A cost-of-living increase for retirees resulting in an increase of 5 percent or more in the plan's liability for accrued benefits; and

(vii) Any other event or trend that results in a material increase in the value of unfunded vested benefits.

§ 4006.5 Exemptions and special rules.

(a) *Variable-rate premium exemptions.* A plan described in any of paragraphs (a)(1)–(a)(5) of this section is not required to determine its unfunded vested benefits under § 4006.4 and does not owe a variable-rate premium under § 4006.3(b).

(1) *Certain fully funded plans.* A plan is described in this paragraph if the plan had fewer than 500 participants on the

last day of the plan year preceding the premium payment year, and an enrolled actuary certifies in accordance with the Premium Payment Package that, as of that date, the plan had no unfunded vested benefits (valued at the interest rate prescribed in § 4006.4(b)(1)).

(2) *Plans without vested benefit liabilities.* A plan is described in this paragraph if it did not have any participants with vested benefits as of the last day of the plan year preceding the premium payment year, and the plan administrator so certifies in accordance with the Premium Payment Package.

(3) *Section 412(i) plans.* A plan is described in this paragraph if the plan was a plan described in section 412(i) of the Code and the regulations thereunder at all times during the plan year preceding the premium payment year and the plan administrator so certifies, in accordance with the Premium Payment Package. If the plan is a new plan or a newly-covered plan, the certification under this paragraph shall be made as of the due date for the premium under § 4007.11(c) and shall certify to the plan's status at all times during the premium payment year through such due date.

(4) *Plans terminating in standard terminations.* The exemption for a plan described in this paragraph is conditioned upon the plan's making a final distribution of assets in a standard termination. If a plan is ultimately unable to do so, the exemption is revoked and all variable-rate amounts not paid pursuant to this exemption are due retroactive to the applicable due date(s). A plan is described in this paragraph if—

(i) The plan administrator has issued notices of intent to terminate the plan in a standard termination in accordance with section 4041(a)(2) of ERISA; and

(ii) The proposed termination date set forth in the notice of intent to terminate is on or before the last day of the plan year preceding the premium payment year.

(5) *Plans at full funding limit.* A plan is described in this paragraph if, on or before the earlier of the due date for payment of the variable-rate portion of the premium under § 4007.11 or the date that portion is paid, the plan's contributing sponsor or contributing sponsors made contributions to the plan for the plan year preceding the premium payment year in an amount not less than the full funding limitation for such preceding plan year under section 302(c)(7) of ERISA and section 412(c)(7) of the Code (determined in accordance with paragraphs (a)(5)(i) and (a)(5)(ii) of this section). In order for a plan to

qualify for this exemption, an enrolled actuary must certify that the plan has met the requirements of this paragraph.

(i) *Determination of full funding limitation.* The determination of whether contributions for the preceding plan year were in an amount not less than the full funding limitation under section 302(c)(7) of ERISA and section 412(c)(7) of the Code for such preceding plan year shall be based on the methods of computing the full funding limitation, including actuarial assumptions and funding methods, used by the plan (provided such assumptions and methods met all requirements, including the requirements for reasonableness, under section 302 of ERISA and section 412 of the Code) with respect to such preceding plan year. Plan assets shall not be reduced by the amount of any credit balance in the plan's funding standard account.

(ii) *Rounding of de minimis amounts.* Any contribution that is rounded down to no less than the next lower multiple of one hundred dollars (in the case of full funding limitations up to one hundred thousand dollars) or to no less than the next lower multiple of one thousand dollars (in the case of full funding limitations above one hundred thousand dollars) shall be deemed for purposes of this paragraph to be in an amount equal to the full funding limitation.

(b) *Special rule for determining vested benefits for certain large plans.* With respect to a plan that had 500 or more participants on the last day of the plan year preceding the premium payment year, if an enrolled actuary determines pursuant to § 4006.4(a) that the actuarial value of plan assets equals or exceeds the value of all benefits accrued under the plan (valued at the interest rate prescribed in § 4006.4(b)(1)), the enrolled actuary need not determine the value of the plan's vested benefits, and may instead report in the Premium Payment Package the value of the accrued benefits.

(c) *Special rule for determining unfunded vested benefits for plans terminating in distress or involuntary terminations.* A plan described in this paragraph may determine its unfunded vested benefits by using the special alternative calculation method set forth in this paragraph. A plan is described in this paragraph if it has issued notices of intent to terminate in a distress termination in accordance with section 4041(a)(2) of ERISA with a proposed termination date on or before the last day of the plan year preceding the premium payment year, or if the PBGC has instituted proceedings to terminate the plan in accordance with section

4042 of ERISA and has sought a termination date on or before the last day of the plan year preceding the premium payment year. Pursuant to this paragraph, a plan shall determine its unfunded vested benefits in accordance with the alternative calculation method in § 4006.4(c), except that—

(1) The calculation shall be based on the Form 5500, Schedule B, for the plan year which includes (in the case of a distress termination) the proposed termination date or (in the case of an involuntary termination) the termination date sought by the PBGC, or, if no Schedule B is filed for that plan year, on the Schedule B for the immediately preceding plan year;

(2) All references in § 4006.4(c) and § 4006.4(d) to the first day of the plan year preceding the premium payment year shall be deemed to refer to the first day of the plan year for which the Schedule B was filed;

(3) The value of the sum of the plan's current liability as of the first day of the plan year preceding the premium payment year for vested benefits of active and terminated vested participants not in pay status, computed in accordance with section 302(d)(7) of ERISA and section 412(l)(7) of the Code, shall be adjusted (in lieu of the adjustment required by § 4006.4(c)(1)) by multiplying that value by the sum of 1 plus the product of .07 and the number of years (rounded to the nearest hundredth of a year) between the date of the Schedule B data and (in the case of a distress termination) the proposed termination date or (in the case of an involuntary termination) the termination date sought by the PBGC; and

(4) The exponent, "Y," in the time adjustment formula of § 4006.4(c)(5) shall be deemed to equal the number of years (rounded to the nearest hundredth of a year) between the date of the Schedule B data and the last day of the plan year preceding the premium payment year.

(d) *Special determination date rule for new and newly-covered plans.* In the case of a new plan or a newly-covered plan, all references in §§ 4006.3, 4006.4, and paragraphs (a) and (b) of this section to the last day of the plan year preceding the premium payment year shall be deemed to refer to the first day of the premium payment year or, if later, the date on which the plan became effective for benefit accruals for future service, and for purposes of determining the plan's premium, the number of plan participants, and (for a single-employer plan) the amount of the plan's unfunded vested benefits and the applicability of any exemption or special rule under

paragraph (a) or (b) of this section, shall be determined as of such first day or later date.

(e) *Special determination date rule for certain mergers and spinoffs.* (1) With respect to a plan described in paragraph (e)(2) of this section, all references in §§ 4006.3, 4006.4, and this section, as applicable, to the last day of the plan year preceding the premium payment year shall be deemed to refer to the first day of the premium payment year.

(2) A plan is described in this paragraph (e)(2) if—

(i) The plan engages in a merger or spinoff that is not *de minimis* pursuant to the regulations under section 414(l) of the Code (in the case of single-employer plans) or pursuant to part 4231 of this chapter (in the case of multiemployer plans), as applicable;

(ii) The merger or spinoff is effective on the first day of the plan's premium payment year; and

(iii) The plan is the transferee plan in the case of a merger or the transferor plan in the case of a spinoff.

(f) *Special refund rule for certain short plan years.* A plan described in this paragraph (f) is entitled to a refund for a short plan year. The amount of the refund will be determined by prorating the premium for the short plan year by the number of months (treating a part of a month as a month) in the short plan year. A plan is described in this paragraph if—

(1) The plan is a new or newly-covered plan that becomes effective for premium purposes on a date other than the first day of its first plan year;

(2) The plan adopts an amendment changing its plan year, resulting in a short plan year;

(3) The plan's assets are distributed pursuant to the plan's termination, in which case the short plan year for purposes of computing the amount of the refund under this paragraph shall be deemed to end on the asset distribution date or, if later (in the case of a single-employer plan), the date 30 days prior to the date the PBGC receives the plan's post-distribution certification; or

(4) The plan is a single-employer plan and a trustee of the plan is appointed pursuant to section 4042 of ERISA, in which case the short plan year for purposes of computing the amount of the refund under this paragraph shall be deemed to end on the date of appointment.

(g) *Special rules for plans of regulated public utilities.* (1) This paragraph (g) applies to a premium payment year beginning before 1998 of a plan maintained by one or more contributing sponsors at least one of which is a regulated public utility. For this

purpose, a regulated public utility is one that, as of the beginning of the premium payment year, is described in section 7701(a)(33)(A)(i) of the Code and has not begun to collect from utility customers rates that reflect the costs incurred or projected to be incurred for additional premiums under section 4006(a)(3)(E) of ERISA pursuant to final and nonappealable determinations by all public utility commissions (or other authorities having jurisdiction over the rates and terms of service by the regulated public utility) that the costs are just and reasonable and recoverable from customers of the regulated public utility.

(2) *Limitation on variable-rate premium and required interest rate.* If every contributing sponsor of a plan described in paragraph (a) of this section is a regulated public utility, then, notwithstanding the provisions of §§ 4006.3(b) and 4006.4(b)(1),—

(i) The variable-rate premium shall not be greater than \$53 multiplied by the number of participants in the plan on the last day of the plan year preceding the premium payment year; and

(ii) If the premium payment year begins after June 1997, § 4006.4(b)(1) shall be applied as if the applicable percentage referred to therein were 80 percent.

(3) *Proportional application of limitation rules.* If a plan is described in paragraph (g)(1) of this section but also has a contributing sponsor that is not a regulated public utility and participants who are not regulated public utility participants (determined under any reasonable method consistently applied among participants and from year to year), the limitations in paragraph (g)(2) of this section shall be applied in proportion to the number of regulated public utility participants in accordance with the Premium Payment Package.

(4) *Special variable-rate premium rule for certain small regulated public utility plans paying maximum variable-rate premium.* A plan whose variable-rate premium is subject to the limitation described in paragraph (g)(2)(i) of this section is not required to determine its unfunded vested benefits under § 4006.4 if—

(i) The number of participants required to be taken into account in computing the plan's premium for the premium payment year is fewer than 500; and

(ii) The plan pays a variable-rate premium equal to \$53 multiplied by the number of participants in the plan on the last day of the plan year preceding the premium payment year.

(5) *Effect of omitted or inadequate information.* The variable-rate premium of a plan described in paragraph (g)(2) of this section may be deemed to be \$53 multiplied by the number of participants in the plan on the last day of the plan year preceding the premium payment year if—

(i) Any item or items necessary to establish the correct variable-rate premium for the plan are omitted from the plan's premium filing; or

(ii) In connection with an audit, the plan's records fail, in the PBGC's judgment, to establish that the plan's unfunded vested benefits were of the amount reported by the plan for the premium payment year.

PART 4007—PAYMENT OF PREMIUMS

Sec.

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Authority: 29 U.S.C. 1302(b)(3), 1306, 1307.

§ 4007.1 Purpose and scope.

This part, which applies to all plans that are covered by title IV of ERISA, provides procedures for paying the premiums imposed by sections 4006 and 4007 of ERISA. (See part 4006 of this chapter for premium rates and computational rules.)

§ 4007.2 Definitions.

(a) The following terms are defined in § 4001.2 of this chapter: Code, contributing sponsor, ERISA, insurer, IRS, multiemployer plan, notice of intent to terminate, PBGC, plan, plan administrator, plan year, and single-employer plan.

(b) For purposes of this part, the following terms are defined in § 4006.2 of this chapter: new plan, newly covered plan, participant, premium payment year, and short plan year.

§ 4007.3 Filing requirement and forms.

The estimation, declaration, reconciliation and payment of premiums shall be made using the forms prescribed by and in accordance with the instructions in the PBGC annual Premium Payment Package. The plan administrator of each covered plan shall

file the prescribed form or forms, and any premium payments due, no later than the applicable due date specified in § 4007.11.

§ 4007.4 Filing address.

Plan administrators shall file all forms required to be filed under this part and all payments for premiums, interest, and penalties required to be made under this part at the address specified in the Premium Payment Package.

§ 4007.5 Date of filing.

(a) Any form required to be filed under this part and any payment required to be made under this part shall be deemed to have been filed or made on the date on which it is mailed.

(b) A form or payment shall be presumed to have been mailed on the date on which it is postmarked by the United States Postal Service, or three days prior to the date on which it is received by the PBGC if it does not contain a legible United States Postal Service postmark.

§ 4007.6 Computation of time.

In computing any period of time prescribed by this part, the day of the act, event, or default from which the designated period of time begins to run is not counted. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or federal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or federal holiday. For purposes of computing late payment interest charges under § 4007.7 and late payment penalty charges under § 4007.8, a Saturday, Sunday or federal holiday referred to in the previous sentence shall be included.

§ 4007.7 Late payment interest charges.

(a) If any premium payment due under this part is not paid by the due date prescribed for such payment by § 4007.11, an interest charge will accrue on the unpaid amount at the rate imposed under section 6601(a) of the Code for the period from the date payment is due to the date payment is made. Late payment interest charges are compounded daily.

(b) When PBGC issues a bill for premium payments necessary to reconcile the premiums paid with the actual premium due, interest will be accrued on the unpaid premium until the date of the bill if paid no later than 30 days after the date of such bill. If the bill is not paid within the 30-day period following the date of such bill, interest will continue to accrue throughout such 30-day period and thereafter, until the date paid.

(c) PBGC bills for interest assessed under this section will be deemed paid when due if paid no later than 30 days after the date of such bills. Otherwise, interest will accrue in accordance with paragraph (a) of this section on the amount of the bill from the date of the bill until the date of payment.

§ 4007.8 Late payment penalty charges.

(a) *Penalty charge.* If any premium payment due under this part is not paid by the due date prescribed for such payment by § 4007.11, the PBGC will, unless a waiver is granted pursuant to paragraph (b) of this section, assess a late payment charge (not to exceed 100% of the unpaid premium) equal to the greater of—

(i) 5% per month (or fraction thereof) of the unpaid premiums; or

(ii) \$25.

(b) *Waiver of penalty charge.* The late payment penalty charge will be waived, in whole or in part—

(1) With respect to any premium payment made within 60 days after the due date prescribed for such payment in § 4007.11, if, before such due date, the PBGC grants a waiver upon a showing of substantial hardship arising from the timely payment of the premium and a showing that the premium will be paid within such 60-day period;

(2) If the PBGC grants a waiver based on any other demonstration of good cause;

(3) If the PBGC, on its own motion, waives the application of paragraph (a) of this section;

(4) With respect to any premium payment (excluding any variable-rate premium under § 4006.3(b)), if a plan that is required to make a reconciliation filing described in § 4007.11(b)(2)(iii)—

(i) Paid at least 90 percent of the flat-rate premium due for the premium payment year by the due date specified in § 4007.11(b)(2)(i); or

(ii) Paid by the due date specified in § 4007.11(b)(2)(i) an amount equal to the premium that would be due for the premium payment year, computed using the flat per capita premium rate for the premium payment year and the participant count upon which the prior year's premium was based; and

(iii) Pays 100 percent of the flat-rate premium due for the premium payment year under § 4006.3 on or before the due date for the reconciliation filing under § 4007.11(b)(2)(iii); or

(5) With respect to any PBGC bills for the premium payment necessary to reconcile the premium paid with the actual premium due, if such bills are paid no later than 30 days after the date of such bills.

§ 4007.9 Coverage for guaranteed basic benefits.

(a) The failure by a plan administrator to pay the premiums due under this part will not result in that plan's loss of coverage for basic benefits guaranteed under sections 4022(a) or 4022A(a) of ERISA.

(b) The payment of the premiums imposed by this part will not result in coverage for basic benefits guaranteed under sections 4022(a) or 4022A(a) of ERISA for plans not covered under title IV of ERISA.

§ 4007.10 Recordkeeping requirements; PBGC audits.

(a) *Retention of records to support premium payments.* All plan records, including calculations and other data prepared by an enrolled actuary or, for a plan described in section 412(i) of the Code, by the insurer from which the insurance contracts are purchased, that are necessary to support or to validate premium payments under this part shall be retained by the plan administrator for a period of six years after the premium due date. Records that must be retained pursuant to this paragraph include, but are not limited to, records that establish the number of plan participants and that reconcile the calculation of the plan's unfunded vested benefits with the actuarial valuation upon which the calculation was based. Records retained pursuant to this paragraph shall be made available to the PBGC upon request for inspection and photocopying.

(b) *PBGC audit.* Premium payments under this part are subject to audit by the PBGC. If, upon audit, the PBGC determines that a premium due under this part was underpaid, the late payment interest charges under § 4007.7 and the late payment penalty charges under § 4007.8 shall apply to the unpaid balance from the premium due date to the date of payment. In determining the premium due, if, in the judgment of the PBGC, the plan's records fail to establish the number of plan participants with respect to whom premiums were required for any premium payment year, the PBGC may rely on data it obtains from other sources (including the IRS and the Department of Labor) for presumptively establishing the number of plan participants for premium computation purposes.

§ 4007.11 Due dates.

(a) *In general.* The premium filing due date for small plans is prescribed in paragraph (a)(1) of this section and the premium filing due dates for large plans are prescribed in paragraph (a)(2) of this section.

(1) *Plans with fewer than 500 participants.* If the plan has fewer than 500 participants, as determined under paragraph (b) of this section, the due date is the fifteenth day of the eighth full calendar month following the month in which the plan year began.

(2) *Plans with 500 or more participants.* If the plan has 500 or more participants, as determined under paragraph (b) of this section—

(i) The due date for the flat-rate premium required by § 4006.3(a) is the last day of the second full calendar month following the close of the plan year preceding the premium payment year; and

(ii) The due date for the variable-rate premium required by § 4006.3(b) for single-employer plans is the fifteenth day of the eighth full calendar month following the month in which the premium payment year begins.

(iii) If the number of plan participants on the last day of the plan year preceding the premium payment year is not known by the date specified in paragraph (a)(2)(i) of this section, a reconciliation filing (on the form prescribed by this part) and any required premium payment or request for refund shall be made by the date specified in paragraph (a)(2)(ii) of this section.

(3) *Plans that change plan years.* For any plan that changes its plan year, the premium form or forms and payment or payments for the short plan year shall be filed by the applicable due date or dates specified in paragraphs (a)(1), (a)(2), or (c) of this section. For the plan year that follows a short plan year, the due date or dates for the premium forms and payments shall be, with respect to each such due date, the later of—

(i) The applicable due date or dates specified in paragraph (a)(1) or (a)(2) of this section; or

(ii) 30 days after the date on which the amendment changing the plan year was adopted.

(b) *Participant count rule for purposes of determining filing due dates.* For purposes of determining under paragraph (a) of this section whether a plan has fewer than 500 participants, or 500 or more participants, the plan administrator shall use—

(1) For a single-employer plan, the number of participants for whom premiums were payable for the plan year preceding the premium payment year, or

(2) For a multiemployer plan,—

(i) If the premium payment year is the plan's second plan year, the first day of the first plan year; or

(ii) If the premium payment year is the plan's third or a subsequent plan

year, the last day of the second preceding plan year.

(c) *Due dates for new and newly covered plans.* Notwithstanding paragraph (a) of this section, the premium form and all premium payments due for the first plan year of coverage of any new plan or newly covered plan shall be filed on or before the latest of—

(1) The fifteenth day of the eighth full calendar month following the month in which the plan year began or, if later, in which the plan became effective for benefit accruals for future service;

(2) 90 days after the date of the plan's adoption; or

(3) 90 days after the date on which the plan became covered by title IV of ERISA.

(d) *Continuing obligation to file.* The obligation to file the form or forms prescribed by this part and to pay any premiums due continues through the plan year in which all plan assets are distributed pursuant to a plan's termination or in which a trustee is appointed under section 4042 of ERISA, whichever occurs earlier. The entire premium computed under this part is due, irrespective of whether the plan is entitled to a refund for a short plan year pursuant to § 4006.5(f).

(e) *Improper filings.* Any form not filed in accordance with this part, not filed in accordance with the instructions in the Premium Payment Package, not accompanied by the required premium payment, or otherwise incomplete, may, in the discretion of the PBGC, be returned with any payment accompanying the form to the plan administrator, and such payment shall be treated as not having been made.

§ 4007.12 Liability for single-employer premiums.

(a) The designation under this part of the plan administrator as the person required to file the applicable forms and to submit the premium payment for a single-employer plan is a procedural requirement only and does not alter the liability for premium payments imposed by section 4007 of ERISA. Pursuant to section 4007(e) of ERISA, both the plan administrator and the contributing sponsor of a single-employer plan are liable for premium payments, and, if the contributing sponsor is a member of a controlled group, each member of the controlled group is jointly and severally liable for the required premiums. Any entity that is liable for required premiums is also liable for any interest and penalties assessed with respect to such premiums.

(b) For any plan year in which a plan administrator issues (pursuant to

section 4041(a)(2) of ERISA) notices of intent to terminate in a distress termination under section 4041(c) of ERISA or the PBGC initiates a termination proceeding under section 4042 of ERISA, and for each plan year thereafter, the obligation to pay the premiums (and any interest or penalties thereon) imposed by ERISA and this part for a single-employer plan shall be an obligation solely of the contributing sponsor and the members of its controlled group, if any.

(Approved by the Office of Management and Budget under control number 1212-0009)

PART 4010—ANNUAL FINANCIAL AND ACTUARIAL INFORMATION REPORTING

Sec.

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Authority: 29 U.S.C. 1302(b)(3); 29 U.S.C. 1310.

§ 4010.1 Purpose and scope.

This part prescribes the requirements for annual filings with the PBGC under section 4010 of ERISA. This part applies to filers for any information year ending on or after December 31, 1995.

§ 4010.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: benefit liabilities, Code, contributing sponsor, controlled group, ERISA, fair market value, IRS, PBGC, person, plan, and plan year.

In addition, for purposes of this part:

Exempt entity means a person who does not have to file information and about whom information does not have to be filed, as described in § 4010.4(d) of this part.

Exempt plan means a plan about which actuarial information does not have to be filed, as described in § 4010.8(c) of this part.

Fair market value of the plan's assets means the fair market value of the plan's assets at the end of the plan year ending within the filer's information year (determined without regard to any contributions receivable).

Filer means a person who is required to file reports, as described in § 4010.4 of this part.

Fiscal year means, with respect to a person, the person's annual accounting period or, if the person has not adopted a closing date, the calendar year.

Information year means the year determined under § 4010.5 of this part.

§ 4010.3 Filing requirement.

(a) *In general.* Except as provided in § 4010.8(c) (relating to exempt plans) and except where waivers have been granted under § 4010.11 of this part, each filer shall submit to the PBGC annually, on or before the due date specified in § 4010.10, all information specified in § 4010.6(a) with respect to all members of a controlled group and all plans maintained by members of a controlled group.

(b) *Single controlled group submission.* Any filer or other person may submit the information specified in § 4010.6(a) on behalf of one or more members of a filer's controlled group. If a person other than a filer submits the information, the submission must also include a written power of attorney signed by a filer authorizing the person to act on behalf of one or more filers.

§ 4010.4 Filers.

(a) *General.* A contributing sponsor of a plan and each member of the contributing sponsor's controlled group is a filer with respect to an information year (unless exempted under paragraph (d) of this section) if—

(1) the aggregate unfunded vested benefits of all plans (including any exempt plans) maintained by the members of the contributing sponsor's controlled group exceed \$50 million (disregarding those plans with no unfunded vested benefits);

(2) any member of a controlled group fails to make a required installment or other required payment to a plan and, as a result, the conditions for imposition of a lien described in section 302(f)(1) (A) and (B) of ERISA or section 412(n)(1) (A) and (B) of the Code have been met during the information year, and the required installment or other required payment is not made within ten days after its due date; or

(3) any plan maintained by a member of a controlled group has been granted one or more minimum funding waivers under section 303 of ERISA or section 412(d) of the Code totaling in excess of \$1 million that, as of the end of the plan year ending within the information year, are still outstanding (determined in accordance with paragraph (c) of this section).

(b) *Unfunded vested benefits—(1) General.* Except as provided in paragraph (b)(2) of this section, for purposes of the \$50 million test in paragraph (a)(1) of this section, the value of a plan's unfunded vested benefits is determined at the end of the plan year ending within the filer's information year in accordance with section 4006(a)(3)(E)(iii) of ERISA and § 4006.4 of this chapter (without reference to the exemptions and special rules under § 4006.5).

(2) *Optional assumptions.* Prior to the first information year in which the mortality assumptions prescribed under section 302(d)(7)(C)(ii)(II) of ERISA apply to all of the plans maintained by a controlled group, the value of unfunded vested benefits for a plan may be determined by substituting for the respective assumptions used under paragraph (b)(1) of this section (but not using the alternative calculation method under § 4006.4(c) of this chapter) all of the following assumptions:

(i) an interest rate equal to 100% of the annual yield for 30-year Treasury constant maturities (as reported in Federal Reserve Statistical Release G.13 and H.15) for the last full calendar month in the plan year;

(ii) the fair market value of the plan's assets; and

(iii) the mortality tables described in section 302(d)(7)(C)(ii)(I) of ERISA or section 412(l)(7)(C)(ii)(I) of the Code; provided that for any plan year ending on or after the effective date of an amendment changing the mortality assumptions used to value benefits to be paid as annuities in trustee plans under part 4044 of this chapter, those amended mortality assumptions shall be used.

(c) *Outstanding waiver.* Before the end of the statutory amortization period, a minimum funding waiver for a plan is considered outstanding unless—

(1) a credit balance exists in the funding standard account (described in section 302(b) of ERISA and section 412(b) of the Code) that is no less than the outstanding balance of all waivers for the plan;

(2) a waiver condition or contractual obligation requires that a credit balance as described in paragraph (c)(1) continue to be maintained as of the end of each plan year during the remainder of the statutory amortization period for the waiver; and

(3) no portion of any credit balance described in paragraph (c)(1) is used to make any required installment under section 302(e) of ERISA or section 412(m) of the Code for any plan year during the remainder of the statutory amortization period.

(d) *Exempt entities.* A person is an exempt entity if the person—

(1) is not a contributing sponsor of a plan (other than an exempt plan);

(2) has revenue for its fiscal year ending within the controlled group's information year that is five percent or less of the controlled group's revenue for the fiscal year(s) ending within the information year;

(3) has annual operating income for the fiscal year ending within the controlled group's information year that is no more than the greater of—

(i) five percent of the controlled group's annual operating income for the fiscal year(s) ending within the information year, or

(ii) \$5 million; and

(4) has net assets at the end of the fiscal year ending within the controlled group's information year that is no more than the greater of—

(i) five percent of the controlled group's net assets at the end of the fiscal year(s) ending within the information year, or

(ii) \$5 million.

§ 4010.5 Information year.

(a) *Determinations based on information year.* An information year is used under this part to determine which persons are filers (§ 4010.4), what information a filer must submit (§§ 4010.6–4010.9), whether a plan is an exempt plan (§ 4010.8(c)), and the due date for submitting the information (§ 4010.10(a)).

(b) *General.* Except as provided in paragraph (c) of this section, a person's information year shall be the fiscal year of the person. A filer is not required to change its fiscal year or the plan year of a plan, to report financial information for any accounting period other than an existing fiscal year, or to report actuarial information for any plan year other than an existing plan year.

(c) *Controlled group members with different fiscal years—(1) Use of calendar year.* If members of a controlled group (disregarding any exempt entity) report financial information on the basis of different fiscal years, the information year shall be the calendar year.

(2) *Example.* Filers A and B are members of the same controlled group. Filer A has a July 1 fiscal year, and filer B has an October 1 fiscal year. The information year is the calendar year. Filer A's financial information with respect to its fiscal year ending June 30, 1996, and filer B's financial information with respect to its fiscal year ending September 30, 1996, must be submitted to the PBGC following the end of the 1996 calendar year (the calendar year in

which those fiscal years end). If filer B were an exempt entity, the information year would be filer A's July 1 fiscal year.

§ 4010.6 Information to be filed.

(a) *General.* A filer must submit the information specified in § 4010.7 (identifying information), § 4010.8 (plan actuarial information) and § 4010.9 (financial information) of this part with respect to each member of the filer's controlled group and each plan maintained by any member of the controlled group.

(b) *Additional information.* By written notification, the PBGC may require any filer to submit additional actuarial or financial information that is necessary to determine plan assets and liabilities for any period through the end of the filer's information year, or the financial status of a filer for any period through the end of the filer's information year. The information must be submitted within ten days after the date of the written notification or by a different time specified therein.

(c) *Previous submissions.* If any required information has been previously submitted to the PBGC, a filer may incorporate this information into the required submission by referring to the previous submission.

§ 4010.7 Identifying information.

(a) *Filers.* Each filer is required to provide the following identifying information with respect to each member of the controlled group (excluding exempt entities)—

(1) the name, address, and telephone number of each member of the controlled group and the legal relationships of each (for example, parent, subsidiary); and

(2) the nine-digit Employer Identification Number (EIN) assigned by the IRS to each member (or if there is no EIN for a member, an explanation).

(b) *Plans.* Each filer is required to provide the following identifying information with respect to each plan (including exempt plans) maintained by any member of the controlled group (including exempt entities)—

(1) the name of each plan;

(2) the EIN and the three-digit Plan Number (PN) assigned by the contributing sponsor to each plan (or if there is no EIN or PN for a plan, an explanation); and

(3) if the EIN or PN of a plan has changed since the beginning of the filer's information year, the previous EIN or PN and an explanation.

§ 4010.8 Plan actuarial information.

(a) *Required information.* For each plan (other than an exempt plan)

maintained by any member of the filer's controlled group, each filer is required to provide the following actuarial information—

(1) the fair market value of the plan's assets;

(2) the value of the plan's benefit liabilities (determined in accordance with paragraph (d) of this section) at the end of the plan year ending within the filer's information year;

(3) a copy of the actuarial valuation report for the plan year ending within the filer's information year that contains or is supplemented by the following information—

(i) each amortization base and related amortization charge or credit to the funding standard account (as defined in section 302 (b) of ERISA or section 412 (b) of the Code) for that plan year (excluding the amount considered contributed to the plan as described in section 302(b)(3)(A) of ERISA or section 412(b)(3)(A) of the Code),

(ii) the itemized development of the additional funding charge payable for that plan year pursuant to section 412(l) of the Code,

(iii) the minimum funding contribution and the maximum deductible contribution for that plan year,

(iv) the actuarial assumptions and methods used for that plan year for purposes of section 302(b) and (d) of ERISA or section 412(b) and (l) of the Code (and any change in those assumptions and methods since the previous valuation and justifications for any change), and

(v) a summary of the principal eligibility and benefit provisions on which the valuation of the plan was based (and any changes to those provisions since the previous valuation), along with descriptions of any benefits not included in the valuation, any significant events that occurred during that plan year, and the plan's early retirement factors; and

(4) a written certification by an enrolled actuary that, to the best of his or her knowledge and belief, the actuarial information submitted is true, correct, and complete and conforms to all applicable laws and regulations, provided that this certification may be qualified in writing, but only to the extent the qualification(s) are permitted under 26 CFR § 301.6059-1(d).

(b) *Alternative compliance for plan actuarial information.* If any of the information specified in paragraph (a)(3) of this section is not available by the date specified in § 4010.10(a), a filer may satisfy the requirement to provide such information by—

(1) including a statement, with the material that is submitted to the PBGC, that the filer will file the unavailable information by the alternative due date specified in § 4010.10(b) of this part, and

(2) filing such information (along with a certification by an enrolled actuary under paragraph (a)(4) of this section) with the PBGC by that alternative due date.

(c) *Exempt plan.* The actuarial information specified in this section is not required with respect to a plan that, as of the end of the plan year ending within the filer's information year, has fewer than 500 participants or has benefit liabilities (determined in accordance with paragraph (d) of this section) equal to or less than the fair market value of the plan's assets, provided that the plan—

(1) has received, on or within ten days after their due dates, all required installments or other payments required to be made during the information year under section 302 of ERISA or section 412 of the Code; and

(2) has no minimum funding waivers outstanding (as described in § 4010.4(c) of this part) as of the end of the plan year ending within the information year.

(d) *Value of benefit liabilities.* The value of a plan's benefit liabilities at the end of a plan year shall be determined using the plan census data described in paragraph (d)(1) of this section and the actuarial assumptions and methods described in paragraph (d)(2) or, where applicable, (d)(3) of this section.

(1) *Census data.*

(i) *Census data period.* Plan census data shall be determined (for all plans for any information year) either as of the end of the plan year or as of the beginning of the next plan year.

(ii) *Projected census data.* If actual plan census data is not available, a plan may use a projection of plan census data from a date within the plan year. The projection must be consistent with projections used to measure pension obligations of the plan for financial statement purposes and must give a result appropriate for the end of the plan year for these obligations. For example, adjustments to the projection process will be required where there has been a significant event (such as a plan amendment or a plant shutdown) that has not been reflected in the projection data.

(2) *Actuarial assumptions and methods.* The value of benefit liabilities shall be determined using the assumptions and methods applicable to the valuation of benefits to be paid as annuities in trustee plans terminating at the end of the plan year (as prescribed

in §§ 4044.51 through 4044.57 of this chapter).

(3) *Special actuarial assumptions for exempt plan determination.* Solely for purposes of determining whether a plan is an exempt plan, the value of benefit liabilities may be determined by substituting for the retirement age assumptions in paragraph (d)(2) the retirement age assumptions used by the plan for that plan year for purposes of section 302(d) of ERISA or section 412(l) of the Code.

§ 4010.9 Financial information.

(a) *General.* Except as provided in this section, each filer is required to provide the following financial information for each controlled group member (other than an exempt entity)—

(1) audited financial statements for the fiscal year ending within the information year (including balance sheets, income statements, cash flow statements, and notes to the financial statements);

(2) if audited financial statements are not available by the date specified in § 4010.10(a), unaudited financial statements for the fiscal year ending within the information year; or

(3) if neither audited nor unaudited financial statements are available by the date specified in § 4010.10(a), copies of federal tax returns for the tax year ending within the information year.

(b) *Consolidated financial statements.* If the financial information of a controlled group member is combined with the information of other group members in consolidated financial statements, a filer may provide the following financial information in lieu of the information required in paragraph (a) of this section—

(1) the audited consolidated financial statements for the filer's information year or, if the audited consolidated financial statements are not available by the date specified in § 4010.10(a), unaudited consolidated financial statements for the fiscal year ending within the information year; and

(2) for each controlled group member included in the consolidated financial statements that is a contributing sponsor of a plan (other than an exempt plan), the contributing sponsor's revenues and operating income for the information year, and net assets at the end of the information year.

(c) *Subsequent submissions.* If unaudited financial statements are submitted as provided in paragraph (a)(2) or (b)(1) of this section, audited financial statements must thereafter be filed within 15 days after they are prepared. If federal tax returns are submitted as provided in paragraph

(a)(3) of this section, audited and unaudited financial statements must thereafter be filed within 15 days after they are prepared.

(d) *Submission of public information.* If any of the financial information required by paragraphs (a) through (c) of this section is publicly available, the filer, in lieu of submitting such information to the PBGC, may include a statement with the other information that is submitted to the PBGC indicating when such financial information was made available to the public and where the PBGC may obtain it. For example, if the controlled group member has filed audited financial statements with the Securities and Exchange Commission, it need not file the financial statements with PBGC but instead can identify the SEC filing as part of its submission under this part.

(e) *Inclusion of information about non-filers and exempt entities.*

Consolidated financial statements provided pursuant to paragraph (b)(1) of this section may include financial information of persons who are not controlled group members (e.g., joint ventures) or are exempt entities.

§ 4010.10 Due date and filing with the PBGC.

(a) *Due date.* Except as permitted under paragraph (b) of this section, a filer shall file the information required under this part with the PBGC on or before the 105th day after the close of the filer's information year.

(b) *Alternative due date.* A filer that includes the statement specified in § 4010.8(b)(1) with its submission to the PBGC by the date specified in paragraph (a) of this section must submit the actuarial information specified in § 4010.8(b)(2) within 15 days after the deadline for filing the plan's annual report (Form 5500 series) for the plan year ending within the filer's information year (see § 2520.104a-5(a)(2) of this title).

(c) *How to file.* Requests and information may be delivered by mail, by delivery service, by hand, or by any other method acceptable to the PBGC, to: Corporate Finance and Negotiations Department, Pension Benefit Guaranty Corporation, 1200 K Street, N.W., Washington, DC 20005-4026.

(d) *Date when information filed.* Information filed under this part is considered filed—

(1) on the date of the United States postmark stamped on the cover in which the information is mailed, if—

(i) the postmark was made by the United States Postal Service; and

(ii) the document was mailed postage prepaid, properly addressed to the PBGC; or

(2) if the conditions stated in paragraph (d)(1) of this section are not met, on the date it is received by the PBGC. Information received on a weekend or Federal holiday or after 5:00 p.m. on a weekday is considered filed on the next regular business day.

(e) *Computation of time.* In computing any period of time under this part, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a weekend or Federal holiday, in which event the period runs until the end of the next day that is not a weekend or Federal holiday.

§ 4010.11 Waivers and extensions.

The PBGC may waive the requirement to submit information with respect to one or more filers or plans or may extend the applicable due date or dates specified in § 4010.10 of this part. The PBGC will exercise this discretion in appropriate cases where it finds convincing evidence supporting a waiver or extension; any waiver or extension may be subject to conditions. A request for a waiver or extension must be filed in writing with the PBGC at the address provided in § 4010.10(c) no later than 15 days before the applicable date specified in § 4010.10 of this part, and must state the facts and circumstances on which the request is based.

§ 4010.12 Confidentiality of information submitted.

In accordance with § 4901.21(a)(3) of this chapter and section 4010(c) of ERISA, any information or documentary material that is not publicly available and is submitted to the PBGC pursuant to this part shall not be made public, except as may be relevant to any administrative or judicial action or proceeding or for disclosures to either body of Congress or to any duly authorized committee or subcommittee of the Congress.

§ 4010.13 Penalties.

If all of the information required under this part is not provided within the specified time limit, the PBGC may assess a separate penalty under section 4071 of ERISA against the filer and each member of the filer's controlled group (other than an exempt entity) of up to \$1,000 a day for each day that the failure continues. The PBGC may also pursue other equitable or legal remedies available to it under the law.

§ 4010.14 OMB control number.

The collection of information requirements contained in this part have been approved by the Office of Management and Budget under OMB Control Number 1212-0049.

PART 4011—DISCLOSURE TO PARTICIPANTS

Sec.

- 4011.1 Purpose and scope.
- 4011.2 Definitions.
- 4011.3 Notice requirement.
- 4011.4 Small plan rules.
- 4011.5 Exemption for new and newly-covered plans.
- 4011.6 Mergers, consolidations, and spinoffs.
- 4011.7 Persons entitled to receive notice.
- 4011.8 Time of notice.
- 4011.9 Manner of issuance of notice.
- 4011.10 Form of notice.
- 4011.11 OMB control number.

Appendix A to Part 4011—Model Participant Notice. Appendix B to Part 4011—Table of maximum Guaranteed Benefits.

Authority: 29 U.S.C. 1302(b)(3), 1311.

§ 4011.1 Purpose and scope.

This part prescribes rules and procedures for complying with the requirements of section 4011 of ERISA. This part applies for any plan year beginning on or after January 1, 1995, with respect to any single-employer plan that is covered by section 4021 of ERISA.

§ 4011.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: contributing sponsor, employer, ERISA, normal retirement age, PBGC, person, plan, plan administrator, plan year, and single-employer plan.

In addition, for purposes of this part: *Participant* has the meaning in § 4041.2 of this chapter.

Participant Notice means the notice required pursuant to section 4011 of ERISA and this part.

§ 4011.3 Notice requirement.

(a) *General.* Except as otherwise provided in this part, the plan administrator of a plan must provide a Participant Notice for a plan year if a variable rate premium is payable for the plan under section 4006(a)(3)(E) of ERISA and part 4006 of this chapter for that plan year, unless, for that plan year or for the prior plan year, the plan meets the Deficit Reduction Contribution ("DRC") Exception Test in paragraph (b) of this section. The DRC Exception Test may be applied using the Small Plan DRC Exception Test rules in § 4011.4(b), where applicable.

(b) *DRC Exception Test*—(1) *Basic rule.* A plan meets the DRC Exception

Test for a plan year if it is exempt from the requirements of section 302(d) of ERISA for that plan year by reason of section 302(d)(9), without regard to the small plan exemption in section 302(d)(6)(A).

(2) *1994 plan year.* A plan satisfies the DRC Exception Test for the 1994 plan year if, for any two of the plan years beginning in 1992, 1993, and 1994 (whether or not consecutive), the plan satisfies any requirement of section 302(d)(9)(D)(i) of ERISA.

(c) *Penalties for non-compliance.* If a plan administrator fails to provide a Participant Notice within the specified time limit or omits material information from a Participant Notice, the PBGC may assess a penalty under section 4071 of ERISA of up to \$1,000 a day for each day that the failure continues.

§ 4011.4 Small plan rules.

(a) *1995 plan year exemption.* A plan that is exempt from the requirements of section 302(d) of ERISA for the 1994 or 1995 plan year by reason of section 302(d)(6)(A) is exempt from the Participant Notice requirement for the 1995 plan year.

(b) *Small Plan DRC Exception Test.* In determining whether the Participant Notice requirement applies for a plan year beginning after 1995, the plan administrator of a plan that is exempt from the requirements of section 302(d) of ERISA by reason of section 302(d)(6)(A) for the plan year being tested may use any one or more of the following rules in determining whether the plan meets the DRC Exception Test for that plan year:

(1) *Use of Schedule B data.* For any plan year for which the plan is exempt from the requirements of section 302(d) of ERISA by reason of section 302(d)(6)(A), provided both of the following adjustments are made—

(i) The market value of the plan's assets as of the beginning of the plan year (as required to be reported on Form 5500, Schedule B) may be substituted for the actuarial value of the plan's assets as of the valuation date; and

(ii) The plan's current liability for all participants' total benefits as of the beginning of the plan year (as required to be reported on Form 5500, Schedule B) may be substituted for the plan's current liability as of the valuation date.

(2) *Pre-1995 plan year 90 percent test.* A plan that is exempt from the requirements of section 302(d) of ERISA for a pre-1995 plan year by reason of section 302(d)(6)(A) satisfies the requirements of section 302(d)(9)(D)(i) for that pre-1995 plan year if the ratio of its assets to its current liability for that plan year is at least 90 percent. For

this purpose, the plan's assets are valued without subtracting any credit balance under section 302(b) of ERISA, and its current liability is determined using the highest interest rate allowable for the plan year under section 302(d)(7)(C).

(3) *Interest rate adjustment.* If the interest rate used to calculate current liability for a plan year is less than the highest rate allowable for the plan year under section 302(d)(7)(C) of ERISA, the current liability may be reduced by one percent for each tenth of a percentage point by which the highest rate exceeds the rate so used.

§ 4011.5 Exemption for new and newly-covered plans.

A plan (other than a plan resulting from a consolidation or spinoff) is exempt from the Participant Notice requirement for the first plan year for which the plan must pay premiums under parts 4006 and 4007 of this chapter.

§ 4011.6 Mergers, consolidations, and spinoffs.

In the case of a plan involved in a merger, consolidation, or spinoff transaction that becomes effective during a plan year, the plan administrator shall apply the requirements of section 4011 of ERISA and of this part for that plan year in a reasonable manner to ensure that the Participant Notice serves its statutory purpose.

§ 4011.7 Persons entitled to receive notice.

The plan administrator must provide the Participant Notice to each person who is a participant, a beneficiary of a deceased participant, an alternate payee under an applicable qualified domestic relations order (as defined in section 206(d)(3) of ERISA), or an employee organization that represents any group of participants for purposes of collective bargaining. To determine who is a person that must receive the Participant Notice for a plan year, the plan administrator may select any date during the period beginning with the last day of the previous plan year and ending with the day on which the Participant Notice for the plan year is due, provided that a change in the date from one plan year to the next does not exclude a substantial number of participants and beneficiaries.

§ 4011.8 Time of notice.

The plan administrator must issue the Participant Notice for a plan year no later than two months after the deadline (including extensions) for filing the annual report for the previous plan year (see § 2520.104a-5(a)(2) of this title).

The plan administrator may change the date of issuance from one plan year to the next, provided that the effect of any change is not to avoid disclosing a minimum funding waiver under § 4011.10(b)(5) or a missed contribution under § 4011.10(b)(6). When the President of the United States declares that, under the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121, 5122(2), 5141(b)), a major disaster exists, the PBGC may extend the due date for providing the Participant Notice by up to 180 days.

§ 4011.9 Manner of issuance of notice.

The Participant Notice shall be issued by using measures reasonably calculated to ensure actual receipt by the persons entitled to receive it. It may be issued together with another document, such as the summary annual report required under section 104(b)(3) of ERISA for the prior plan year, but must be in a separate document.

§ 4011.10 Form of notice.

(a) *General.* The Participant Notice (and any additional information under paragraph (d) of this section) shall be readable and written in a manner calculated to be understood by the average plan participant and not to mislead recipients. The Model Participant Notice in Appendix A to this part (when properly completed) is an example of a Participant Notice meeting the requirements of this section.

(b) *Content.* The Participant Notice for a plan year shall include—

(1) Identifying information (the name of the plan and the contributing sponsor, the employer identification number of the contributing sponsor, the plan number, the date (at least the month and year) on which the Participant Notice is issued, and the name, title, address and telephone number of the person(s) who can provide information about the plan's funding);

(2) A statement to the effect that the Participant Notice is required by law;

(3) The Notice Funding Percentage for the plan year, determined in accordance with paragraph (c) of this section, and the date as of which the Notice Funding Percentage is determined;

(4) A statement to the effect that—

(i) To pay pension benefits, the employer is required to contribute money to the plan over a period of years;

(ii) A plan's funding percentage does not take into consideration the financial strength of the employer; and

(iii) The employer, by law, must pay for all pension benefits, but benefits may be at risk if the employer faces a

severe financial crisis or is in bankruptcy;

(5) If, for any of the five plan years immediately preceding the plan year, the plan has been granted a minimum funding waiver under section 303 of ERISA that has not (as of the end of the prior plan year) been fully repaid, a statement identifying each such plan year and an explanation of a minimum funding waiver;

(6) For any payment subject to the requirements of this paragraph, a statement identifying the due date for the payment and noting that the payment has or has not been made and (if made) the date of the payment. Once participants have been notified (under this part or Title I of ERISA) of a missed contribution that is subject to the requirements of this paragraph, the delinquency need not be reported in a Participant Notice for a subsequent plan year if the missed contribution has been paid in full by the time the subsequent Participant Notice is issued. The payments subject to the requirements of this paragraph are—

(i) Any minimum funding payment necessary to satisfy the minimum funding standard under section 302(a) of ERISA for any plan year beginning on or after January 1, 1994, if not paid by the earlier of the due date for that payment (the latest date allowed under section 302(c)(10)) or the date of issuance of the Participant Notice; and

(ii) An installment or other payment required by section 302 of ERISA for a plan year beginning on or after January 1, 1995, that was not paid by the 60th day after the due date for that payment;

(7) A statement to the effect that if a plan terminates before all pension benefits are fully funded, the PBGC pays most persons all pension benefits, but some persons may lose certain benefits that are not guaranteed;

(8) A summary of plan benefits guaranteed by the PBGC, with an explanation of the limitations on such guarantee; and

(9) A statement that further information about the PBGC's guarantee may be obtained by requesting a free copy of the booklet "Your Guaranteed Pension" from Consumer Information Center, Dept. YGP, Pueblo, Colorado 81009. The Participant Notice may include a statement that the booklet may be obtained through electronic access via the World Wide Web from the PBGC Homepage at <http://www.pbgc.gov/ygp.htm>.

(c) *Notice Funding Percentage—*

(1) *General Rule.* The Notice Funding Percentage that must be included in the Participant Notice for a plan year is the "funded current liability percentage" (as

that term is defined in section 302(d)(9)(C) of ERISA) for that plan year or the prior plan year.

(2) *Small plans.* A plan that is exempt from the requirements of section 302(d) of ERISA for a plan year by reason of section 302(d)(6)(A) may determine its funded current liability percentage for that plan year using the Small Plan DRC Exception Test rules in § 4011.4(b).

(d) *Additional information.* The plan administrator may include with the Participant Notice any information not described in paragraph (b) of this section only if it is in a separate document.

(e) *Foreign languages.* In the case of a plan that (as of the date selected under § 4011.7) covers the numbers or percentages specified in § 2520.104b-10(e) of this title of participants literate only in the same non-English language, the plan administrator shall provide those participants either—

(1) An English-language Participant Notice that prominently displays a legend, in their common non-English language, offering them assistance in that language, and clearly setting forth any procedures participants must follow to obtain such assistance, or

(2) A Participant Notice in that language.

§ 4011.11 OMB control number.

The collections of information contained in this part have been approved by the Office of Management and Budget under OMB control number 1212-0050.

Appendix A to Part 4011—Model Participant Notice

The following is an example of a Participant Notice that satisfies the requirements of § 4011.10 when the required information is filled in (subject to §§ 4011.10(d)–(e), where applicable).

Notice to Participants of [Plan Name]

The law requires that you receive information on the funding level of your defined benefit pension plan and the benefits guaranteed by the Pension Benefit Guaranty Corporation (PBGC), a federal insurance agency. YOUR PLAN'S FUNDING

As of [DATE], your plan had [INSERT NOTICE FUNDING PERCENTAGE (DETERMINED IN ACCORDANCE WITH § 4011.10(c))] percent of the money needed to pay benefits promised to employees and retirees.

To pay pension benefits, your employer is required to contribute money to the pension plan over a period of years. A plan's funding percentage does not take into consideration the financial strength of the employer. Your employer, by law, must pay for all pension benefits, but your benefits may be at risk if your employer faces a severe financial crisis or is in bankruptcy.

[INCLUDE THE FOLLOWING PARAGRAPH ONLY IF, FOR ANY OF THE PREVIOUS FIVE PLAN YEARS, THE PLAN HAS BEEN GRANTED AND HAS NOT FULLY REPAID A FUNDING WAIVER.]

Your plan received a funding waiver for [LIST ANY OF THE FIVE PREVIOUS PLAN YEARS FOR WHICH A FUNDING WAIVER WAS GRANTED AND HAS NOT BEEN FULLY REPAID]. If a company is experiencing temporary financial hardship, the Internal Revenue Service may grant a funding waiver that permits the company to delay contributions that fund the pension plan.

[INCLUDE THE FOLLOWING WITH RESPECT TO ANY UNPAID OR LATE PAYMENT THAT MUST BE DISCLOSED UNDER § 4011.10(b)(6):]

Your plan was required to receive a payment from the employer on [LIST APPLICABLE DUE DATE(S)]. That payment [has not been made] [was made on [LIST APPLICABLE PAYMENT DATE(S)]].

PBGC GUARANTEES

When a pension plan ends without enough money to pay all benefits, the PBGC steps in to pay pension benefits. The PBGC pays most people all pension benefits, but some people may lose certain benefits that are not guaranteed.

The PBGC pays pension benefits up to certain maximum limits.

- The maximum guaranteed benefit is [INSERT FROM TABLE IN APPENDIX B] per month or [INSERT FROM TABLE IN APPENDIX B] per year for a 65-year-old person in a plan that terminates in [INSERT APPLICABLE YEAR].

- The maximum benefit may be reduced for an individual who is younger than age 65. For example, it is [INSERT FROM TABLE IN APPENDIX B] per month or [INSERT FROM TABLE IN APPENDIX B] per year for an individual who starts receiving benefits at age 55. [IN LIEU OF AGE 55, YOU MAY ADD OR SUBSTITUTE ANY AGE(S) RELEVANT UNDER THE PLAN. FOR EXAMPLE, YOU MAY ADD OR SUBSTITUTE THE MAXIMUM BENEFIT FOR AGES 62 OR 60 FROM THE TABLE IN APPENDIX B. IF THE PLAN PROVIDES FOR NORMAL RETIREMENT BEFORE AGE 65, YOU MUST INCLUDE THE NORMAL RETIREMENT AGE.]

[IF THE PLAN DOES NOT PROVIDE FOR COMMENCEMENT OF BENEFITS BEFORE AGE 65, YOU MAY OMIT THIS PARAGRAPH.]

- The maximum benefit will also be reduced when a benefit is provided for a survivor.

The PBGC does not guarantee certain types of benefits.

[INCLUDE THE FOLLOWING GUARANTEE LIMITS THAT APPLY TO THE BENEFITS AVAILABLE UNDER YOUR PLAN.]

- The PBGC does not guarantee benefits for which you do not have a vested right when a plan ends, usually because you have not worked enough years for the company.
- The PBGC does not guarantee benefits for which you have not met all age, service, or other requirements at the time the plan ends.
- Benefit increases and new benefits that have been in place for less than a year are

not guaranteed. Those that have been in place for less than 5 years are only partly guaranteed.

- Early retirement payments that are greater than payments at normal retirement age may not be guaranteed. For example, a supplemental benefit that stops when you become eligible for Social Security may not be guaranteed.

- Benefits other than pension benefits, such as health insurance, life insurance, death benefits, vacation pay, or severance pay, are not guaranteed.

- The PBGC does not pay lump sums exceeding \$3,500.

WHERE TO GET MORE INFORMATION

Your plan, [EIN-PN], is sponsored by [CONTRIBUTING SPONSOR(S)]. If you would like more information about the funding of your plan, contact [INSERT NAME, TITLE, BUSINESS ADDRESS AND PHONE NUMBER OF INDIVIDUAL OR ENTITY].

For more information about the PBGC and the benefits it guarantees, you may request a free copy of "Your Guaranteed Pension" by writing to Consumer Information Center, Dept. YGP, Pueblo, Colorado 81009.

[THE FOLLOWING SENTENCE MAY BE INCLUDED:] "Your Guaranteed Pension" is also available from the PBGC Homepage on the World Wide Web at <http://www.pbgc.gov/ygp.htm>.

Issued: [INSERT AT LEAST MONTH AND YEAR]

Appendix B to Part 4011—Table of Maximum Guaranteed Benefits

If a plan terminates in—	The maximum guaranteed benefit for an individual starting to receive benefits at the age listed below is the amount (monthly or annual) listed below:							
	Age 65		Age 62		Age 60		Age 55	
	Monthly	Annual	Monthly	Annual	Monthly	Annual	Monthly	Annual
1995	\$2,573.86	\$30,886.32	\$2,033.35	\$24,400.20	\$1,673.01	\$20,076.12	\$1,158.24	\$13,898.88
1996	\$2,642.05	\$31,704.60	\$2,087.22	\$25,046.64	\$1,717.33	\$20,607.96	\$1,188.92	\$14,267.04

The maximum guaranteed benefit for an individual starting to receive benefits at ages other than those listed above can be determined by applying the PBGC's regulation on computation of maximum guaranteeable benefits (29 CFR 4022.22).

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

Subpart A—General Provisions; Guaranteed Benefits

Sec.

- 4022.1 Purpose and scope.
- 4022.2 Definitions.
- 4022.3 Guaranteed benefits.
- 4022.4 Entitlement to a benefit.
- 4022.5 Determination of nonforfeitable benefits.
- 4022.6 Annuity payable for total disability.
- 4022.7 Benefits payable in a single installment.

Subpart B—Limitations on Guaranteed Benefits

- 4022.21 Limitations; in general.
- 4022.22 Maximum guaranteeable benefit.
- 4022.23 Computation of maximum guaranteeable benefits.
- 4022.24 Benefit increases.
- 4022.25 Five-year phase-in of benefit guarantee for participants other than substantial owners.
- 4022.26 Phase-in of benefit guarantee for participants who are substantial owners.
- 4022.27 Effect of tax disqualification.

Subpart C—Calculation and Payment of Unfunded Nonguaranteed Benefits [Reserved]

Subpart D—Benefit Reductions in Terminating Plans

- 4022.61 Limitations on benefit payments by plan administrator.
- 4022.62 Estimated guaranteed benefit.
- 4022.63 Estimated title IV benefit.

Subpart E—PBGC Recoupment and Reimbursement of Benefit Overpayments and Underpayments

- 4022.81 General rules.
- 4022.82 Method of recoupment.
- 4022.83 PBGC reimbursement of benefit underpayments.

Appendix A to Part 4022—Maximum Guaranteeable Monthly Benefit

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

Subpart A—General Provisions; Guaranteed Benefits

§ 4022.1 Purpose and scope.

The purpose of this part is to prescribe rules governing the calculation and payment of benefits payable in terminated single-employer plans under section 4022 of ERISA. Subpart A, which applies to each plan

providing benefits guaranteed under title IV of ERISA, contains definitions applicable to all subparts, and describes basic-type benefits that are guaranteed by the PBGC subject to the limitations set forth in Subpart B. Subpart C is reserved for rules relating to the calculation and payment of unfunded nonguaranteed benefits under section 4022(c) of ERISA. Subpart D prescribes procedures that minimize the overpayment of benefits by plan administrators after initiating distress terminations of single-employer plans that are not expected to be sufficient for guaranteed benefits. Subpart E sets forth the method of recoupment of benefit payments in excess of the amounts permitted under sections 4022, 4022B, and 4044 of ERISA from participants and beneficiaries in PBGC-trusteed plans, and provides for reimbursement of benefit underpayments. (The provisions of this part have not been amended to take account of changes made in section 4022 of ERISA by sections 766 and 777 of the Retirement Protection Act of 1994.)

§ 4022.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: annuity, Code, employer, ERISA, guaranteed benefit, mandatory employee contributions, nonforfeitable benefit, normal retirement age, notice of intent to terminate, PBGC, person, plan, plan administrator, plan year, proposed termination date, substantial owner, and title IV benefit.

In addition, for purposes of this part (unless otherwise required by the context):

Accumulated mandatory employee contributions means mandatory employee contributions plus interest credited on those contributions under the plan, or, if greater, interest required by section 204(c) of ERISA.

Benefit in pay status means that one or more benefit payments have been made or would have been made except for administrative delay.

Benefit increase means any benefit arising from the adoption of a new plan or an increase in the value of benefits payable arising from an amendment to an existing plan. Such increases include, but are not limited to, a scheduled increase in benefits under a plan or plan amendment, such as a cost-of-living increase, and any change in plan provisions which advances a participant's or beneficiary's entitlement to a benefit, such as liberalized participation requirements or vesting schedules, reductions in the normal or early retirement age under a plan, and changes in the form of benefit payments.

In the case of a plan under which the amount of benefits depends on the participant's salary and the participant receives a salary increase the resulting increase in benefits to which the participant becomes entitled will not, for the purpose of this part, be treated as a benefit increase. Similarly, in the case of a plan under which the amount of benefits depends on the participant's age or service, and the participant becomes entitled to increased benefits solely because of advancement in age or service, the increased benefits to which the participant becomes entitled will not, for the purpose of this part, be treated as a benefit increase.

Covered employment means employment with respect to which benefits accrue under a plan.

Pension benefit means a benefit payable as an annuity, or one or more payments related thereto, to a participant who permanently leaves or has permanently left covered employment, or to a surviving beneficiary, which payments by themselves or in combination with Social Security, Railroad Retirement, or workmen's compensation benefits provide a substantially level income to the recipient.

Straight life annuity means a series of level periodic payments payable for the life of the recipient, but does not include any combined annuity form, including an annuity payable for a term certain and life.

§ 4022.3 Guaranteed benefits.

Except as otherwise provided in this part, the PBGC will guarantee the amount, as of the termination date, of a benefit provided under a plan to the extent that the benefit does not exceed the limitations in ERISA and in subpart B, if—

(a) The benefit is a nonforfeitable benefit;

(b) The benefit qualifies as a pension benefit as defined in § 4022.2; and

(c) The participant is entitled to the benefit under § 4022.4.

§ 4022.4 Entitlement to a benefit.

(a) A participant or his surviving beneficiary is entitled to a benefit if under the provisions of a plan:

(1) The benefit was in pay status on the date of the termination of the plan.

(2) A benefit payable at normal retirement age is an optional form of payment to the benefit otherwise payable at such age and the participant elected the benefit before the termination date of the plan.

(3) Except for a benefit described in paragraph (a)(2) of this section, before the termination date the participant had

satisfied the conditions of the plan necessary to establish the right to receive the benefit prior to such date other than application for the benefit, satisfaction of a waiting period described in the plan, or retirement; or

(4) Absent an election by the participant, the benefit would be payable upon retirement.

(5) In the case of a benefit that returns all or a portion of a participant's accumulated mandatory employee contributions upon death, the participant (or beneficiary) had satisfied the conditions of the plan necessary to establish the right to the benefit other than death or designation of a beneficiary.

(b) If none of the conditions set forth in paragraph (a) of this section is met, the PBGC will determine whether the participant is entitled to a benefit on the basis of the provisions of the plan and the circumstances of the case.

§ 4022.5 Determination of nonforfeitable benefits.

(a) A guaranteed benefit payable to a surviving beneficiary is not considered to be forfeitable solely because the plan provides that the benefit will cease upon the remarriage of such beneficiary or his attaining a specified age. However, the PBGC will observe the provisions of the plan relating to the effect of such remarriage or attainment of such specified age on the surviving beneficiary's eligibility to continue to receive benefit payments.

(b) Any other provision in a plan that the right to a benefit in pay status will cease or be suspended upon the occurrence of any specified condition does not automatically make that benefit forfeitable. In each such case the PBGC will determine whether the benefit is forfeitable.

(c) A benefit guaranteed under § 4022.6 shall not be considered forfeitable solely because the plan provides that upon recovery of the participant the benefit will cease.

§ 4022.6 Annuity payable for total disability.

(a) Except as provided in paragraph (b) of this section, an annuity which is payable (or would be payable after a waiting period described in the plan, whether or not the participant is in receipt of other benefits during such waiting period), under the terms of a plan on account of the total and permanent disability of a participant which is expected to last for the life of the participant and which began before the termination date is considered to be a pension benefit.

(b) In any case in which the PBGC determines that the standards for

determining such total and permanent disability under a plan were unreasonable, or were modified in anticipation of termination of the plan, the disability benefits payable to a participant under such standard shall not be guaranteed unless the participant meets the standards of the Social Security Act and the regulations promulgated thereunder for determining total disability.

(c) For the purpose of this section, a participant may be required, upon the request of the PBGC, to submit to an examination or to submit proof of continued total and permanent disability. If the PBGC finds that a participant is no longer so disabled, it may suspend, modify, or discontinue the payment of the disability benefit.

§ 4022.7 Benefits payable in a single installment.

(a) *Alternative benefit.* If a benefit that is guaranteed under this part is payable in a single installment or substantially so under the terms of the plan, or an option elected under the plan by the participant, the benefit will not be guaranteed or paid as such, but the PBGC will guarantee the alternative benefit, if any, in the plan which provides for the payment of equal periodic installments for the life of the recipient. If the plan provides more than one such annuity, the recipient may within 30 days after notification of the proposed termination of the plan elect to receive one of those annuities. If the plan does not provide such an annuity, the PBGC will guarantee an actuarially equivalent life annuity.

(b)(1) *Payment in single installments.* Notwithstanding paragraph (a) of this section, in any case in which the value of a guaranteed benefit payable by the PBGC is \$3,500 or less, the total value of the guaranteed benefit may be paid in a single payment. For purposes of determining the value of the guaranteed benefit, subtract from the value of the guaranteed benefit, any amounts that are returned under paragraph (b)(2) of this section, but only to the extent such amounts do not exceed the value of the portion of an individual's benefit derived from mandatory employee contributions that is guaranteed.

(2) Return of employee contributions—

(i) *General.* Notwithstanding any other provision of this part, the PBGC may pay in a single installment (or a series of installments) instead of as an annuity, the value of the portion of an individual's basic-type benefit derived from mandatory employee contributions, if:

(A) The individual elects payment in a single installment (or a series of installments) before the sixty-first (61st) day after the date he or she receives notice that such an election is available; and

(B) Payment in a single installment (or a series of installments) is consistent with the plan's provisions. For purposes of this part, the portion of an individual's basic-type benefit derived from mandatory employee contributions is determined under § 4044.12 (priority category 2 benefits) of this chapter, and the value of that portion is computed under the applicable rules contained in part 4044, subpart B, of this chapter.

(ii) *Set-off for distributions after termination.* The amount to be returned under paragraph (b)(2)(i) of this section is reduced by the set-off amount. The set-off amount is the amount by which distributions made to the individual after the termination date exceed the amount that would have been distributed, exclusive of mandatory employee contributions, if the individual had withdrawn the mandatory employee contributions on the termination date.

Example: Participant A is receiving a benefit of \$600 per month when the plan terminates, \$200 of which is derived from mandatory employee contributions. If the participant had withdrawn his contributions on the termination date, his benefit would have been reduced to \$400 per month. The participant receives two monthly payments after the termination date. The set-off amount is \$400. (The \$600 actual payment minus the \$400 the participant would have received if he had withdrawn his contributions multiplied by the two months for which he received the extra payment.)

(c) Death benefits—

(1) *General.* Notwithstanding paragraph (a) of this section, a benefit that would otherwise be guaranteed under the provisions of this subpart, except for the fact that it is payable solely in a single installment (or substantially so) upon the death of a participant, shall be paid by the PBGC as an annuity that has the same value as the single installment. The PBGC will in each case determine the amount and duration of the annuity based on all the facts and circumstances.

(2) *Exception.* Upon the death of a participant the PBGC may pay in a single installment (or a series of installments) that portion of the participant's accumulated mandatory employee contributions that is payable under the plan in a single installment (or a series of installments) upon the participant's death.

Subpart B—Limitations on Guaranteed Benefits

§ 4022.21 Limitations; in general.

(a)(1) Subject to paragraphs (b), (c) and (d) of this section, the PBGC will not guarantee that part of an installment payment that exceeds the dollar amount payable as a straight life annuity commencing at normal retirement age, or thereafter, to which a participant would have been entitled under the provisions of the plan in effect on the termination date, on the basis of his credited service to such date. If the plan does not provide a straight life annuity either as its normal form of retirement benefit or as an option to the normal form, the PBGC will for purposes of this paragraph convert the plan's normal form benefit to a straight life annuity of equal actuarial value as determined by the PBGC.

(2) The limitation of paragraph (a)(1) of this section shall not apply to:

(i) A survivor's benefit payable as an annuity on account of the death of a participant that occurred before the plan terminates and before the participant retired;

(ii) A disability pension described in section 4022.6 of this part; or

(iii) A benefit payable in non-level installments that in combination with Social Security, Railroad Retirement, or workman's compensation benefits yields a substantially level income if the projected income from the plan benefit over the expected life of the recipient does not exceed the value of the straight life annuity described in paragraph (a)(1) of this section.

(b) The PBGC will not guarantee the payment of that part of any benefit that exceeds the limitations in section 4022(b) of ERISA and this subpart B.

(c)(1) Except as provided in paragraph (c)(2) of this section, the PBGC does not guarantee a benefit payable in a single installment (or substantially so) upon the death of a participant or his surviving beneficiary unless that benefit is substantially derived from a reduction in the pension benefit payable to the participant or surviving beneficiary.

(2) Paragraphs (a) and (c)(1) of this section do not apply to that portion of accumulated mandatory employee contributions payable under a plan upon the death of a participant, and such a benefit is a pension benefit for purposes of this part.

(d) The PBGC will not guarantee a benefit payable to other than natural persons, or a trust or estate for the benefit of one or more natural persons.

§ 4022.22 Maximum guaranteeable benefit.

Subject to section 4022B of ERISA and part 4022B of this chapter, benefits payable with respect to a participant under a plan shall be guaranteed only to the extent that such benefits do not exceed the actuarial value of a benefit in the form of a life annuity payable in monthly installments, commencing at age 65 equal to the lesser of the amounts computed in paragraphs (a) and (b) of this section.

(a) One-twelfth of the participant's average annual gross income from his employer during either his highest-paid five consecutive calendar years in which he was an active participant under the plan, or if he was not an active participant throughout the entire such period, the lesser number of calendar years within that period in which he was an active participant under the plan.

(1) As used in this paragraph, "gross income" means "earned income" as defined in section 911(b) of the Code, determined without regard to any community property laws.

(2) For the purposes of this paragraph, if the plan is one to which more than one employer contributes, and during any calendar year the participant received gross income from more than one such contributing employer, then the amounts so received shall be aggregated in determining the participant's gross income for the calendar year.

(b) \$750 multiplied by the fraction $x/13,200$ where "x" is the Social Security contribution and benefit base determined under section 230 of the Social Security Act in effect at the termination date of the plan.

§ 4022.23 Computation of maximum guaranteeable benefits.

(a) *General.* Where a benefit is payable in any manner other than as a monthly benefit payable for life commencing at age 65, the maximum guaranteeable monthly amount of such benefit shall be computed by applying the applicable factor or factors set forth in paragraphs (c)–(e) of this section to the monthly amount computed under § 4022.22. In the case of a step-down life annuity, the maximum guaranteeable monthly amount of such benefit shall be computed in accordance with paragraph (f) of this section.

(b) *Application of adjustment factors to monthly amount computed under § 4022.22.* (1) Each percentage increase or decrease computed under paragraphs (c), (d), and (e) of this section shall be added to or subtracted from a base of 1.00, and the resulting amounts shall be multiplied.

(2) The monthly amount computed under § 4022.22 shall be multiplied by the product computed pursuant to paragraph (b)(1) of this section in order to determine the participant's and/or beneficiary's maximum benefit guaranteeable.

(c) *Annuitant's age factor.* If a participant or the beneficiary of a deceased participant is entitled to and chooses to receive his benefit at an age younger than 65, the monthly amount computed under § 4022.22 shall be reduced by the following amounts for each month up to the number of whole months below age 65 that corresponds to the later of the participant's age at the termination date or his age at the time he begins to receive the benefit: For each of the 60 months immediately preceding the 65th birthday, the reduction shall be $\frac{7}{12}$ of 1%; For each of the 60 months immediately preceding the 60th birthday, the reduction shall be $\frac{4}{12}$ of 1%; For each of the 120 months immediately preceding the 55th birthday, the reduction shall be $\frac{3}{12}$ of 1%; and For each succeeding 120 months period, the monthly percentage reduction shall be $\frac{1}{2}$ of that used for the preceding 120 month period.

(d) *Factor for benefit payable in a form other than as a life annuity.* When a benefit is in a form other than a life annuity payable in monthly installments, the monthly amount computed under § 4022.22 shall be adjusted by the appropriate factors on a case-by-case basis by PBGC. This paragraph sets forth the adjustment factors to be used for several common benefit forms payable in monthly installments.

(1) *Period certain and continuous annuity.* A period certain and continuous annuity means an annuity which is payable in periodic installments for the participant's life, but for not less than a specified period of time whether or not the participant dies during that period. The monthly amount of a period certain and continuous annuity computed under § 4022.22 shall be reduced by the following amounts for each month of the period certain subsequent to the termination date:

For each month up to 60 months deduct $\frac{1}{24}$ of 1%;

For each month beyond 60 months deduct $\frac{1}{12}$ of 1%.

(i) A cash refund annuity means an annuity under which if the participant dies prior to the time when he has received pension payments equal to a fixed sum specified in the plan, then the balance is paid as a lump-sum death benefit. A cash refund annuity shall be treated as a benefit payable for a period

certain and continuous. The period of certainty shall be computed by dividing the amount of the lump-sum refund by the monthly amount to which the participant is entitled under the terms of the plan.

(ii) An installment refund annuity means an annuity under which if the participant dies prior to the time he has received pension payments equal to a fixed sum specified in the plan, then the balance is paid as a death benefit in periodic installments equal in amount to the participant's periodic benefit. An installment refund annuity shall be treated as a benefit payable for a period certain and continuous. The period of certainty shall be computed by dividing the amount of the remaining refund by the monthly amount to which the participant is entitled under the terms of the plan.

(2) *Joint and survivor annuity (contingent basis).* A joint and survivor annuity (contingent basis) means an annuity which is payable in periodic installments to a participant for his life and upon his death is payable to his beneficiary for the beneficiary's life in the same or in a reduced amount. The monthly amount of a joint and survivor annuity (contingent basis) computed under § 4022.22 shall be reduced by an amount equal to 10% plus $\frac{3}{10}$ of 1% for each percentage point in excess of 50% of the participant's benefit that will continue to be paid to the beneficiary. If the benefit payable to the beneficiary is less than 50 percent of the participant's benefit, PBGC shall provide the adjustment factors to be used.

(3) *Joint and survivor annuity (joint basis).* A joint and survivor annuity (joint basis) means an annuity which is payable in periodic installments to a participant and upon his death or the death of his beneficiary is payable to the survivor for the survivor's life in the same or in a reduced amount. The monthly amount of a joint and survivor annuity (joint basis) computed under § 4022.22 shall be reduced by an amount equal to $\frac{4}{10}$ of 1% for each percentage point in excess of 50% of the participant's original benefit that will continue to be paid to the survivor. If the benefit payable to the survivor is less than 50 percent of the participant's original benefit, PBGC shall provide the adjustment factors to be used.

(e) When a benefit is payable in a form described in paragraph (d) (2) or (3) of this section, and the beneficiary's age is different from the participant's age, by 15 years or less, the monthly amount computed under § 4022.22 shall be adjusted by the following amounts: If the beneficiary is younger than the

participant, deduct 1% for each year of the age difference; If the beneficiary is older than the participant, add ½ of 1% for each year of the age difference. In computing the difference in ages, years over 65 years of age shall not be counted. If the difference in age between the beneficiary and the participant is greater than 15 years, PBGC shall provide the adjustment factors to be used.

(f) *Step-down life annuity.* A step-down life annuity means an annuity payable in a certain amount for the life of the participant plus a temporary additional amount payable until the participant attains an age specified in the plan.

(1) The temporary additional amount payable under a step-down life annuity shall be converted to a life annuity payable in monthly installments by multiplying the appropriate factor based

on the participant's age and the number of remaining years of the temporary additional benefit by the amount of the temporary additional benefit. The factors to be used are set forth in the table below. The amount of the monthly benefit so calculated shall be added to the level amount of the monthly benefit payable for life to determine the level-life annuity that is equivalent to the step-down life annuity.

FACTORS FOR CONVERTING TEMPORARY ADDITIONAL BENEFIT UNDER STEP-DOWN LIFE ANNUITY

Age of participant ¹ at the later of the date the temporary additional benefit commences or the date of plan termination	Number of years temporary additional benefit is payable under the plan as of the date of plan termination ²									
	1	2	3	4	5	6	7	8	9	10
45	0.060	0.117	0.170	0.220	0.268	0.315	0.355	0.395	0.435	0.475
46	.061	.119	.173	.224	.273	.321	.362	.403	.444	.485
47	.062	.121	.176	.228	.278	.327	.369	.411	.453	.495
48	.063	.123	.179	.232	.283	.333	.376	.419	.462	.505
49	.064	.125	.182	.236	.288	.339	.383	.427	.471	.515
50	.065	.127	.185	.240	.293	.345	.390	.435	.480	.525
51	.066	.129	.188	.244	.298	.351	.397	.443	.489	.535
52	.068	.133	.194	.252	.308	.363	.411	.459	.507	.555
53	.067	.131	.191	.248	.303	.357	.404	.451	.498	.545
54	.069	.135	.197	.256	.313	.369	.418	.467	.516	.565
55	.070	.137	.200	.260	.318	.375	.425	.475	.525	.575
56	.072	.141	.206	.268	.328	.387	.439	.491	.543	.....
57	.074	.145	.212	.276	.338	.399	.453	.507	.....	.....
58	.076	.149	.218	.284	.348	.411	.467	.....	.....	.....
59	.078	.153	.224	.292	.358	.423	.....	.....	.....	.....
60	.080	.157	.230	.300	.368	.....	.....	.....	.....	.....
61	.082	.161	.236	.308	.....	.....	.....	.....	.....	.....
62	.084	.165	.242	.....	.....	.....	.....	.....	.....	.....
63	.086	.169	.....	.....	.....	.....	.....	.....	.....	.....
64	.088	.....	.....	.....	.....	.....	.....	.....	.....	.....

¹ Age of participant is his age at his last birthday.

² If the benefit is payable for less than 1 yr, the appropriate factor is obtained by multiplying the factor for 1 yr by a fraction, the numerator of which is the number of months the benefit is payable, and the denominator of which is 12. If the benefit is payable for 1 or more whole years, plus an additional number of months less than 12, the appropriate factor is obtained by linear interpolation between the factor for the number of whole years the benefit is payable and the factor for the next year.

(2) If a participant is entitled to and chooses to receive a step-down life annuity at an age younger than 65, the monthly amount computed under § 4022.22 shall be adjusted by applying the factors set forth in paragraph (c) of this section in the manner described in paragraph (b) of this section.

(3) If the level-life monthly benefit calculated pursuant to paragraph (f)(1) of this section exceeds the monthly amount calculated pursuant to paragraph (f)(2) of this section, then the monthly maximum benefit guaranteeable shall be a step-down life annuity under which the monthly amount of the temporary additional benefit and the amount of the monthly benefit payable for life, respectively, shall bear the same ratio to the monthly amount of the temporary additional benefit and the monthly benefit payable for life provided under the plan, respectively, as the monthly benefit calculated pursuant to paragraph (f)(2)

of this section bears to the monthly benefit calculated pursuant to paragraph (f)(1) of this section.

§ 4022.24 Benefit increases.

(a) *Scope.* This section applies:

(1) To all benefit increases, as defined in § 4022.2, payable with respect to a participant other than a substantial owner, which have been in effect for less than five years preceding the termination date; and

(2) To all benefit increases payable with respect to a substantial owner, which have been in effect for less than 30 years preceding the termination date.

(b) *General rule.* Benefit increases described in paragraph (a) of this section shall be guaranteed only to the extent provided in § 4022.25 with respect to a participant other than a substantial owner and in § 4022.26 with respect to a participant who is a substantial owner.

(c) *Computation of guaranteeable benefit increases.* Except as provided in paragraph (d) of this section pertaining to multiple benefit increases, the amount of a guaranteeable benefit increase shall be the amount, if any, by which the monthly benefit calculated pursuant to paragraph (c)(1) of this section (the monthly benefit provided under the terms of the plan as of the termination date, as limited by § 4022.22) exceeds the monthly benefit calculated pursuant to paragraph (c)(4) of this section (the monthly benefit which would have been payable on the termination date if the benefit provided subsequent to the increase were equivalent, as of the date of the increase, to the benefit provided prior to the increase).

(1) Determine the amount of the monthly benefit payable on the termination date (or, in the case of a deferred benefit, the monthly benefit which will become payable thereafter)

under the terms of the plan subsequent to the increase, using service credited to the participant as of the termination date, that is guaranteeable pursuant to § 4022.22;

(2) Determine, as of the date of the benefit increase, in accordance with the provisions of § 4022.23, the factors which would be used to calculate the monthly maximum benefit guaranteeable (i) under the terms of the plan prior to the increase and (ii) under the terms of the plan subsequent to the increase. However, when the benefit referred to in paragraph (c)(2)(ii) of this section is a joint and survivor benefit deferred as of the termination date and there is no beneficiary on that date, the factors computed in paragraph (c)(2)(ii) of this section shall be determined as if the benefit were payable only to the participant. Each set of factors determined under this paragraph shall be stated in the manner set forth in § 4022.23(b)(1);

(3) Multiply the monthly benefit which would have been payable (or, in the case of a deferred benefit, would have become payable) under the terms of the plan prior to the increase based on service credited to the participant as of the termination date by a fraction, the numerator of which is the product of the factors computed pursuant to paragraph (c)(2)(ii) of this section and the denominator of which is the product of the factors computed pursuant to paragraph (c)(2)(i) of this section.

(4) Calculate the amount of the monthly benefit which would be payable on the termination date if the monthly benefit computed in paragraph (c)(3) of this section had been payable commencing on the date of the benefit increase (or, in the case of a deferred benefit, would have become payable thereafter.) In the case of a benefit which does not become payable until subsequent to the termination date, the amount of the monthly benefit determined pursuant to this paragraph is the same as the amount of the monthly benefit calculated pursuant to paragraph (c)(3) of this section.

(d) *Multiple benefit increases.* (1) Where there has been more than one benefit increase described in paragraph (a) of this section, the amounts of guaranteeable benefit increases shall be calculated beginning with the earliest increase, and each such amount (except for the amount resulting from the final benefit increase) shall be multiplied by a fraction, the numerator of which is the product of the factors, stated in the manner set forth in § 4022.23(b)(1), used to calculate the monthly maximum guaranteeable benefit under § 4022.22 and the denominator of which is the

product of the factors used in the calculation under paragraph (c)(2)(i) of this section.

(2) Each benefit increase shall be treated separately for the purposes of § 4022.25, except as otherwise provided in paragraph (d) of that section, and for the purposes of § 4022.26, as appropriate.

(e) For the purposes of this subpart, a benefit increase is deemed to be in effect commencing on the later of its adoption date or its effective date.

§ 4022.25 Five-year phase-in of benefit guarantee for participants other than substantial owners.

(a) *Scope.* This section applies to the guarantee of benefit increases which have been in effect for less than five years with respect to participants other than substantial owners.

(b) *Phase-in formula.* The amount of a benefit increase computed pursuant to § 4022.24 shall be guaranteed to the extent provided in the following formula: the number of years the benefit increase has been in effect, not to exceed five, multiplied by the greater of (1) 20 percent of the amount computed pursuant to § 4022.24; or (2) \$20 per month.

(c) *Computation of years.* In computing the number of years a benefit increase has been in effect, each complete 12-month period prior to the termination date during which such benefit increase was in effect shall constitute one year.

(d) *Multiple benefit increases.* In applying the formula contained in paragraph (b) of this section, multiple benefit increases within any 12-month period prior to the termination date and calculated from that date shall be aggregated and treated as one benefit increase.

(e) Notwithstanding the provisions of paragraph (b) of this section, a benefit increase described in paragraph (a) of this section shall be guaranteed only if PBGC determines that the plan was terminated for a reasonable business purpose and not for the purpose of obtaining the payment of benefits by PBGC.

§ 4022.26 Phase-in of benefit guarantee for participants who are substantial owners.

(a) *Scope.* This section shall apply to the guarantee of all benefits described in subpart A with respect to participants who are substantial owners at the termination date or who were substantial owners at any time within the 5-year period preceding that date.

(b) *Phase-in formula when there have been no benefit increases.* Benefits provided by a plan under which there

has been no benefit increase, other than the adoption of the plan, shall be guaranteed to the extent provided in the following formula: The monthly amount computed under § 4022.22 multiplied by a fraction not to exceed 1, the numerator of which is the number of full years prior to the termination date that the substantial owner was an active participant under the plan, and the denominator of which is 30. Active participation under a plan commences at the later of the date on which the plan is adopted or becomes effective.

(c) *Phase-in formula when there have been benefit increases.* If there has been a benefit increase under the plan, other than the adoption of the plan, benefits provided by each such increase shall be guaranteed to the extent provided in the following formula: The amount of the guaranteeable benefit increase computed under § 4022.24 multiplied by a fraction not to exceed 1, the numerator of which is the number of full years prior to the termination date that the benefit increase was in effect and during which the substantial owner was an active participant under the plan, and the denominator of which is 30. However, in no event shall the total benefits guaranteed under all such benefit increases exceed the benefits which are guaranteed under paragraph (b) of this section with respect to a plan described therein.

(d) For the purpose of computing the benefits guaranteed under this section, in the case of a substantial owner who becomes an active participant under a plan after a benefit increase (other than the adoption of the plan) has been put into effect, the plan as it exists at the time he commences his participation shall be deemed to be the original plan with respect to him.

§ 4022.27 Effect of tax disqualification.

(a) *General rule.* Except as provided in paragraph (b) of this section, benefits accrued under a plan after the date on which the Secretary of the Treasury or his delegate issues a notice that any trust which is part of the plan no longer meets the requirements of section 401(a) of the Code or that the plan no longer meets the requirements of section 404(a) of the Code or after the date of adoption of a plan amendment that causes the issuance of such a notice shall not be guaranteed under this part.

(b) *Exceptions.* The restriction on the guarantee of benefits set forth in paragraph (a) of this section shall not apply if:

(1) The Secretary of the Treasury or his delegate issues a notice stating that the original notice referred to in

paragraph (a) of this section was erroneous;

(2) The Secretary of the Treasury or his delegate finds that, subsequent to the issuance of the notice referred to in paragraph (a) of this section, appropriate action has been taken with respect to the trust or plan to cause it to meet the requirements of sections 401(a) or 404(a)(2) of the Code, respectively, and issues a subsequent notice stating that the trust or plan meets such requirements; or

(3) The plan amendment is revoked retroactively to its original effective date.

Subpart C—Calculation and Payment of Unfunded Nonguaranteed Benefits [Reserved]

Subpart D—Benefit Reductions in Terminating Plans

§ 4022.61 Limitations on benefit payments by plan administrator.

(a) *General.* When section 4041.4 of this chapter requires a plan administrator to reduce benefits, the plan administrator shall limit benefit payments in accordance with this section.

(b) *Accrued benefit at normal retirement.* Except to the extent permitted by paragraph (d) of this section, a plan administrator may not pay that portion of a monthly benefit payable with respect to any participant that exceeds the participant's accrued benefit payable at normal retirement age under the plan. For the purpose of applying this limitation, post-retirement benefit increases, such as cost-of-living adjustments, are not considered to increase a participant's benefit beyond his or her accrued benefit payable at normal retirement age.

(c) *Maximum guaranteeable benefit.* Except to the extent permitted by paragraph (d) of this section, a plan administrator may not pay that portion of a monthly benefit payable with respect to any participant, as limited by paragraph (b) of this section, that exceeds the maximum guaranteeable benefit under section 4022(b)(3)(B) of ERISA and § 4022.22(b) of this part, adjusted for age and benefit form, for the year of the proposed termination date.

(d) *Estimated benefit payments.* A plan administrator shall pay the monthly benefit payable with respect to each participant as determined under § 4022.62 or § 4022.63, whichever produces the higher benefit.

(e) *PBGC authority to modify procedures.* In order to avoid abuse of the plan termination insurance system, inequitable treatment of participants

and beneficiaries, or the imposition of unreasonable burdens on terminating plans, the PBGC may authorize or direct the use of alternative procedures for determining benefit reductions.

(f) *Examples.* This section is illustrated by the following examples:

Example 1—Facts. On October 10, 1992, a plan administrator files with the PBGC a notice of intent to terminate in a distress termination that includes December 31, 1992, as the proposed termination date. A participant who is in pay status on December 31, 1992, has been receiving his accrued benefit of \$2,500 per month under the plan. The benefit is in the form of a joint and survivor annuity (contingent basis) that will pay 50 percent of the participant's benefit amount (i.e., \$1,250 per month) to his surviving spouse following the death of the participant. On December 31, 1992, the participant is age 66, and his wife is age 56.

Benefit reductions. Paragraph (b) of this section requires the plan administrator to cease paying benefits in excess of the accrued benefit payable at normal retirement age. Because the participant is receiving only his accrued benefit, no reduction is required under paragraph (b).

Paragraph (c) of this section requires the plan administrator to cease paying benefits in excess of the maximum guaranteeable benefit, adjusted for age and benefit form in accordance with the provisions of subpart B. The maximum guaranteeable benefit for plans terminating in 1992, the year of the proposed termination date, is \$2,352.27 per month, payable in the form of a single life annuity at age 65. Because the participant is older than age 65, no adjustment is required under § 4022.23(c) based on the annuitant's age factor. The benefit form is a joint and survivor annuity (contingent basis), as defined in § 4022.23(d)(2). The required benefit reduction for this benefit form under § 4022.23(d) is 10 percent. The corresponding adjustment factor is 0.90 (1.00–0.10). The benefit reduction factor to adjust for the age difference between the participant and the beneficiary is computed under § 4022.23(e). In computing the difference in ages, years over 65 years of age are not taken into account. Therefore, the age difference is 9 years (65–56). The required percentage reduction when the beneficiary is 9 years younger than the participant is 9 percent. The corresponding adjustment factor is 0.91 (1.00–0.09).

The maximum guaranteeable benefit adjusted for age and benefit form is \$1,926.51 ($\$2,352.27 \times 0.90 \times 0.91$) per month. Therefore, the plan administrator must reduce the participant's benefit payment from \$2,500 to \$1,926.51. If the participant dies after December 31, 1992, the plan administrator will pay his spouse \$963.26 ($0.50 \times \$1,926.51$) per month.

Example 2—Facts. The benefit of a participant who retired under a plan at age 60 is a reduced single life annuity of \$400 per month plus a temporary supplement of \$400 per month payable until age 62 (i.e., a step-down benefit). The participant's accrued benefit under the plan is \$450 per month, payable from the plan's normal retirement

age. On the proposed termination date, June 30, 1992, the participant is 61 years old.

The maximum guaranteeable benefit adjusted for age under § 4022.23(c) of this chapter is \$1,693.63 ($\$2,352.27 \times 0.72$) per month. Since the benefit is payable as a single life annuity, no adjustment is required under § 4022.23(d) for benefit form.

Benefit reductions. The plan benefit of \$800 per month payable until age 62 exceeds the participant's accrued benefit at normal requirement age of \$450 per month. Paragraph (b) of this section requires that, except to the extent permitted by paragraph (d), the plan benefit must be reduced to \$450 per month. Since the levelized benefit of \$404.10 ($(0.082 \times 50) + \$400$) per month, determined under § 4022.23(f), is less than the adjusted maximum guaranteeable benefit of \$1,693.63 per month, no further reduction in the \$450 per month benefit payment is required under paragraph (c) of this section. The plan administrator next would determine the amount of the participant's estimated benefit under paragraph (d).

Example 3—Facts. A retired participant is receiving a reduced early retirement benefit of \$1,100 per month plus a temporary supplement of \$700 per month payable until age 62. The benefit is in the form of a single life annuity. On the proposed termination date, November 30, 1992, the participant is 56 years old.

The participant's accrued benefit at normal retirement age under the plan is \$1,200 per month. The maximum guaranteeable benefit adjusted for age is \$1,152.61 ($\$2,352.27 \times 0.49$) per month. A form adjustment is not required.

Benefit reductions. The plan benefit of \$1,800 per month payable from age 56 to age 62 exceeds the participant's accrued benefit at normal retirement age of \$1,200 per month. Therefore, under paragraph (b) of this section, the plan administrator must reduce the temporary supplement to \$100 per month.

For the purpose of determining whether the reduced benefit, i.e., a level-life annuity of \$1,100 per month and a temporary annuity supplement of \$100 per month to age 62, exceeds the maximum guaranteeable benefit adjusted for age, the temporary annuity supplement of \$100 per month is converted to a level-life annuity equivalent in accordance with § 4022.23(f) of this chapter. The level-life annuity equivalent is \$38.70 ($\$100 \times 0.387$). This, added to the life annuity of \$1,100 per month, equals \$1,138.70. Since the maximum guaranteeable benefit of \$1,152.61 per month exceeds \$1,138.70 per month, no further reduction is required under paragraph (c) of this section.

The plan administrator next would determine the participant's estimated benefit under paragraph (d). Assume that the estimated benefit under paragraph (d) is \$780 per month until age 62 and \$715 per month thereafter. The plan administrator would pay the participant \$780 per month, reduced to \$715 per month at age 62, subject to the final benefit determination made under title IV.

Example 4—Facts. A retired participant is receiving a reduced early retirement benefit of \$2,650 per month plus a temporary supplement of \$800 per month payable until

age 62. The benefit is in the form of a joint and survivor annuity (contingent basis) that will pay 50 percent of the participant's benefit amount to his surviving spouse following the death of the participant. On the proposed termination date, December 20, 1992, the participant and his spouse are each 56 years old.

The participant's accrued benefit at normal retirement age under the plan is \$3,000 per month. The maximum guaranteeable benefit adjusted for age and the joint and survivor annuity (contingent basis) annuity form is \$1,037.35 per month. An adjustment for age difference is not required because the participant and his spouse are the same age.

Benefit reductions. The plan benefit of \$3,450 per month payable from age 56 to age 62 exceeds the participant's accrued benefit at normal retirement age, which is \$3,000 per month. Therefore, under paragraph (b) of this section, the plan administrator must reduce the participant's benefit so that it does not exceed \$3,000 per month.

The level-life equivalent of the participant's reduced benefit, determined using the § 4022.23(f) adjustment factor, is \$2,785.45 ($(\$350 \times 0.387) + \$2,650$) per month. Since this benefit exceeds the participant's maximum guaranteeable benefit of \$1,037.35 per month, the plan administrator must reduce the participant's benefit payment so that it does not exceed the maximum guaranteeable benefit.

The ratio of (i) the participant's maximum guaranteeable benefit to (ii) the level-life equivalent of the participant's reduced benefit (computed under the "accrued for normal retirement age" limitation) is used in converting the level-life maximum guaranteeable benefit to the step-down benefit form. The level-life equivalent of the reduced benefit computed under the "accrued for normal retirement age" limitation is 37.24 percent ($\$1,037.35 / \$2,785.45$). Thus, the plan administrator must reduce the participant's level-life benefit of \$2,650 per month to \$986.86 ($\$2,650 \times 0.3724$) and must further reduce the reduced temporary benefit of \$350 per month to \$130.34 ($\$350 \times 0.3724$). Under paragraph (c) of this section, therefore, the participant's maximum guaranteeable benefit is \$1,117.20 ($\$986.86 + \$130.34$) per month to age 62 and \$986.86 per month thereafter, subject to any adjustment under paragraph (d) of this section.

Assume that the estimated benefit under paragraph (d) is \$1,005.48 per month to age 62 and \$888.17 per month thereafter. The plan administrator would reduce the participant's benefit from \$3,450 per month to \$1,005.48 per month and pay this amount until age 62, at which time the benefit payment would be reduced to \$888.17 per month, subject to the final benefit determination made under title IV.

§ 4022.62 Estimated guaranteed benefit.

(a) *General.* The estimated guaranteed benefit payable with respect to each participant who is not a substantial owner is computed under paragraph (c) of this section. The estimated guaranteed benefit payable with respect to each participant who is a substantial

owner is computed under paragraph (d) of this section.

(b) *Rules for determining benefits.* For the purposes of determining entitlement to a benefit and the amount of the estimated benefit under this section, the following rules apply:

(1) *Participants in pay status on the proposed termination date.* For benefits payable with respect to a participant who is in pay status on or before the proposed termination date, the plan administrator shall use the participant's age and benefit payable under the plan as of the proposed termination date.

(2) *Participants who enter pay status after the proposed termination date.* For benefits payable with respect to a participant who enters pay status after the proposed termination date, the plan administrator shall use the participant's age as of the benefit commencement date and his or her service and compensation as of the proposed termination date.

(3) *Participants with new benefits or benefit improvements.* For the purpose of determining the estimated guaranteed benefit under paragraph (c) of this section, only new benefits and benefit improvements that affect the benefit of the participant or beneficiary for whom the determination is made are taken into account.

(4) *Limitations on estimated guaranteed benefits.* For the purpose of determining the estimated guaranteed benefit under paragraph (c) or (d) of this section, the benefit determined under paragraph (b)(1) or (b)(2) of this section is subject to the limitations set forth in § 4022.61 (b) and (c).

(c) *Estimated guaranteed benefit payable with respect to a participant who is not a substantial owner.* For benefits payable with respect to a participant who is not a substantial owner, the estimated guaranteed benefit is determined under paragraph (c)(1) of this section, if no portion of the benefit is subject to the phase-in of plan termination insurance guarantees set forth in section 4022(b)(1) of ERISA. In any other case, the estimated guaranteed benefit is determined under paragraph (c)(2). "Benefit subject to phase-in" means a benefit that is subject to the phase-in of plan termination insurance guarantees set forth in section 4022(b)(1) of ERISA, determined without regard to section 4022(b)(7) of ERISA.

(1) *Participants with no benefits subject to phase-in.* In the case of a participant or beneficiary with no benefit improvement (as defined in paragraph (c)(2)(ii)) or new benefit (as defined in paragraph (c)(2)(i)) in the five years preceding the proposed termination date, the estimated

guaranteed benefit is the benefit to which he or she is entitled under the rules in paragraph (b) of this section.

(2) *Participants with benefits subject to phase-in.* In the case of a participant or beneficiary with a benefit improvement or new benefit in the five years preceding the proposed termination date, the estimated guaranteed benefit is the benefit to which he or she is entitled under the rules in paragraph (b) of this section, multiplied by the multiplier determined according to paragraphs (i), (ii), and (iii), but not less than the benefit to which he or she would have been entitled if the benefit improvement or new benefit had not been adopted.

(i) From column (a) of Table I, select the line that applies according to the number of full years before the proposed termination date since the plan was last amended to provide for a new benefit (or the number of full years since the plan was established, if it has never been amended to provide for a new benefit). "New benefit" means a change in the terms of the plan that results in (a) a participant's or a beneficiary's eligibility for a benefit that was not previously available or to which he or she was not entitled (excluding a benefit that is actuarially equivalent to the normal retirement benefit to which the participant was previously entitled) or (b) an increase of more than twenty percent in the benefit to which a participant is entitled upon entering pay status before his or her normal retirement age under the plan. "New benefits" result from liberalized participation or vesting requirements, reductions in the age or service requirements for receiving unreduced benefits, additions of actuarially subsidized benefits, and increases in actuarial subsidies. The establishment of a plan creates a new benefit as of the effective date of the plan. A change in the amount of a benefit is not deemed to be a "new benefit" if it results solely from a benefit improvement. "New benefit" and "benefit improvement" are mutually exclusive terms.

(ii) If there was no benefit improvement under the plan during the one-year period ending on the proposed termination date, use the multiplier set forth in column (b) of Table I on the line selected from column (a). "Benefit improvement" means a change in the terms of the plan that results in (a) an increase in the benefit to which a participant is entitled at his or her normal retirement age under the plan or (b) an increase in the benefit to which a participant or beneficiary in pay status is entitled.

(iii) If there was any benefit improvement during the one-year period ending on the proposed termination date, use the multiplier set forth in column (c) of Table I on the line selected from column (a).

TABLE I.—APPLICABLE MULTIPLIER
IF—

Full years since last new benefit	No benefit improvement during last year	Benefit improvement during last year
(a)	(b)	(c)
Five or more	.90	.80
Four	.80	.70
Three	.65	.55
Two	.50	.45
Fewer than two	.35	.30

Note: The foregoing method of estimating guaranteed benefits is based upon the PBGC's experience with a wide range of plans and may not provide accurate estimates in certain circumstances. In accordance with § 4022.61(e), a plan administrator may use a different method of estimation if he or she demonstrates to the PBGC that his proposed method will be more equitable to participants and beneficiaries. The PBGC may require the use of a different method in certain cases.

(d) *Estimated guaranteed benefit payable with respect to a substantial owner.* For benefits payable with respect to each participant who is a substantial owner and who commenced participation under the plan fewer than five full years before the proposed termination date, the estimated guaranteed benefit is determined under paragraph (d)(1). With respect to any other substantial owner, the estimated guaranteed benefit is determined under paragraph (d)(2).

(1) *Fewer than five years of participation.* The estimated guaranteed benefit under this paragraph is the benefit to which the substantial owner is entitled, as determined under paragraph (b) of this section, multiplied by a fraction, not to exceed one, the numerator of which is the number of full years prior to the proposed termination date that the substantial owner was an active participant under the plan and the denominator of which is thirty.

(2) *Five or more years of participation.* The estimated guaranteed benefit under this paragraph is the lesser of—

(i) the estimated guaranteed benefit calculated under paragraph (d)(1) of this section; or

(ii) the benefit to which the substantial owner would have been entitled as of the proposed termination date (or benefit commencement date in the case of a substantial owner whose benefit commences after the proposed

termination date) under the terms of the plan in effect when he or she first began participation, as limited by § 4022.61 (b) and (c), multiplied by a fraction, not to exceed one, the numerator of which is two times the number of full years of his or her active participation under the plan prior to the proposed termination date and the denominator of which is thirty.

(e) *Examples.* This section is illustrated by the following examples:

Example 1—*Facts.* A participant who is not a substantial owner retired on December 31, 1991, at age 60 and began receiving a benefit of \$600 per month. On January 1, 1989, the plan had been amended to allow participants to retire with unreduced benefits at age 60. Previously, a participant who retired before age 65 was subject to a reduction of $\frac{1}{15}$ for each year by which his or her actual retirement age preceded age 65. On January 1, 1992, the plan's benefit formula was amended to increase benefits for participants who retired before January 1, 1992. As a result, the participant's benefit was increased to \$750 per month. There have been no other pertinent amendments. The proposed termination date is December 15, 1992.

Estimated guaranteed benefit. No reduction is required under § 4022.61 (b) or (c) because the participant's benefit does not exceed either the participant's accrued benefit at normal retirement age or the maximum guaranteeable benefit. (Post-retirement benefit increases are not considered as increasing accrued benefits payable at normal retirement age.)

The amendment as of January 1, 1989, resulted in a "new benefit" because the reduction in the age at which the participant could receive unreduced benefits increased the participant's benefit entitlement at actual retirement age by $\frac{5}{15}$, which is more than a 20 percent increase. The amendment of January 1, 1992, which increased the participant's benefit to \$750 per month, is a "benefit improvement" because it is an increase in the amount of benefit for persons in pay status. (No percentage test applies in determining whether such an increase is a benefit improvement.)

The multiplier for computing the amount of the estimated guaranteed benefit is taken from the third row of Table I (because the last new benefit had been in effect for 3 full years as of the proposed termination date) and column (c) (because there was a benefit improvement within the 1-year period preceding the proposed termination date). This multiplier is 0.55. Therefore, the amount of the participant's estimated guaranteed benefit is \$412.50 ($0.55 \times \$750$) per month.

Example 2—*Facts.* A participant who is not a substantial owner terminated employment on December 31, 1990. On January 1, 1992, she reached age 65 and began receiving a benefit of \$250 per month. She had completed 3 years of service at her termination of employment and was fully vested in her accrued benefit. The plan's vesting schedule had been amended on July

1, 1988. Under the schedule in effect before the amendment, a participant with 5 years of service was 100 percent vested. There have been no other pertinent amendments. The proposed termination date is December 31, 1992.

Estimated guaranteed benefit. No reduction is required under § 4022.61 (b) or (c) because the participant's benefit does not exceed either her accrued benefit at normal retirement age or the maximum guaranteeable benefit. The plan's change of vesting schedule created a new benefit for the participant. Because the amendment was in effect for 4 full years before the proposed termination date, the second row of Table I is used to determine the applicable multiplier for estimating the amount of the participant's guaranteed benefit. Because the participant did not receive any benefit improvement during the 12-month period ending on the proposed termination date, column (b) of the table is used. Therefore, the multiplier is 0.80, and the amount of the participant's estimated guaranteed benefit is \$200 ($0.80 \times \$250$) per month.

Example 3—*Facts.* A participant who is a substantial owner retired prior to the proposed termination date after $5\frac{1}{2}$ years of active participation in the plan. The benefit under the terms of the plan when he first began active participation was \$800 per month. On the proposed termination date of April 30, 1992, he was entitled to receive a benefit of \$2000 per month. No reduction of this benefit is required under § 4022.61 (b) or (c).

Estimated guaranteed benefit. Paragraph (d)(2) of this section is used to compute the amount of the estimated guaranteed benefit of substantial owners with 5 or more years of active participation prior to the proposed termination date. Consequently, the amount of this participant's estimated guaranteed benefit is the lesser of—

(i) the amount calculated as if he had been an active participant in the plan for fewer than 5 full years on the proposed termination date, or \$333.33 ($\$2000 \times \frac{5}{30}$) per month, or

(ii) the amount to which he would have been entitled as of the proposed termination date under the terms of the plan when he first began participation, as limited by § 4022.61 (b) and (c), multiplied by 2 times the number of years of active participation and divided by 30, or \$266.67 ($\$800 \times 2 \times \frac{5}{30}$) per month. Therefore, the amount of the participant's estimated guaranteed benefit is \$266.67 per month.

§ 4022.63 Estimated title IV benefit.

(a) *General.* If the conditions specified in paragraph (b) exist, the plan administrator shall determine each participant's estimated title IV benefit. The estimated title IV benefit payable with respect to each participant who is not a substantial owner is computed under paragraph (c) of this section. The estimated title IV benefit payable with respect to each participant who is a substantial owner is computed under paragraph (d) of this section.

(b) *Conditions for use of this section.* The conditions set forth in this

paragraph must be satisfied in order to make use of the procedures set forth in this section. If the specified conditions exist, estimated title IV benefits must be determined in accordance with these procedures (or in accordance with alternative procedures authorized by the PBGC under § 4022.61(f)) for each participant and beneficiary whose benefit under the plan exceeds the limitations contained in § 4022.61(b) or (c) or who is a substantial owner or the beneficiary of a substantial owner. If the specified conditions do not exist, title IV benefits may be estimated by the plan administrator in accordance with procedures authorized by the PBGC, but no such estimate is required. The conditions are as follows:

(1) An actuarial valuation of the plan has been performed for a plan year beginning not more than eighteen months before the proposed termination date. If the interest rate used to value plan liabilities in this valuation exceeded the applicable valuation interest rates and factors under appendix B to part 4044 of this chapter in effect on the proposed termination date, the value of benefits in pay status and the value of vested benefits not in pay status on the valuation date must be converted to the PBGC's valuation rates and factors.

(2) The plan has been in effect for at least five full years before the proposed termination date, and the most recent actuarial valuation demonstrates that the value of plan assets, reduced by employee contributions remaining in the plan and interest credited thereon under the terms of the plan, exceeds the present value, adjusted as required under paragraph (b)(1), of all plan benefits in pay status on the valuation date.

(c) *Estimated title IV benefit payable with respect to a participant who is not a substantial owner.* For benefits payable with respect to a participant who is not a substantial owner, the estimated title IV benefit is the estimated priority category 3 benefit computed under this paragraph. Priority category 3 benefits are payable with respect to participants who were, or could have been, in pay status three full years prior to the proposed termination date. The estimated priority category 3 benefit is computed by multiplying the benefit payable with respect to the participant under § 4022.62 (b)(1) and (b)(2) by a fraction, not to exceed one—

(1) The numerator of which is the benefit that would be payable with respect to the participant at normal retirement age under the provisions of the plan in effect on the date five full years before the proposed termination

date, based on the participant's age, service, and compensation as of the earlier of the participant's benefit commencement date or the proposed termination date, and

(2) The denominator of which is the benefit that would be payable with respect to the participant at normal retirement age under the provisions of the plan in effect on the proposed termination date, based on the participant's age, service, and compensation as of the earlier of the participant's benefit commencement date or the proposed termination date.

(d) *Estimated title IV benefit payable with respect to a substantial owner.* For benefits payable with respect to a participant who is a substantial owner, the estimated title IV benefit is the higher of the benefit computed under paragraph (c) of this section or the benefit computed under this paragraph.

(1) The plan administrator shall first calculate the estimated guaranteed benefit payable with respect to the substantial owner as if he or she were not a substantial owner, using the method set forth in § 4022.62(c).

(2) The benefit computed under paragraph (d)(1) shall be multiplied by the priority category 4 funding ratio. The category 4 funding ratio is the ratio of x to y , not to exceed one, where—

(i) in a plan with priority category 3 benefits, x equals plan assets minus employee contributions remaining in the plan on the valuation date, with interest credited thereon under the terms of the plan, and the present value of benefits in pay status, and y equals the present value of all vested benefits not in pay status minus such employee contributions and interest; or

(ii) in a plan with no priority category 3 benefits, x equals plan assets minus employee contributions remaining in the plan on the valuation date, with interest credited thereon under the terms of the plan, and y equals the present value of all vested benefits minus such employee contributions and interest.

(e) *Examples.* This section is illustrated by the following examples:

Example 1—*Facts.* A participant who is not a substantial owner was eligible to retire 3½ years before the proposed termination date. The participant retired 2 years before the proposed termination date with 20 years of service. Her final 5 years' average salary was \$45,000, and she was entitled to an unreduced early retirement benefit of \$1,500 per month payable as a single life annuity. This retirement benefit does not exceed the limitation in § 4022.61 (b) or (c).

On the participant's benefit commencement date, the plan provided for a normal retirement benefit of 2 percent of the final 5 years' salary times the number of

years of service. Five years before the proposed termination date, the percentage was 1½ percent. The amendments improving benefits were put into effect 3½ years prior to the proposed termination date. There were no other amendments during the 5-year period.

The participant's estimated guaranteed benefit computed under § 4022.62(c) is \$1,500 per month times 0.90 (the factor from column (b) of Table I in § 4022.62(c)(2)), or \$1,350 per month. It is assumed that the plan meets the conditions set forth in paragraph (b) of this section, and the plan administrator is therefore required to estimate the title IV benefit.

Estimated title IV benefit. For a participant who is not a substantial owner, the amount of the estimated title IV benefit is the estimated priority category 3 benefit computed under paragraph (c) of this section. This amount is computed by multiplying the participant's benefit under the plan as of the later of the proposed termination date or the benefit commencement date by the ratio of (i) the normal retirement benefit under the provisions of the plan in effect 5 years before the proposed termination date and (ii) the normal retirement benefit under the plan provisions in effect on the proposed termination date.

Thus, the numerator of the ratio is the benefit that would be payable to the participant under the normal retirement provisions of the plan 5 years before the proposed termination date, based on her age, service, and compensation on her benefit commencement date. The denominator of the ratio is the benefit that would be payable to the participant under the normal retirement provisions of the plan in effect on the proposed termination date, based on her age, service, and compensation as of the earlier of her benefit commencement date or the proposed termination date. Since the only different factor in the numerator and denominator is the salary percentage, the amount of the estimated title IV benefit is \$1,125 ($0.015/0.020 \times \$1,500$) per month. This amount is less than the estimated guaranteed benefit of \$1,350 per month. Therefore, in accordance with § 4022.61(d), the benefit payable to the participant is \$1,350 per month.

Example 2—*Facts.* A participant who is a substantial owner retires at the plan's normal retirement age, having completed 5 years of active participation in the plan, on October 31, 1992, which is the proposed termination date. Under provisions of the plan in effect 5 years prior to the proposed termination date, the participant is entitled to a single life annuity of \$500 per month. Under the most recent plan amendments, which were put into effect 1½ years prior to the proposed termination date, the participant is entitled to a single life annuity of \$1,000 per month. The participant's estimated guaranteed benefit computed under § 4022.62(d)(2) is \$166.67 per month.

It is assumed that all of the conditions in paragraph (b) of this section have been met. Plan assets equal \$2 million. The present value of all benefits in pay status is \$1.5 million based on applicable PBGC interest rates. There are no employee contributions

and the present value of all vested benefits that are not in pay status is \$0.75 million based on applicable PBGC interest rates.

Estimated title IV benefit. Paragraph (d) of this section provides that the amount of the estimated title IV benefit payable with respect to a participant who is a substantial owner is the higher of the estimated priority category 3 benefit computed under paragraph (c) of this section or the estimated priority category 4 benefit computed under paragraph (d) of this section.

Under paragraph (c), the participant's estimated priority category 3 benefit is \$500 ($\$1,000 \times \$500/\$1000$) per month.

Under paragraph (d), the participant's estimated priority category 4 benefit is the estimated guaranteed benefit computed under § 4022.62(c) (i.e., as if the participant were not a substantial owner) multiplied by the priority category 4 funding ratio. Since the plan has priority category 3 benefits, the ratio is determined under paragraph (d)(2)(i). The numerator of the ratio is plan assets minus the present value of benefits in pay status. The denominator of the ratio is the present value of all vested benefits that are not in pay status. The participant's estimated guaranteed benefit under § 4022.62(c) is \$1,000 per month times 0.90 (the factor from column (b) of Table I in § 4022.62(c)(2)), or \$900 per month. Multiplying \$900 by the category 4 funding ratio of $\frac{2}{3}$ (\$2 million—\$1.5 million)/\$0.75 million) produces an estimated category 4 benefit of \$600 per month.

Because the estimated category 4 benefit so computed is greater than the estimated category 3 benefit so computed, the estimated category 4 benefit is the estimated title IV benefit. Because the estimated category 4 benefit so computed is greater than the estimated guaranteed benefit of \$166.67 per month, in accordance with § 4022.61(d), the benefit payable to the participant is the estimated category 4 benefit of \$600 per month.

Subpart E—PBGC Recoupment and Reimbursement of Benefit Overpayments and Underpayments

§ 4022.81 General rules.

(a) *Recoupment of benefit overpayments.* If at any time the PBGC determines that net benefits paid with respect to any participant in a PBGC-trusted plan exceed the total amount to which the participant or his or her beneficiary is entitled up to that time under title IV of ERISA, and the participant or beneficiary is entitled to receive future benefit payments, the PBGC shall recoup the overpayment in accordance with paragraph (c) of this section and § 4022.82. Notwithstanding the previous sentence, the PBGC may, in its discretion, recover overpayments by methods other than recouping in accordance with the rules in this subpart. The PBGC will not normally exercise this right unless net benefits paid after the termination date exceed those to which a participant or

beneficiary is entitled under the terms of the plan before any reductions under subpart D.

(b) *Reimbursement of benefit underpayments.* If at any time the PBGC determines that net benefits paid with respect to a participant in a PBGC-trusted plan are less than the amount to which the participant or his or her beneficiary is entitled up to that time under title IV of ERISA, the PBGC shall reimburse the participant or beneficiary for the net underpayment in accordance with paragraphs (c) and (d) of this section and § 4022.83.

(c) *Payments subject to recoupment or reimbursement.* The PBGC shall recoup net overpayments and reimburse net underpayments made on or after the latest of the proposed termination date, the termination date, or, if no notice of intent to terminate was issued, the date on which proceedings to terminate the plan are instituted pursuant to section 4042 of ERISA.

(d) *Interest.* The PBGC will compute interest on overpayments and underpayments using the interest rate established for valuing immediate annuities as set forth in part 4044, appendix B, of this chapter according to the following rules:

(1) *Overpayments before recoupment begins.* Except as provided in paragraph (d)(2), no interest is charged on overpayments from the date of the payment to the date on which recoupment begins.

(2) *Receipt of both overpayments and underpayments.* If both benefit overpayments and benefit underpayments are made with respect to a participant, the PBGC will determine the amount of the net overpayment or underpayment by charging or crediting interest on each payment from the first day of the month after the date of payment to the first day of the month in which recoupment begins. If the net overpayment thus computed is greater than the sum of the actual overpayments (unadjusted for interest to the date on which recoupment begins), computations under § 4022.82 will be based upon the sum of the actual overpayments.

§ 4022.82 Method of recoupment.

(a) *Future benefit reductions.* Unless a participant or beneficiary elects otherwise under paragraph (b) of this section, the PBGC shall recoup overpayments of benefits in accordance with this paragraph. The benefit reduction under this paragraph shall be an amount equal to the fraction determined under paragraphs (a)(1) and (a)(2) of this section, multiplied by each

future benefit payment to which the participant or beneficiary is entitled.

(1) *Computation.* The PBGC shall determine the fractional multiplier by dividing the amount of the benefit overpayment by the present value of the benefit payable with respect to the participant under title IV of ERISA. The PBGC shall determine the present value of the benefit to which a participant or beneficiary is entitled under title IV of ERISA as of the termination date, using the PBGC interest rates and factors in effect on that date. The PBGC may, however, utilize a different date of determination if warranted by the facts and circumstances of a particular case.

(2) *Limitation on benefit reduction.* Except as provided in paragraph (a)(1) of this section, the PBGC shall reduce benefits with respect to a participant or beneficiary by no more than the greater of (i) ten percent per month or (ii) the amount of benefit per month in excess of the maximum guaranteeable benefit payable under section 4022(b)(3)(B) of ERISA, determined without adjustment for age and benefit form.

(3) *PBGC notice to participant or beneficiary.* Before effecting a benefit reduction pursuant to this paragraph, the PBGC shall notify the participant or beneficiary in writing of the amount of the benefit overpayment and of the amount of the reduced benefit computed under this section. The notice will advise the participant or beneficiary of the repayment option set forth in paragraph (b) of this section and inform him or her that the PBGC will proceed to recover the benefit overpayment in accordance with this paragraph unless an election to repay in a lump sum is made in accordance with paragraph (b).

(b) *Lump sum repayment.* A participant or beneficiary who has received a net benefit overpayment may elect to repay the excess in a single payment on or before a date agreed to by the participant or beneficiary and the PBGC. If the full payment is not made by the agreed upon date or a date is not agreed upon, the PBGC may proceed to recover the overpayment in accordance with paragraph (a) of this section.

§ 4022.83 PBGC reimbursement of benefit underpayments.

When the PBGC determines that there has been a net benefit underpayment made with respect to a participant, it shall pay the participant or beneficiary the amount of the net underpayment, determined in accordance with § 4022.81(d), in a single payment.

Appendix to Part 4022—Maximum Guaranteeable Monthly Benefit

The following table lists by year the maximum guaranteeable monthly benefit payable in the form of a life annuity commencing at age 65 as described by § 4022.22(b) to a participant in a plan that terminated in that year:

Year	Maximum guaranteeable monthly benefit
1974	\$750.00
1975	801.14
1976	869.32
1977	937.50
1978	1,005.68
1979	1,073.86
1980	1,159.09
1981	1,261.36
1982	1,380.68
1983	1,517.05
1984	1,602.27
1985	1,687.50
1986	1,789.77
1987	1,857.95
1988	1,909.09
1989	2,028.41
1990	2,164.77
1991	2,250.00
1992	2,352.27
1993	2,437.50
1994	2,556.82
1995	2,573.86
1996	2,642.05

PART 4022B—AGGREGATE LIMITS ON GUARANTEED BENEFITS

§ 4022B.1 Aggregate payments limitation.

If a person is entitled to benefits under two or more plans or with respect to two or more participants, or if more than one person is entitled to benefits payable with respect to one participant, the aggregate benefits payable by PBGC from its funds shall be limited to the extent set forth in § 4022.22 computed without regard to the provisions of § 4022.22(a). The limitation contained in § 4022.22 shall be applied separately to each plan at the date of its termination, and the amounts payable by PBGC under each plan shall be aggregated up to the limitation contained in this section.

PART 4041—TERMINATION OF SINGLE-EMPLOYER PLANS

Subpart A—General Provisions

Sec.

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- 4041.5 Challenges to plan termination under collective bargaining agreement.
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- 4041.21 Notice of intent to terminate.
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Subpart C—Distress Termination Process

- 4041.41 Notice of intent to terminate.
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- 4041.43 Distress termination notice.
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Appendix to Part 4041—Agreement for Commitment to Make Plan Sufficient for Benefit Liabilities

Authority: 29 U.S.C. 1302(b)(3), 1341, 1344, 1350.

Subpart A—General Provisions

§ 4041.1 Purpose and scope.

This part sets forth the rules and procedures for terminating a single-employer pension plan in a standard termination or in a distress termination under ERISA. Subpart A contains various general rules that apply to both standard terminations and distress terminations. Subpart B sets forth the specific steps that a plan administrator must follow in order to terminate a plan in a standard termination. Subpart C sets forth the specific steps that a plan administrator must follow in order to terminate a plan in a distress termination. This part applies to the termination of any single-employer plan covered under section 4021(a) of ERISA and not excluded by section 4021(b). This part does not reflect the amendments to sections 4041(b)(2)(C)(i) (relating to the PBGC's authority not to nullify a termination if nullification would be inconsistent with the interests of participants and beneficiaries) or 4041(c)(2)(B)(i)(I) (relating to the liquidation criteria for a distress termination) that were contained in the Retirement Protection Act of 1994 (Pub. L. 103-465, section 778 (a) and (b)).

§ 4041.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: affected party, annuity, benefit liabilities, Code, contributing sponsor, controlled group, distress termination, distribution date, employer, ERISA, guaranteed benefit, insurer, irrevocable commitment, IRS, mandatory employee contributions, normal retirement age, notice of intent to terminate, PBGC, person, plan, plan administrator, plan year, single-employer plan, standard termination, termination date, and title IV benefit.

In addition, for purposes of this part: *Distress termination notice* means the notice filed with the PBGC pursuant to section 4041(c)(2)(A) of ERISA and § 4041.43. PBGC Form 601 (including Schedule EA-D) is the distress termination notice.

Distribution notice means the notice issued to the plan administrator by the PBGC pursuant to § 4041.45(c) of this part upon the PBGC's determination that the plan has sufficient assets to pay at least guaranteed benefits.

Existing collective bargaining agreement means a collective bargaining agreement that—

(1) By its terms, either has not expired or is extended beyond its stated expiration date because neither of the collective bargaining parties took the required action to terminate it, and

(2) Has not been made inoperative by a judicial ruling. When a collective bargaining agreement no longer meets these conditions, it ceases to be an "existing collective bargaining agreement," whether or not any or all of its terms may continue to apply by operation of law.

Majority owner means, with respect to a contributing sponsor of a single-employer plan, an individual who owns, directly or indirectly, 50 percent or more of—

(1) An unincorporated trade or business,

(2) The capital interest or the profits interest in a partnership, or

(3) Either the voting stock of a corporation or the value of all of the stock of a corporation. For this purpose, the constructive ownership rules of section 414 (b) and (c) of the Code shall apply.

Notice of benefit distribution means the notice to each participant and beneficiary required by § 4041.46 of this part describing the benefit to be distributed to him or her.

Notice of noncompliance means a notice issued to a plan administrator by the PBGC pursuant to section 4041(b)(2)(C) of ERISA and § 4041.26 of this part advising the plan administrator that the requirements for a standard

termination have not been satisfied and that the plan is an ongoing plan.

Notice of plan benefits means the notice to each participant and beneficiary required by section 4041(b)(2)(B) of ERISA and §§ 4041.22 and 4041.23 of this part describing his or her plan benefits.

Participant means—

(1) Any individual who is currently in employment covered by the plan and who is earning or retaining credited service under the plan, including any individual who is considered covered under the plan for purposes of meeting the minimum participation requirements but who, because of offset or similar provisions, does not have any accrued benefits;

(2) Any nonvested individual who is not currently in employment covered by the plan but who is earning or retaining credited service under the plan; and

(3) Any individual who is retired or separated from employment covered by the plan and who is receiving benefits under the plan or is entitled to begin receiving benefits under the plan in the future, excluding any such individual to whom an insurer has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan.

Plan benefits means the benefits to which a participant is, or may become, entitled under the plan's provisions in effect as of the termination date, based on the participant's accrued benefit under the plan as of that date. Each participant's "plan benefits" equals that participant's "benefit liabilities," and the sum of all "plan benefits" equals the plan's "benefit liabilities."

Proposed distribution date means the date chosen by the plan administrator as the tentative date for the distribution of plan assets pursuant to a standard termination. A proposed distribution date may not be earlier than the 61st day, nor later than the 240th day, following the day on which the plan administrator files a standard termination notice with the PBGC.

Proposed termination date means the date specified as such by the plan administrator in the notice of intent to terminate or, if later, in the standard termination notice or the distress termination notice. A proposed termination date specified in the notice of intent to terminate may not be earlier than the 60th day, nor later than the 90th day, after the issuance of the notice of intent to terminate. A proposed termination date becomes the 'termination date' if a plan terminates in a standard termination. A proposed termination date specified in the distress termination notice may not be

earlier than the proposed termination date specified in the notice of intent to terminate, or (except with PBGC approval) later than the 90th day after the issuance of the notice of intent to terminate.

Residual assets means the plan assets remaining after all benefit liabilities and other liabilities of the plan have been satisfied.

Standard termination notice means the notice filed with the PBGC pursuant to section 4041(b)(2)(A) of ERISA and § 4041.24 of this part advising the PBGC of a proposed standard termination. PBGC Form 500 (including Schedule EA-S) is the standard termination notice.

§ 4041.3 Requirements for a standard termination or a distress termination.

(a) *Exclusive means of voluntary plan termination.* A plan may be voluntarily terminated by the plan administrator only if all of the requirements for a standard termination set forth in paragraph (b) of this section are satisfied or all of the requirements for a distress termination set forth in paragraph (c) of this section are satisfied.

(b) *Requirements for a standard termination.* A plan may be terminated in a standard termination only if—

(1) The plan administrator issues a notice of intent to terminate to each affected party in accordance with § 4041.21 at least 60 days and not more than 90 days before the proposed termination date;

(2) The plan administrator files a standard termination notice with the PBGC in accordance with § 4041.24 no later than 120 days after the proposed termination date or, if applicable, no later than the due date established in an extension notice issued under § 4041.8;

(3) The plan administrator issues notices of plan benefits to plan participants and beneficiaries in accordance with §§ 4041.22 and 4041.23 no later than the date that the standard termination notice is filed with the PBGC;

(4) The PBGC does not issue a notice of noncompliance to the plan administrator pursuant to § 4041.26; and

(5) The plan administrator distributes plan assets in accordance with § 4041.27(c) within the 180-day (or extended) distribution period under § 4041.27(a), (e), and (f) (or, where applicable, within the time prescribed in part 4050 of this chapter), in satisfaction of all benefit liabilities under the plan.

(c) *Requirements for a distress termination.* A plan may be terminated in a distress termination only if—

(1) The plan administrator issues a notice of intent to terminate to each affected party in accordance with § 4041.41 at least 60 days and not more than 90 days before the proposed termination date;

(2) The plan administrator files a distress termination notice with the PBGC in accordance with § 4041.43 no later than 120 days after the proposed termination date or, if applicable, no later than the due date established in an extension notice issued under § 4041.8; and

(3) The PBGC determines that each contributing sponsor and each member of its controlled group satisfy one of the distress criteria set forth in paragraph (e) of this section.

(d) *Effect of failure to satisfy requirements.* (1) If the plan administrator does not satisfy all of the requirements of paragraph (b) of this section for a standard termination or, except as provided in paragraph (d)(2)(i) of this section, all of the requirements of paragraph (c) of this section for a distress termination, any action taken to effect the plan termination shall be null and void, and the plan shall be an ongoing plan. A plan administrator who still desires to terminate the plan shall initiate the termination process again, starting with the issuance of a new notice of intent to terminate.

(2)(i) The PBGC may, upon its own motion, waive any requirement with respect to notices to be filed with the PBGC under paragraph (c)(1) or (c)(2) of this section if the PBGC believes that it will be less costly or administratively burdensome to the PBGC to do so. The PBGC will not entertain requests for waivers under this paragraph.

(ii) Notwithstanding any other provision of this part, the PBGC retains the authority in any case to initiate a plan termination in accordance with the provisions of section 4042 of ERISA.

(e) *Distress criteria.* In a distress termination, each contributing sponsor and each member of its controlled group shall satisfy at least one (but not necessarily the same one) of the following criteria in order for a distress termination to occur:

(1) *Liquidation.* This criterion is met if, as of the proposed termination date—

(i) A person has filed or had filed against it a petition seeking liquidation in a case under title 11, United States Code, or under a similar federal law or law of a State or political subdivision of a State, or a case described in paragraph (e)(2) of this section has been converted to such a case; and

(ii) The case has not been dismissed.

(2) *Reorganization.* This criterion is met if—

(i) As of the proposed termination date, a person has filed or had filed against it a petition seeking reorganization in a case under title 11, United States Code, or under a similar law of a state or a political subdivision of a state, or a case described in paragraph (e)(1) of this section has been converted to such a case;

(ii) As of the proposed termination date, the case has not been dismissed;

(iii) The person notifies the PBGC of any request to the bankruptcy court (or other appropriate court in a case under such similar law of a state or a political subdivision of a state) for approval of the plan termination by concurrently filing with the PBGC a copy of the motion requesting court approval, including any documents submitted in support of the request; and

(iv) The bankruptcy court or other appropriate court determines that, unless the plan is terminated, such person will be unable to pay all its debts pursuant to a plan of reorganization and will be unable to continue in business outside the reorganization process and approves the plan termination.

(3) *Inability to continue in business.* This criterion is met if a person demonstrates to the satisfaction of the PBGC that, unless a distress termination occurs, the person will be unable to pay its debts when due and to continue in business.

(4) *Unreasonably burdensome pension costs.* This criterion is met if a person demonstrates to the satisfaction of the PBGC that the person's costs of providing pension coverage have become unreasonably burdensome solely as a result of declining covered employment under all single-employer plans for which that person is a contributing sponsor.

(f) *Non-duplicative efforts.* (1) If a person requests approval of the plan termination by a court, as described in paragraph (e)(2) of this section, the PBGC—

(i) Will normally enter an appearance to request that the court make specific findings as to whether the contributing sponsor or controlled group member meets the distress test in paragraph (e)(3) of this section, or state that it is unable to make such findings;

(ii) Will provide the court with any information it has that may be germane to the court's ruling;

(iii) Will, if the person has requested, or later requests, a determination by the PBGC under paragraph (e)(3) of this section, defer action on the request until the court makes its determination; and

(iv) Will be bound by a final and non-appealable order of the court.

(2) If a person requests a determination by the PBGC under paragraph (e)(3) of this section, the PBGC determines that the distress criterion is not met, and the person thereafter requests approval of the plan termination by a court, as described in paragraph (e)(2) of this section, the PBGC will advise the court of its determination and make its administrative record available to the court.

(g) *Non-recognition of certain actions.* If the PBGC finds that a person undertook any action or failed to act for the principal purpose of satisfying any of the distress criteria contained in paragraph (e) of this section, rather than for a reasonable business purpose, the PBGC shall disregard such act or failure to act in determining whether the person has satisfied any of those criteria.

§ 4041.4 Administration of plan during pendency of termination proceedings.

(a) *General rule.* Except to the extent specifically prohibited by this section, during the pendency of termination proceedings the plan administrator shall continue to carry out the normal operations of the plan, such as putting participants into pay status, collecting contributions due the plan, investing plan assets, and, during the pendency of a standard termination, making loans to participants, in accordance with plan provisions and applicable law and regulations.

(b) *Prohibitions after issuance of notice of intent to terminate in a standard termination.* Except as provided in paragraph (d) of this section, during the period beginning on the first day the plan administrator issues a notice of intent to terminate and ending on the last day of the PBGC's 60-day (or extended) review period, as described in § 4041.25(a), the plan administrator shall not—

(1) Distribute plan assets pursuant to or in furtherance of the termination of the plan;

(2) Pay benefits attributable to employer contributions, other than death benefits, in any form other than as an annuity; or

(3) Purchase irrevocable commitments to provide benefits from an insurer.

(c) *Prohibitions after issuing notice of intent to terminate in a distress termination.* The plan administrator shall not make loans to plan participants beginning on the first day he or she issues a notice of intent to terminate, and from that date until a distribution is permitted pursuant to § 4041.48, the plan administrator shall not—

(1) Distribute plan assets pursuant to, or (except as required by this part) take any other actions to implement, the termination of the plan;

(2) Pay benefits attributable to employer contributions, other than death benefits, in any form other than as an annuity; or

(3) Purchase irrevocable commitments to provide benefits from an insurer.

(d) *Exceptions in a standard termination.* During the period set forth in paragraph (b) of this section, the plan administrator may pay benefits attributable to employer contributions either through the purchase of irrevocable commitments from an insurer or in a form other than an annuity if—

(1) The participant has separated from active employment;

(2) The distribution is consistent with prior plan practice; and

(3) The distribution is not reasonably expected to jeopardize the plan's sufficiency for benefit liabilities.

(e) *Effect of notice of noncompliance in a standard termination.* If the PBGC issues a notice of noncompliance pursuant to § 4041.26, the prohibitions described in paragraphs (b)(2) and (b)(3) of this section shall cease to apply—

(1) Upon expiration of the period during which reconsideration may be requested under § 4041.26(c) or, if earlier, at the time the plan administrator decides not to request reconsideration; or

(2) If reconsideration is requested, upon PBGC issuance of its decision on reconsideration.

(f) *Limitation on benefit payments on or after proposed termination date in a distress termination.* Beginning on the proposed termination date, the plan administrator shall reduce benefits to the level determined under part 4022, subpart D, of this chapter.

(g) *Failure to qualify for distress termination.* In any case where the PBGC determines, pursuant to § 4041.42(c) or § 4041.44(c)(1), that the requirements for a distress termination are not satisfied—

(1) The prohibitions in paragraph (c) of this section, other than those in paragraph (c)(1), shall cease to apply—

(i) Upon expiration of the period during which reconsideration may be requested under §§ 4041.42(e) and 4041.44(d) or, if earlier, at the time the plan administrator decides not to request reconsideration; or

(ii) If reconsideration is requested, upon PBGC issuance of its decision on reconsideration.

(2) Any benefits that were not paid pursuant to paragraph (f) of this section shall be due and payable as of the

effective date of the PBGC's determination, together with interest from the date (or dates) on which the unpaid amounts were originally due until the date on which they are paid in full at the rate or rates prescribed under § 4022.81(d) of this chapter.

(h) *Effect of subsequent insufficiency.* If the plan administrator makes a finding of subsequent insufficiency for guaranteed benefits pursuant to § 4041.47(b), or the PBGC notifies the plan administrator that it has made a finding of subsequent insufficiency for guaranteed benefits pursuant to § 4041.47(d), the prohibitions in paragraph (c) of this section shall apply in accordance with § 4041.47(e).

§ 4041.5 Challenges to plan termination under collective bargaining agreement.

(a) *Suspension upon formal challenge to termination.* (1)(i) If the PBGC is advised, before the 60-day (or extended) period specified in § 4041.25 ends (in a standard termination) or before issuance of a notice of inability to determine sufficiency or a distribution notice pursuant to § 4041.45(b) or (c) (in a distress termination), that a formal challenge to the termination (as described in paragraph (b) of this section) has been initiated, the PBGC shall suspend the termination proceeding and shall so advise the plan administrator in writing.

(ii) If the PBGC is advised of a challenge described in paragraph (a)(1)(i) of this section after the 60-day (or extended) period specified in § 4041.25 ends (in a standard termination) or after issuance of a notice of inability to determine sufficiency or a distribution notice pursuant to § 4041.45(b) or (c) (in a distress termination) but before the termination procedure is concluded pursuant to this part, the PBGC may suspend the termination proceeding and, if it does, shall so advise the plan administrator in writing.

(2) The rules in paragraphs (a)(3) or (a)(4) (as appropriate) shall apply during a period of suspension beginning on the date of the PBGC's written notification to the plan administrator and ending with the final resolution of the challenge to the termination:

(3) In a standard termination—

(i) The running of all time periods specified in ERISA or this part relevant to the termination shall be suspended; and

(ii) The plan administrator shall comply with the prohibitions in § 4041.4.

(4) In a distress termination—

(i) The suspension shall stay the issuance by the PBGC of any notice of

inability to determine sufficiency or distribution notice or, if any such notice was previously issued, shall stay its effectiveness;

(ii) The plan administrator shall comply with the prohibitions in § 4041.4; and

(iii) The plan administrator shall file a distress termination notice with the PBGC in the manner and within the time specified in § 4041.43.

(b) *Formal challenge to termination.* For purposes of this section, a formal challenge to a plan termination is initiated when any of the following actions is taken, asserting that the termination would violate the terms and conditions of an existing collective bargaining agreement:

(1) The commencement of any procedure specified in the collective bargaining agreement for resolving disputes under the agreement; or

(2) The commencement of any action before an arbitrator, administrative agency or board, or court under applicable labor-management relations law.

(c) *Resolution of challenge.* Immediately upon the final resolution (as described in paragraph (d) of this section) of the formal challenge to the termination, the plan administrator shall notify the PBGC in writing of the outcome of the challenge, and shall provide the PBGC with a copy of the award or order, if any. If the validity of the proposed termination has been upheld, the plan administrator also shall advise the PBGC whether the plan administrator wishes to continue the proposed termination.

(1) *Challenge sustained.* If the arbitrator, agency, board, or court has determined (or the parties have agreed) that the proposed termination violates an existing collective bargaining agreement, the PBGC shall dismiss the termination proceeding, all actions taken to effect the plan termination shall be null and void, and the plan shall be an ongoing plan. In this event, in a distress termination, § 4041.4(g) shall apply as of the date of the dismissal by the PBGC.

(2) *Termination sustained.* If the arbitrator, agency, board, or court has determined (or the parties have agreed) that the proposed termination does not violate an existing collective bargaining agreement and the plan administrator wishes to proceed with the termination, the PBGC shall reactivate the termination proceeding by sending a written notice thereof to the plan administrator, and the following rules shall apply:

(i) The termination proceeding shall continue from the point where it was suspended;

(ii) All actions taken to effect the termination before the suspension shall be effective;

(iii) Any time periods that were suspended shall resume running from the date of the PBGC's notice of the reactivation of the proceeding;

(iv) Any time periods that had fewer than 15 days remaining shall be extended to the 15th day after the date of the PBGC's notice, or such later date as the PBGC may specify, and

(v) In a distress termination, the PBGC shall proceed to issue a notice of inability to determine sufficiency or a distribution notice (or reactivate any such notice stayed under paragraph (a)(3) of this section), either with or without first requesting updated information from the plan administrator pursuant to § 4041.43(c).

(d) *Final resolution of challenge.* For purposes of this section, a formal challenge to a proposed termination is finally resolved when—

(1) The parties involved in the challenge enter into a settlement that resolves the challenge;

(2) A final award, administrative decision, or court order is issued that is not subject to review or appeal; or

(3) A final award, administrative decision, or court order is issued that is not appealed, or review or enforcement of which is not sought, within the time for filing an appeal or requesting review or enforcement.

(e) *Involuntary termination by the PBGC.* Notwithstanding any other provision of this section, the PBGC retains the authority in any case to initiate a plan termination in accordance with the provisions of section 4042 of ERISA.

§ 4041.6 Annuity requirements.

(a) *General rule.* Except as provided in paragraphs (b) and (d) of this section (or, where applicable, in part 4050 of this chapter), when a plan is closed out under § 4041.27 (in a standard termination) or § 4041.48 (in a distress termination), any benefit that is payable as an annuity under the provisions of the plan must be provided in annuity form through the purchase from an insurer of a single premium, nonparticipating, nonsurrenderable annuity contract that constitutes an irrevocable commitment by the insurer to provide the benefits purchased.

(b) *Exceptions to annuity requirement.* A benefit that is payable as an annuity under the provisions of a plan need not be provided in annuity form if the plan provides for an alternative form of

distribution and either paragraph (b)(1) or (b)(2) of this section applies:

(1) The participant is not in pay status as of the distribution date, and the present value of the participant's total benefit under the plan, including amounts previously distributed to the participant, is \$3,500 or less, determined in accordance with sections 411(a)(11) and 417(e)(3) of the Code and the regulations thereunder. The present value of such benefits shall be determined using the interest rate or rates as of—

(i) The date set forth in the plan for such purpose, provided that the plan provision is in accord with section 417(e)(3) of the Code and the regulations thereunder (substituting “distribution date” for “annuity starting date” wherever used in the plan); or

(ii) If the plan does not provide for such a date, the distribution date.

(2) The participant elected the alternative form of distribution in writing, with the written consent of his or her spouse, in accordance with the requirements of sections 401(a)(11), 411(a)(11), and 417 of the Code and the regulations thereunder.

(c) *Optional benefit forms.* Except as permitted by sections 401(a)(11), 411(d)(6), and 417 of the Code and the regulations thereunder, an annuity contract purchased to satisfy the annuity requirement shall preserve all applicable benefit options provided under the plan as of the termination date.

(d) *Participating annuities.* (1) *General rule.* Notwithstanding the requirement of paragraph (a) of this section that an annuity contract be nonparticipating, a participating annuity contract may be purchased to satisfy the annuity requirement if the plan can provide for all benefit liabilities and—

(i) All benefit liabilities will be guaranteed under the annuity contract as the unconditional, irrevocable, and noncancellable obligation of the insurer;

(ii) In no event, including unfavorable investment or actuarial experience, can the amounts payable to participants under the annuity contract decrease except to correct mistakes; and

(iii) As provided in paragraph (d)(2) of this section, no amount of residual assets to which participants are entitled will be used to pay for the participation feature.

(2) *Plans with residual assets.* If all or a portion of the residual assets of a plan will be distributed to participants—

(i) The additional premium for the participation feature must be paid from the contributing sponsor's share, if any,

of the residual assets or from assets of the contributing sponsor; and

(ii) If the plan provided for mandatory employee contributions, the amount of residual assets must be determined using the price of the annuities for all benefit liabilities without the participation feature.

§ 4041.7 Facilitating plan sufficiency in a standard termination.

(a) *Commitment to make plan sufficient—(1) General rule.* At any time before a standard termination notice is filed with the PBGC, in order to enable the plan to terminate in that standard termination, a contributing sponsor or a member of a controlled group of a contributing sponsor may make a commitment to contribute any additional sums necessary to make the plan sufficient for all benefit liabilities. Any such commitment shall be treated as a plan asset for all purposes under this part. A sample commitment is included in the appendix to this part.

(2) *Requirements for valid commitment.* A commitment to make a plan sufficient for all benefit liabilities shall be valid for purposes of this part only if the commitment—

(i) Is made to the plan;

(ii) Is in writing, signed by the contributing sponsor and/or controlled group member(s); and

(iii) If the contributing sponsor or controlled group member is the subject of a bankruptcy liquidation or reorganization proceeding, as described in § 4041.3(e)(1) or (e)(2) of this part, is approved by the court before which the liquidation or reorganization proceeding is pending or is unconditionally guaranteed, by a person not in bankruptcy, to be met at or before the time distribution of assets is required in the standard termination.

(b) *Alternative treatment of majority owner's benefit—(1) General rule.* In order to facilitate the termination of the plan and distribution of assets in a standard termination, a majority owner may agree to forego receipt of all or part of his or her benefit until the benefit liabilities of all other plan participants have been satisfied.

(2) *Requirements for valid agreement.* Any agreement by a majority owner to an alternative treatment of his or her benefit is valid only if—

(i) The agreement is in writing;

(ii) In any case in which the total value of the benefit (determined in accordance with § 4041.6(b) of this part) is greater than \$3,500, the spouse, if any, of the majority owner consents, in writing, to the alternative treatment of the benefit; and

(iii) The agreement is not inconsistent with a qualified domestic relations order (as defined in section 206(d)(3) of ERISA).

§ 4041.8 Disaster relief.

(a) Notwithstanding any other provision in this part, when the President of the United States declares that, under the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121, 5122(2), 5141(b)), a major disaster exists, the Executive Director of the PBGC (or his or her designee) may, by issuing one or more notices of disaster relief, extend by up to 180 days the due date for—

(1) Filing the standard termination notice under § 4041.24;

(2) Completing the distribution of plan assets in a standard termination under § 4041.27;

(3) Filing the distress termination notice pursuant to § 4041.43;

(4) Issuing the notices of benefit distribution in a distress termination pursuant to § 4041.46(a)(1); or

(5) Completing the distribution of plan assets in a distress termination pursuant to § 4041.48.

(b) The due date extension or extensions described in paragraph (a) of this section shall apply only to plan terminations with respect to which the principal place of business of the contributing sponsor or the plan administrator, or the office of the service provider, bank, insurance company, or other person maintaining the information necessary to file the standard or distress termination notice, issue notices of plan benefits or benefit distribution, or complete the distribution of plan assets (as applicable), is within a designated disaster area.

(c) The standard or distress termination notice or the post-distribution certification shall identify the termination as being qualified for the due date extension.

§ 4041.9 Filing with the PBGC.

(a) *Date of filing.* Any document required or permitted to be filed with the PBGC under this part shall be deemed filed on the date that it is received at the PBGC, providing it is received no later than 4:00 p.m. on a day other than Saturday, Sunday, or a Federal holiday. Documents received after 4:00 p.m. or on Saturday, Sunday, or a Federal holiday shall be deemed filed on the next regular business day.

(b) *How to file.* Except as may otherwise be provided in applicable forms and instructions, any document to be filed under this part may be delivered by mail or by hand to: Reports

Processing, Insurance Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005-4026

§ 4041.10 Computation of time.

In computing any period of time prescribed or allowed by this part, the day of the act or event from which the designated period of time begins to run is not counted. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Notwithstanding the preceding sentence, a proposed termination date may be any day, including a Saturday, Sunday, or Federal holiday.

§ 4041.11 Maintenance of plan records.

Either the contributing sponsor or the plan administrator of a plan terminating in a standard termination or a plan terminating in a distress termination that closes out in accordance with § 4041.48 pursuant to a distribution notice issued under § 4041.45(c) shall maintain and preserve all records used to compute benefits with respect to each individual who is a plan participant or a beneficiary of a deceased participant as of the termination date in accordance with the following rules:

(a) The records to be maintained and preserved are those used to compute the benefit for purposes of distribution to each individual in accordance with § 4041.27(c) (in a standard termination) or § 4041.48 (in a distress termination) and include, but are not limited to, the plan documents and all underlying data, including worksheets prepared by or at the direction of the enrolled actuary, used in determining the amount, form, and value of benefits.

(b) All records subject to this section shall be preserved for six years after the date the post-distribution certification required under § 4041.27(h) (in a standard termination) or § 4041.48(b) (in a distress termination) is filed with the PBGC.

(c) The contributing sponsor or plan administrator, as appropriate, shall make records subject to this section available to the PBGC upon request for inspection and photocopying, and shall submit such records to the PBGC within 30 days after receipt of the PBGC's written request therefor (or such other period as may be specified in such written request).

§ 4041.12 Information collection.

The information collection requirements contained in this part have

been approved by the Office of Management and Budget under control number 1212-0036.

Subpart B—Standard Termination Process

§ 4041.21 Notice of intent to terminate.

(a) *General rule.* At least 60 days and no more than 90 days before the proposed termination date, the plan administrator shall issue to each person who is (as of the proposed termination date) an affected party (other than the PBGC) a written notice of intent to terminate containing all of the information specified in paragraph (d) of this section. Failure to comply with the requirements of this section shall nullify the proposed termination.

(b) *Discovery of other affected parties.* Notwithstanding the provisions of paragraph (a) of this section, if the plan administrator discovers additional affected parties after the expiration of the time period specified in paragraph (a) of this section, the failure to issue the notice of intent to terminate to such parties within the specified time period will not cause the notice to be untimely under paragraph (a) of this section if the plan administrator could not reasonably have been expected to know of the additional affected parties and if he or she promptly issues the notice to each additional affected party.

(c) *Issuance—(1) Method.* The plan administrator shall issue the notice of intent to terminate to each affected party (other than the PBGC) individually either by hand delivery or by first-class mail or courier service directed to the affected party's last known address.

(2) *When issued.* The notice of intent to terminate is deemed issued to each affected party on the date on which it is handed to the affected party or deposited with a mail or courier service (as evidenced by a postmark or written receipt).

(d) *Contents of notice.* The plan administrator shall include in the notice of intent to terminate all of the following information:

(1) The name of the plan and of the contributing sponsor;

(2) The employer identification number ("EIN") of the contributing sponsor and the plan number ("PN"); if there is no EIN or PN, the notice shall so state;

(3) The name, address, and telephone number of the person who may be contacted by an affected party with questions concerning the plan's termination;

(4) A statement that the plan administrator expects to terminate the plan in a standard termination on a

proposed termination date that is either—

(i) A specific date set forth in the notice, or

(ii) A date to be determined that is dependent on the occurrence of some future event;

(5) If the proposed termination date is dependent on the occurrence of a future event, the nature of the event (such as the merger of the contributing sponsor with another entity), generally when the event is expected to occur, and when the termination will occur in relation to the other event;

(6) A statement that benefit and service accruals will continue until the termination date or, if applicable, that benefit accruals were or will be frozen as of a specific date in accordance with section 204(h) of ERISA;

(7) A statement that, in order to terminate in a standard termination, plan assets must be sufficient to provide all benefit liabilities under the plan with respect to each participant and each beneficiary of a deceased participant;

(8) A statement that, after plan assets have been distributed to provide all benefit liabilities with respect to a participant or a beneficiary of a deceased participant, either by the purchase of an irrevocable commitment or commitments from an insurer to provide benefits or by an alternative form of distribution provided for under the plan, the PBGC's guarantee with respect to that participant's or beneficiary's benefit ends;

(9) If distribution of benefits under the plan may be wholly or partially by the purchase of irrevocable commitments from an insurer—

(i) The name and address of the insurer or insurers from whom, or (if not then known) the insurers from among whom, the plan administrator intends to purchase the irrevocable commitments; or

(ii) If the plan administrator has not identified an insurer or insurers at the time the notice of intent to terminate is issued, a statement that—

(A) Irrevocable commitments may be purchased from an insurer to provide some or all of the benefits under the plan,

(B) The insurer or insurers have not yet been identified, and

(C) Affected parties (other than the PBGC) will be notified at a later date (but no later than 45 days before the distribution date) of the name and address of the insurer or insurers from whom, or (if not then known) the insurers from among whom, the plan administrator intends to purchase the irrevocable commitments;

(10) A statement that if the termination does not occur, the plan administrator will notify the affected parties (other than the PBGC) in writing of that fact;

(11) A statement that each affected party, other than the PBGC or any employee organization, will receive a written notification of the benefits that the person will receive; and

(12) For retirees only, a statement that their monthly (or other periodic) benefit amounts will not be affected by the plan's termination.

(e) *Supplemental notice requirements.* (1) The plan administrator shall issue a supplemental notice (or notices) of intent to terminate to each affected party (other than the PBGC) in accordance with the rules in paragraph (e)(2) of this section if—

(i) The plan administrator has not yet identified an insurer or insurers at the time the notice of intent to terminate is issued; or

(ii) The plan administrator notifies affected parties (other than the PBGC) of the insurer or insurers from whom (or from among whom) he or she intends to purchase the irrevocable commitments, either in the notice of intent to terminate or in a later notice, but subsequently decides to select a different insurer.

(2) The plan administrator shall issue each supplemental notice in the manner provided in paragraph (c) of this section no later than 45 days before the distribution date and shall include the name and address of the insurer or insurers from whom, or (if not then known) the insurers from among whom, the plan administrator intends to purchase the irrevocable commitments.

(3) Any supplemental notice or notices meeting the requirements of paragraph (e)(2) of this section shall be deemed a part of the notice of intent to terminate.

(f) *Spin-off/termination transactions.* In the case of a spin-off/termination transaction, the plan administrator shall provide all participants in the original plan who are covered by the ongoing plan (as of the proposed termination date) with a notice describing the transaction no later than the date on which the plan administrator completes the issuance of notices of intent to terminate under this section. A spin-off/termination is a transaction in which a single defined benefit plan is split into two or more plans, in conjunction with the termination of one or more of the plans, resulting in a reversion of residual assets to the employer.

§ 4041.22 Issuance of notices of plan benefits.

(a) *General rule.* No later than the date on which the plan administrator files the standard termination notice with the PBGC, as required by § 4041.24, the plan administrator shall issue to each person described in paragraph (b) of this section a notice of that individual's plan benefits. The notice shall be in the form and contain the information specified in § 4041.23. Failure to comply with the requirements of this section shall nullify the proposed termination.

(b) *Persons entitled to notice.* The plan administrator shall issue a notice of plan benefits to each person (other than the PBGC or any employee organization) who is an affected party as of the proposed termination date (and, in the case of a spin-off/termination transaction as described in § 4043.21(f), each person who is, as of the proposed termination date, a participant in the original plan who is covered by the ongoing plan).

(c) *Discovery of other affected parties.* Notwithstanding the provisions of paragraph (a) of this section, if the plan administrator discovers additional persons entitled to a notice of plan benefits after the expiration of the time period specified in paragraph (a) of this section, the failure to issue a notice of plan benefits to such persons within the specified time period will not cause such notices to be untimely under paragraph (a) of this section if the plan administrator could not reasonably have been expected to know of the additional persons and if he or she promptly issues, to each such additional person, a notice of plan benefits in the form and containing the information specified in § 4041.23.

(d) *Issuance—(1) Method.* The plan administrator shall issue a notice of plan benefits individually to each person described in paragraph (b) of this section, either by hand-delivery or by first-class mail or courier service directed to the person's last known address.

(2) *When issued.* A notice of plan benefits is deemed issued to each person on the date it is handed to the person or deposited with a mail or courier service (as evidenced by a postmark or written receipt).

§ 4041.23 Form and contents of notices of plan benefits.

(a) *Form of notices.* The plan administrator shall provide notices of plan benefits written in plain, non-technical English that is likely to be understood by the average participant or beneficiary. If technical terms must be

used, their meaning shall be explained in non-technical language.

(b) *Foreign languages.* The plan administrator of a plan described in this paragraph shall comply with paragraph (a) of this section and also shall include in the notices a statement, prominently displayed, in the foreign language (or languages) common to the non-English speaking plan participants advising them of how they may obtain assistance in understanding the notice. The assistance need not involve written materials, but shall be adequate to reasonably ensure that the participants and beneficiaries understand the information contained in their notices and shall be provided through media and at times and places that are reasonably accessible to the participants and beneficiaries. A plan is described in this paragraph if, as of the proposed termination date, the plan either—

(1) Covers fewer than 100 participants and at least 25 percent of those participants speak only the same non-English language or

(2) Covers 100 or more participants and at least the lesser of 500 or 10 percent of those participants speak the same non-English language.

(c) *Contents of notice.* In addition to the information described in paragraph (d), (e), or (f) of this section, as applicable, the plan administrator shall include in each notice of plan benefits the following information:

(1) The name of the plan, the employer identification number ("EIN") of the contributing sponsor, and the plan number ("PN"); if there is no EIN or PN, the notice shall so state;

(2) The name, address, and telephone number of the person who may be contacted to answer questions concerning a participant's or beneficiary's benefit;

(3) The proposed termination date and, if applicable, a statement that this date is later than the proposed termination date given in the notice of intent to terminate; and

(4) If the amount of the plan benefits set forth in a notice is an estimate, a statement that the amount is an estimate and that benefits paid may be greater than or less than the estimate.

(d) *Benefits of persons in pay status.* The plan administrator shall include in the notice of plan benefits for a participant or beneficiary in pay status as of the proposed termination date the following information:

(1) The amount and form of the participant's plan benefits payable as of the proposed termination date;

(2) The amount and form of benefit, if any, payable to a beneficiary upon the

participant's death and the name of the beneficiary;

(3) The amount and date of any increase or decrease in the benefit scheduled to occur after the proposed termination date (or that has already occurred) and an explanation of the increase or decrease, including, where applicable, a reference to the pertinent plan provision; and

(4) For benefits of participants or beneficiaries in pay status for one year or less as of the proposed termination date, the specific personal data used to calculate the plan benefits described in paragraphs (d)(1) and (d)(2) of this section, *e.g.*, participant's age at retirement, spouse's age, participant's length of service, and including, for Social Security offset benefits, the participant's actual or, if unknown, estimated Social Security benefit and, for an estimated benefit, the assumptions used for the participant's earnings history.

(e) *Benefits of participants not in pay status but form and starting date known.* The plan administrator shall include in the notice of plan benefits for a participant who is not in pay status as of the proposed termination date, but who has, as of that date, elected to retire and has elected a form and starting date, or with respect to whom the plan administrator has determined a lump sum distribution will be made, the following information:

(1) The amount and form of the participant's plan benefits payable as of the projected benefit starting date, and what that date is;

(2) The amount and form of benefit, if any, payable to a beneficiary upon the participant's death and the name of the beneficiary;

(3) The amount and date of any increase or decrease in the benefit scheduled to occur after the proposed termination date (or that has already occurred) and an explanation of the increase or decrease, including, where applicable, a reference to the pertinent plan provision; and

(4) If the age at which, or form in which, the plan benefits will be paid differs from the age or form in which the participant's accrued benefit at normal retirement age is stated in the plan, the age or form stated in the plan and the age or form adjustment factors, including, in the case of a lump sum benefit, the interest rate used to convert to the lump sum benefit described in paragraph (e)(1) of this section and a reference to the pertinent plan provision;

(5) The specific personal data, as described in paragraph (d)(4) of this section, used to calculate the plan

benefits (other than a lump sum benefit) described in paragraphs (e)(1) and (e)(2) of this section and, with respect to a benefit payable as a lump sum, the personal data used to calculate the underlying annuity; and

(6) If the plan benefits will be paid in a lump sum, an explanation of how the interest rate is used to calculate the lump sum; a statement that the higher the interest rate used, the smaller the lump sum amount; and, if applicable, a statement that the lump sum amount given is an estimate because the applicable interest rate may change before the distribution date.

(f) *Benefits of all other participants not in pay status.* The plan administrator shall include in the notice of plan benefits for any participant not described in paragraph (d) or (e) of this section, the following information:

(1) The amount and form of the participant's plan benefits payable at normal retirement age in any form permitted under the plan;

(2) The availability of any alternative benefit forms, including those payable to a beneficiary upon the participant's death either before or after retirement, and, for any benefits to which the participant is or may become entitled that would be payable before normal retirement age, the earliest benefit commencement date, the amount payable on and after such date, and whether the benefit would be subject to future reduction;

(3) The specific personal data, as described in paragraph (d)(4) of this section, used to calculate the plan benefits described in paragraph (f)(1) of this section and, with respect to a benefit that may be paid in a lump sum, the personal data used to calculate the underlying annuity; and

(4) If the plan benefits may be paid in a lump sum, an explanation of when a lump sum may be paid without a participant's consent; an explanation of how the interest rate is used to calculate the lump sum; and a statement that the higher the interest rate used, the smaller the lump sum amount.

§ 4041.24 Standard termination notice.

(a) *Form.* The plan administrator shall file with the PBGC a PBGC Form 500, Standard Termination Notice, Single-Employer Plan Termination, with Schedule EA-S, Standard Termination Certification of Sufficiency, that has been completed in accordance with the instructions thereto. Except as provided in § 4041.8, the plan administrator shall file the standard termination notice on or before the 120th day after the proposed termination date.

(b) *Supplemental notice requirement.* If any of the benefits of the terminating plan may be provided in annuity form through the purchase of irrevocable commitments from an insurer and either of the conditions in paragraph (b)(1) of this section is met, the plan administrator shall file a supplemental notice (or notices) with the PBGC in accordance with the provisions in paragraph (b)(2) of this section.

(1) The plan administrator shall file with the PBGC a supplemental notice (or notices) if—

(i) The insurer or insurers from whom the plan administrator intends to purchase irrevocable commitments is not identified in the standard termination notice filed with the PBGC, or

(ii) The plan administrator has notified the PBGC of the insurer or insurers from whom he or she intends to purchase irrevocable commitments, either in the standard termination notice or in a later notice pursuant to paragraph (b)(2) of this section, and subsequently decides to select a different insurer.

(2) The supplemental notice (or notices) may be filed at any time after the filing of the standard termination notice, but no later than 45 days before the distribution date, and shall—

(i) Be in writing addressed to: Reports Processing, Insurance Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005-4026.

(ii) Give information identifying the contributing sponsor and the plan by name, address, employer identification and plan numbers ("EIN/PN"), and PBGC case number (if applicable); and

(iii) Give the name and address of the insurer or insurers from whom, or (if not then known) the insurers from among whom, the plan administrator intends to purchase the irrevocable commitments.

§ 4041.25 PBGC action upon filing of standard termination notice.

(a) *Review period upon filing of standard termination notice—(1) General rule.* After a complete standard termination notice has been filed in accordance with § 4041.9, the PBGC has 60 days to review the notice, determine whether to issue a notice of noncompliance pursuant to § 4041.26, and issue any such notice. The 60-day review period begins on the day following the filing of a complete standard termination notice and includes the 60th day. If the PBGC does not issue a notice of noncompliance by the last day of this 60-day period, the plan administrator shall proceed to

close out the plan in accordance with § 4041.27.

(2) *Extension of review period.* The 60-day review period may be extended according to the following rules:

(i) The PBGC and the plan administrator may agree in writing, before the expiration of the 60-day review period, to extend the period for up to an additional 60 days;

(ii) More than one such extension may be made; and

(iii) Any extension may be made upon whatever terms and conditions are agreed to by the PBGC and the plan administrator.

(3) *Suspension of review period.* The 60-day review period shall be suspended in accordance with paragraph (d) of this section if the PBGC requests supplemental information.

(b) *Acknowledgment of complete standard termination notice.* The PBGC shall notify the plan administrator in writing of the date on which a complete standard termination notice was filed, so that the plan administrator may determine when the 60-day review period will expire.

(c) *Return of incomplete standard termination notice.* The PBGC shall return an incomplete standard termination notice and advise the plan administrator in writing of the missing item(s) of information and that the complete standard termination notice must be filed no later than the 120th day after the proposed termination date or the 20th day after the date of the PBGC notice, whichever is later.

(d) *Authority to request supplemental information.* Whenever the PBGC has reason to believe that any of the requirements of §§ 4041.21 through 4041.24 of this part were not complied with, or in any proposed termination that will result in a reversion of residual assets to the contributing sponsor, the PBGC may require the submission of information supplementing that furnished pursuant to § 4041.24. A request for additional information under this paragraph shall be in writing and shall suspend the running of the 60-day (or extended) review period described in paragraph (a) of this section. That period shall begin running again on the day following the filing of the required information. If a plan administrator or contributing sponsor fails to submit information required under this paragraph within the period specified in the PBGC's request, the PBGC may issue a notice of noncompliance in accordance with § 4041.26 or take other appropriate action to enforce the requirements of Title IV of ERISA.

(e) *Authority to suspend or nullify proposed termination.* Notwithstanding

any other provision of this part, the PBGC may, by written notice to the plan administrator, suspend or nullify a proposed termination after expiration of the 60-day (or extended) review period in any case in which it determines that such action is necessary to carry out the purposes of Title IV of ERISA.

§ 4041.26 Notice of noncompliance.

(a) *General.* (1) The PBGC shall issue to the plan administrator a written notice of noncompliance, within the period prescribed by § 4041.25, whenever it makes one of the following determinations:

(i) A determination that the plan administrator failed to issue the notice of intent to terminate in accordance with § 4041.21.

(ii) A determination that the plan administrator failed to issue notices of plan benefits in accordance with §§ 4041.22 and 4041.23.

(iii) A determination that the standard termination notice, or any supplemental notice, was not filed in accordance with § 4041.24.

(iv) A determination that, as of the proposed distribution date, plan assets will not be sufficient to satisfy all benefit liabilities under the plan.

(2) The PBGC shall base any determination described in paragraph (a)(1) of this section on the information contained in the standard termination notice, including any supplemental submission under § 4041.25(d) and any supplemental notice under § 4041.24(b), or on information provided by any affected party or otherwise obtained by the PBGC.

(b) *Effect of notice of noncompliance.* A notice of noncompliance ends the standard termination proceeding, nullifies all actions taken to terminate the plan, and renders the plan an ongoing plan. The notice of noncompliance is effective upon the expiration of the period within which the plan administrator may request reconsideration pursuant to paragraph (c) of this section but, once a notice is issued, the plan administrator shall take no further action to terminate the plan (except by initiation of a new termination) unless and until the notice is revoked pursuant to a decision by the PBGC on reconsideration.

(c) *Reconsideration of notice of noncompliance.* A plan administrator may request reconsideration of a notice of noncompliance in accordance with the rules prescribed in part 4003, subpart C, of this chapter. Any request for reconsideration automatically stays the effectiveness of the notice of noncompliance until the PBGC issues its decision on reconsideration.

(d) *Notice to affected parties—(1) General rule.* Upon a decision by the PBGC on reconsideration affirming the issuance of a notice of noncompliance (or, if earlier, upon the plan administrator's decision not to request reconsideration), the plan administrator shall notify the affected parties (other than the PBGC), and any persons who were provided notice under § 4041.21(f), in writing that the plan is not going to terminate or, if applicable, that the termination was invalid but that a new notice of intent to terminate is being issued.

(2) *Method of issuance.* The notices shall be delivered by first-class mail or by hand to each person described in paragraph (d)(1) who is an employee organization or a participant or beneficiary who is then in pay status. The notices to other participants and beneficiaries shall be provided in any manner reasonably calculated to reach those participants and beneficiaries. Reasonable methods of notification include, but are not limited to, posting the notice at participants' worksites or publishing the notice in an employee organization newsletter or newspaper of general circulation in the area or areas where participants and beneficiaries reside.

§ 4041.27 Closeout of plan.

(a) *General rules—(1) Distribution.* Except as provided in paragraphs (b), (e), and (f) of this section and § 4041.8 of this part, if the PBGC does not issue a notice of noncompliance within the period specified in § 4041.25 or, if a notice of noncompliance is issued and later revoked after reconsideration under § 4041.26(c), the plan administrator shall complete the distribution of plan assets in accordance with paragraph (c) of this section within 180 days after the expiration of the review period specified in § 4041.25 (or, if applicable, the date on which the PBGC revokes the notice of noncompliance) or, if applicable, within the time prescribed in part 4050 of this chapter.

(2) *Post-distribution requirements.* The plan administrator shall file with the PBGC a post-distribution certification in accordance with paragraph (h) of this section and, if any of the plan's benefit liabilities payable to a participant or beneficiary have been distributed through the purchase of irrevocable commitments, the plan administrator also shall provide such participant or beneficiary with a notice, contract, or certificate in accordance with paragraph (g) of this section.

(b) *Assets insufficient to satisfy benefit liabilities.* Before distributing

plan assets to close out the plan, the plan administrator shall determine that plan assets are, in fact, sufficient to satisfy all benefit liabilities. In determining if plan assets are sufficient, the plan administrator shall subtract all liabilities (other than the future benefit liabilities that will be provided when assets are distributed), *e.g.*, benefit payments due before the distribution date; PBGC premiums for all plan years through and including the plan year in which assets are distributed; expenses, fees, and other administrative costs. If plan assets are not sufficient to satisfy all benefit liabilities, the plan administrator shall not make any distribution of assets to effect the plan's termination. In the event of an insufficiency, the plan administrator shall promptly notify the PBGC.

(c) *Method of distribution.* The plan administrator shall distribute plan assets in accordance with § 4041.6 by purchasing irrevocable commitments from an insurer in satisfaction of all benefit liabilities that must be provided in annuity form, and by otherwise providing all benefit liabilities that need not be provided in annuity form. The plan administrator shall comply with part 4050 of this chapter (dealing with missing participants), if applicable.

(d) *Failure to distribute within 180-day period.* Except as provided in paragraphs (e) and (f) of this section, failure to distribute assets in accordance with paragraph (c) of this section within the 180-day distribution period set forth in paragraph (a)(1) of this section, because of an insufficiency of plan assets as described in paragraph (b) of this section or for any other reason, shall nullify the termination. All actions taken to effect the plan's termination shall be null and void, and the plan shall be an ongoing plan. In this event, the plan administrator shall notify affected parties (other than the PBGC) in writing, in accordance with § 4041.26(d), that the plan is not going to terminate or, if applicable, that the termination was invalid but that a new notice of intent to terminate is being issued.

(e) *Automatic extension of time for distribution.* (1) *Requirements for automatic extension.* The plan administrator shall be entitled to an automatic extension of the 180-day period in which to complete the distribution of plan assets if the plan administrator—

(i) Submits to the IRS a complete request for a determination with respect to the plan's tax-qualification status upon termination ("determination letter") on or before the date that the

plan administrator files the standard termination notice with the PBGC;

(ii) Does not receive a determination letter at least 60 days before the expiration of the 180-day period; and

(iii) On or before the expiration of the 180-day period, notifies the PBGC in writing that an extension of the distribution deadline is required and certifies that the conditions in this paragraph have been met.

(2) *Extension period.* If the requirements in paragraph (e)(1) of this section are met, the time within which the plan administrator shall complete the distribution of plan assets is automatically extended until the 60th day after receipt of a favorable determination letter from the IRS.

(f) *Discretionary extension of time for distribution.* If the plan administrator will be unable to complete the distribution of plan assets within the 180-day (or extended) period for any reason other than an insufficiency described in paragraph (b) of this section, the plan administrator may request, and the PBGC shall grant or deny, in its discretion, an extension of time within which to complete the distribution according to the following rules:

(1) The plan administrator shall file a written request for a discretionary extension with the PBGC at least 30 days before the expiration of the 180-day (or extended) distribution period, explain the reason(s) for the request, and provide a date certain by which the distribution will be made if the extension is granted.

(2) The PBGC will not grant a discretionary extension based on failure to meet the requirements for an automatic extension under paragraph (e) of this section or failure to locate all participants or beneficiaries.

(3) The PBGC will grant a discretionary extension, in whole or in part, only if it is satisfied that the delay in making the distribution is not due to the action or inaction of the plan administrator or the contributing sponsor and that the distribution can in fact be completed by the date requested.

(g) *Notice of annuity contract.* In the case of the distribution of benefit liabilities through the purchase of irrevocable commitments—

(1) Either the plan administrator or the insurer shall, as soon as practicable, provide each participant and beneficiary with a copy of the annuity contract or certificate showing the insurer's name and address and clearly reflecting the insurer's obligation to provide the participant's or beneficiary's benefit; (2) If such a contract or certificate is not available on or before the date on which

the post-distribution certificate is required to be filed pursuant to paragraph (h) of this section, the plan administrator shall, no later than such date, provide each participant and beneficiary with a written notice stating—

(i) That the obligation for providing the participant's or beneficiary's plan benefits has transferred to the insurer;

(ii) The name and address of the insurer;

(iii) The name, address, and telephone number of the person designated by the insurer to answer questions concerning the annuity; and

(iv) That the participant or beneficiary will receive from the plan administrator or insurer a copy of the annuity contract or a certificate showing the insurer's name and address and clearly reflecting the insurer's obligation to provide the participant's or beneficiary's benefit; and

(3) The plan administrator shall certify to the PBGC, as part of the post-distribution certification required under paragraph (h) of this section, that the requirements in paragraph (g)(1) or (g)(2) of this section have been satisfied.

(h) *Post-distribution certification.* Within 30 days after the last distribution date, the plan administrator shall file with the PBGC a PBGC Form 501, Post-Distribution Certification for Standard Termination, that has been completed in accordance with the instructions thereto. This requirement shall be considered satisfied if, in accordance with § 4050.6(a)(2) and (a)(3) of this chapter, the plan administrator files a preliminary post-distribution certification within 30 days after the last distribution date and, in addition, timely files an amended post-distribution certification that otherwise satisfies all applicable requirements.

Subpart C—Distress Termination Process

§ 4041.41 Notice of intent to terminate.

(a) *General rules.* (1) At least 60 days and no more than 90 days before the proposed termination date, the plan administrator shall issue to each person who is (as of the proposed termination date) an affected party a written notice of intent to terminate.

(2) The plan administrator shall issue the notice of intent to terminate to all affected parties other than the PBGC at or before the time he or she files the notice with the PBGC.

(3) The notice to affected parties other than the PBGC shall contain all of the information specified in paragraph (d) of this section.

(4) The notice to the PBGC shall be filed on PBGC Form 600, Distress Termination, Notice of Intent to Terminate, completed in accordance with the instructions thereto.

(b) *Discovery of other affected parties.* Notwithstanding the provisions of paragraphs (a)(1) and (a)(2) of this section, if the plan administrator discovers additional affected parties after the expiration of the time period specified in paragraphs (a)(1) or (a)(2) of this section, the failure to issue the notice of intent to terminate to such parties within the specified time periods will not cause the notice to be untimely under paragraph (a) of this section if the plan administrator could not reasonably have been expected to know of the additional affected parties and if he or she promptly issues the notice to each additional affected party.

(c) *Issuance—(1) Method.* The plan administrator shall issue the notice of intent to terminate individually to each affected party. The notice to the PBGC shall be filed in accordance with § 4041.9. The notice to each of the other affected parties shall be either hand delivered or delivered by first-class mail or courier service directed to the affected party's last known address.

(2) *When issued.* The notice of intent to terminate is deemed issued to the PBGC on the date on which it is filed and to any other affected party on the date on which it is handed to the affected party or deposited with a mail or courier service (as evidenced by a postmark or written receipt).

(d) *Contents of notice to affected parties other than the PBGC.* The plan administrator shall include in the notice of intent to terminate to each affected party other than the PBGC all of the following information:

(1) The name of the plan and of the contributing sponsor;

(2) The employer identification number ("EIN") of the contributing sponsor and the plan number ("PN"); if there is no EIN or PN, the notice shall so state;

(3) The name, address, and telephone number of the person who may be contacted by an affected party with questions concerning the plan's termination;

(4) A statement that the plan administrator expects to terminate the plan in a distress termination on a specified proposed termination date.

(5) A statement that benefit and service accruals will continue until the termination date or, if applicable, that benefit accruals were or will be frozen as of a specific date in accordance with section 204(h) of ERISA;

(6) A statement of whether plan assets are sufficient to pay all guaranteed benefits or all benefit liabilities;

(7) A brief description of what benefits are guaranteed by the PBGC (e.g., if only a portion of the benefits are guaranteed because of the phase-in rule, this should be explained), and a statement that participants and beneficiaries also may receive a portion of the benefits to which each is entitled under the terms of the plan in excess of guaranteed benefits; and

(8) A statement, if applicable, that benefits may be subject to reduction because of the limitations on the amounts guaranteed by the PBGC or because plan assets are insufficient to pay for full benefits (pursuant to part 4022, subparts B and D, of this chapter) and that payments in excess of the amount guaranteed by the PBGC may be recouped by the PBGC (pursuant to part 4022, subpart E, of this chapter).

(e) *Spin-off/termination transactions.* In the case of a spin-off/termination transaction (as described in § 4041.21(f)), the plan administrator shall provide all participants and beneficiaries in the original plan who are also participants or beneficiaries in the ongoing plan (as of the proposed termination date) with a notice describing the transaction no later than the date on which the plan administrator completes the issuance of notices of intent to terminate under this section.

§ 4041.42 PBGC review of notice of intent to terminate.

(a) *General.* When a notice of intent to terminate is filed with it, the PBGC—

(1) Shall determine whether the notice was issued in compliance with § 4041.41; and

(2) Shall advise the plan administrator of its determination, in accordance with paragraph (b) or (c) of this section, no later than the proposed termination date specified in the notice.

(b) *Tentative finding of compliance.* If the PBGC determines that the issuance of the notice of intent to terminate appears to be in compliance with § 4041.41, it shall notify the plan administrator in writing that—

(1) The PBGC has made a tentative determination of compliance;

(2) The distress termination proceeding may continue; and

(3) After reviewing the distress termination notice filed pursuant to § 4041.43, the PBGC will make final, or reverse, this tentative determination.

(c) *Finding of noncompliance.* If the PBGC determines that the issuance of the notice of intent to terminate was not in compliance with § 4041.41 (except

for requirements that the PBGC elects to waive under § 4041.3(d)(2)(i) with respect to the notice filed with the PBGC), the PBGC shall notify the plan administrator in writing—

(1) That the PBGC has determined that the notice of intent to terminate was not properly issued; and

(2) That the proposed distress termination is null and void and the plan is an ongoing plan.

(d) *Information on need to institute section 4042 proceedings.* The PBGC may require the plan administrator to submit, within 20 days after the plan administrator's receipt of the PBGC's written request (or such other period as may be specified in such written request), any information that the PBGC determines it needs in order to decide whether to institute termination or trusteeship proceedings pursuant to section 4042 of ERISA, whenever—

(1) A notice of intent to terminate indicates that benefits currently in pay status (or that should be in pay status) are not being paid or that this is likely to occur within the 180-day period following the issuance of the notice of intent to terminate;

(2) The PBGC issues a determination under paragraph (c) of this section; or

(3) The PBGC has any reason to believe that it may be necessary or appropriate to institute proceedings under section 4042 of ERISA.

(e) *Reconsideration of finding of noncompliance.* A plan administrator may request reconsideration of the PBGC's determination of noncompliance under paragraph (c) of this section in accordance with the rules prescribed in part 4003, subpart C, of this chapter. Any request for reconsideration automatically stays the effectiveness of the determination until the PBGC issues its decision on reconsideration, but does not stay the time period within which information must be submitted to the PBGC in response to a request under paragraph (d) of this section.

(f) *Notice to affected parties.* Upon a decision by the PBGC affirming a finding of noncompliance or upon the expiration of the period within which the plan administrator may request reconsideration of a finding of noncompliance (or, if earlier, upon the plan administrator's decision not to request reconsideration), the plan administrator shall notify the affected parties (and any persons who were provided notice under § 4041.41(e)) in writing that the plan is not going to terminate or, if applicable, that the termination is invalid but that a new notice of intent to terminate is being issued. The notice required by this

paragraph shall be provided in the manner described in § 4041.26(d)(2).

§ 4041.43 Distress termination notice.

(a) *General rule.* The plan administrator shall file with the PBGC a PBGC Form 601, Distress Termination Notice, Single-Employer Plan Termination, with Schedule EA–D, Distress Termination Enrolled Actuary Certification, that has been completed in accordance with the instructions thereto, on or before the 120th day after the proposed termination date or, if applicable, no later than the due date established in an extension notice issued under § 4041.8.

(b) *Participant and benefit information.* (1) *Plan insufficient for guaranteed benefits.* Unless the enrolled actuary certifies, in the Schedule EA–D filed in accordance with paragraph (a) of this section, that the plan is sufficient either for guaranteed benefits or for benefit liabilities, the plan administrator shall file with the PBGC the participant and benefit information described in PBGC Form 601 and the instructions thereto by the later of—

(i) 120 days after the proposed termination date, or

(ii) 30 days after receipt of the PBGC's determination, pursuant to § 4041.44(b), that the requirements for a distress termination have been satisfied.

(2) *Plan sufficient for guaranteed benefits or benefit liabilities.* If the enrolled actuary certifies that the plan is sufficient either for guaranteed benefits or for benefit liabilities, the plan administrator need not submit the participant and benefit information described in PBGC Form 601 and the instructions thereto unless requested to do so pursuant to paragraph (c) of this section.

(3) *Effect of failure to provide information.* The PBGC may void the distress termination if the plan administrator fails to provide complete participant and benefit information in accordance with this section.

(c) *Additional information.* The PBGC may in any case require the submission of any additional information that it needs to make the determinations that it is required to make under this part or to pay benefits pursuant to section 4061 or 4022(c) of ERISA. The plan administrator shall submit any information requested under this paragraph within 30 days after receiving the PBGC's written request (or such other period as may be specified in such written request).

(d) *Due date extension.* Notwithstanding the provisions of paragraphs (a), (b), and (c) of this section, the due date for filing PBGC

Form 601 or other information required under this section may be extended by a notice issued under § 4041.8.

§ 4041.44 PBGC determination of compliance with requirements for distress termination.

(a) *General.* Based on the information contained in and submitted with the PBGC Form 600 and the PBGC Form 601, with Schedule EA–D, and on any information submitted by an affected party or otherwise obtained by the PBGC, the PBGC shall determine whether the requirements for a distress termination set forth in § 4041.3(c) have been met and shall notify the plan administrator in writing of its determination, in accordance with paragraph (b) or (c) of this section.

(b) *Qualifying termination.* If the PBGC determines that all of the requirements of § 4041.3(c) have been satisfied, it shall so advise the plan administrator and shall also advise the plan administrator of whether participant and benefit information must be submitted in accordance with § 4041.43(b).

(c) *Non-qualifying termination.* (1) Except as provided in paragraph (c)(2) of this section, if the PBGC determines that any of the requirements of § 4041.3(c) has not been met, it shall notify the plan administrator of its determination, the basis therefor, and the effect thereof (as provided in § 4041.3(d)).

(2) If the only basis for the PBGC's determination described in paragraph (c)(1) of this section is that the distress termination notice is incomplete, the PBGC shall advise the plan administrator of the missing item(s) of information and that the information must be filed with the PBGC no later than the 120th day after the proposed termination date or the 30th day after the date of the PBGC's notice of its determination, whichever is later, or, if applicable, no later than the due date established in an extension notice issued under § 4041.8.

(d) *Reconsideration of determination of non-qualification.* A plan administrator may request reconsideration of the PBGC's determination under paragraph (c)(1) of this section in accordance with the rules prescribed in part 4003, subpart C, of this chapter. The filing of a request for reconsideration automatically stays the effectiveness of the determination until the PBGC issues its decision on reconsideration.

(e) *Notice to affected parties.* Upon a decision by the PBGC affirming a determination of non-qualification or upon the expiration of the period within

which the plan administrator may request reconsideration of a determination of non-qualification (or, if earlier, upon the plan administrator's decision not to request reconsideration), the plan administrator shall notify the affected parties (and any persons who were provided notice under § 4041.41(e)) in writing that the plan is not going to terminate or, if applicable, that the termination is invalid but that a new notice of intent to terminate is being issued. The notice required by this paragraph shall be provided in the manner described in § 4041.26(d)(2).

§ 4041.45 PBGC determination of plan sufficiency/insufficiency.

(a) *General.* Upon receipt of participant and benefit information filed pursuant to § 4041.43 (b)(1) or (c), the PBGC shall determine the degree to which the plan is sufficient and notify the plan administrator in writing of its determination in accordance with paragraph (b) or (c) of this section.

(b) *Insufficiency for guaranteed benefits.* If the PBGC finds that it is unable to determine that a plan is sufficient for guaranteed benefits, it shall issue a "notice of inability to determine sufficiency" notifying the plan administrator of this finding and advising the plan administrator that—

(1) The plan administrator shall continue to administer the plan under the restrictions imposed by § 4041.4; and

(2) The termination shall be completed under section 4042 of ERISA.

(c) *Sufficiency for guaranteed benefits or benefit liabilities.* If the PBGC determines that a plan is sufficient for guaranteed benefits but not for benefit liabilities or is sufficient for benefit liabilities, the PBGC shall issue to the plan administrator a distribution notice advising the plan administrator—

(1) To issue notices of benefit distribution in accordance with § 4041.46;

(2) To close out the plan in accordance with § 4041.48;

(3) To file a timely post-distribution certification with the PBGC in accordance with § 4041.48(b); and

(4) That either the plan administrator or the contributing sponsor must preserve and maintain plan records in accordance with § 4041.11.

§ 4041.46 Notices of benefit distribution.

(a) *General rules.* When a distribution notice is issued by the PBGC pursuant to § 4041.45(c), the plan administrator shall—

(1) No later than 60 days after receiving the distribution notice or, if applicable, no later than the due date

established in an extension notice issued under § 4041.8, issue a notice of benefit distribution in accordance with the rules described in paragraphs (c) and (d) of this section to each person (other than any employee organization or the PBGC) who is an affected party as of the termination date (and, in the case of a spin-off/termination transaction as described in § 4041.21(f), each person who is, as of the termination date, a participant in the original plan and covered by the ongoing plan); and

(2) No later than 15 days after the date on which the plan administrator completes the issuance of the notices of benefit distribution, file with the PBGC a certification that the notices were so issued in accordance with the requirements of this section.

(b) *Discovery of other affected parties.* Notwithstanding the provisions of paragraph (a) of this section, if the plan administrator discovers additional persons entitled to a notice of benefit distribution after the expiration of the time period specified in paragraph (a)(1) of this section, the failure to issue the notices of benefit distribution to such persons within the specified time period will not cause such notices to be untimely under paragraph (a) of this section if the plan administrator could not reasonably have been expected to know of the additional persons and if he or she promptly issues, to each such additional person, a notice of benefit distribution in the form and containing the information specified in paragraph (d) of this section.

(c) *Issuance—(1) Method.* The plan administrator shall issue a notice of benefit distribution individually to each person, either by hand-delivery or by first-class mail or courier service directed to the person's last known address.

(2) *When issued.* A notice of benefit distribution is deemed issued to each person on the date it is handed to the person or deposited with a mail or courier service (as evidenced by a postmark or written receipt).

(d) *Form and content of notices.* The plan administrator shall provide notices of benefit distribution in the form described in § 4041.23 (a) and (b) of this part and shall include in each—

(1) The information described in § 4041.23(c) of this part;

(2) The information described in § 4041.23 (d), (e), or (f) of this part, as applicable (replacing the term “plan benefits” with “Title IV benefits” and “proposed termination date” with “termination date”);

(3) A statement that, after plan assets have been distributed to provide all of

the Title IV benefits payable with respect to a participant or a beneficiary of a deceased participant, either by the purchase of an irrevocable commitment or commitments from an insurer to provide benefits or by an alternative form of distribution provided for under the plan, the PBGC's guarantee with respect to that participant's or beneficiary's benefit ends; and

(4) If distribution of benefits under the plan may be wholly or partially by the purchase of irrevocable commitments from an insurer—

(i) The name and address of the insurer or insurers from whom, or (if not then known) the insurers from among whom, the plan administrator intends to purchase the irrevocable commitments; or

(ii) If the plan administrator has not identified an insurer or insurers at the time the notice of distribution is issued, a statement that the affected party to whom the notice is directed will be notified at a later date (but no later than 45 days before the distribution date) of the name and address of the insurer or insurers from whom, or (if not then known) the insurers from among whom, irrevocable commitments may be purchased.

(e) *Supplemental notice requirements.*

(1) The plan administrator shall issue a supplemental notice (or notices) of distribution to each person in accordance with the rules in paragraph (e)(2) of this section if—

(i) The plan administrator has not yet identified an insurer or insurers at the time the notice of distribution is issued; or

(ii) The plan administrator included in the notice of distribution the name or names of the insurer or insurers from whom (or from among whom) he or she intends to purchase the irrevocable commitments, but subsequently decides to select a different insurer.

(2) The plan administrator shall issue each supplemental notice in the manner provided in paragraph (c) of this section no later than 45 days before the distribution date and shall include the name and address of the insurer or insurers from whom, or (if not then known) the insurers from among whom, the plan administrator intends to purchase the irrevocable commitments.

§ 4041.47 Verification of plan sufficiency prior to closeout.

(a) *General rule.* Before distributing plan assets pursuant to a closeout under § 4041.48, the plan administrator shall verify whether the plan's assets are still sufficient to provide for benefits at the level determined by the PBGC, i.e., guaranteed benefits or benefit liabilities.

If the plan administrator finds that the plan is no longer able to provide for benefits at the level determined by the PBGC, then paragraph (b) or (c) of this section, as appropriate, shall apply.

(b) *Subsequent insufficiency for guaranteed benefits.* When a plan administrator finds that a plan is no longer sufficient for guaranteed benefits, the plan administrator shall promptly notify the PBGC in writing of that fact and shall take no further action to implement the plan termination, pending the PBGC's determination and notice pursuant to paragraph (b)(1) or (b)(2) of this section.

(1) *PBGC concurrence with finding.* If the PBGC concurs with the plan administrator's finding, the distribution notice shall be void, and the PBGC shall—

(i) Issue the plan administrator a notice of inability to determine sufficiency in accordance with § 4041.45(b); and

(ii) Require the plan administrator to submit a new valuation, certified to by an enrolled actuary, of the benefit liabilities and guaranteed benefits under the plan, valued in accordance with §§ 4044.41 through 4044.57 of this chapter as of the date of the plan administrator's notice to the PBGC.

(2) *PBGC non-concurrence with finding.* If the PBGC does not concur with the plan administrator's finding, it shall so notify the plan administrator in writing, and the distribution notice shall remain in effect.

(c) *Subsequent insufficiency for benefit liabilities.* When a plan administrator finds that a plan is sufficient for guaranteed benefits but is no longer sufficient for benefit liabilities, the plan administrator shall immediately notify the PBGC in writing of this fact, but shall continue with the distribution of assets in accordance with § 4041.48.

(d) *Finding by PBGC of subsequent insufficiency.* In any case in which the PBGC finds on its own initiative that a subsequent insufficiency for guaranteed benefits has occurred, paragraph (b)(1) of this section shall apply, except that the guaranteed benefits shall be revalued as of the date of the PBGC's finding.

(e) *Restrictions upon finding of subsequent insufficiency.* When the plan administrator makes the finding described in paragraph (b) of this section or receives notice that the PBGC has made the finding described in paragraph (d) of this section, the plan administrator shall (except to the extent the PBGC otherwise directs) be subject to the prohibitions in § 4041.4(c).

§ 4041.48 Closeout of plan.

(a) *General rules*—(1) *Distribution*. If a plan administrator receives a distribution notice from the PBGC pursuant to § 4041.45(c) and neither the plan administrator nor the PBGC makes the finding described in § 4041.47 (b) or (d), the plan administrator shall distribute plan assets in accordance with §§ 4041.6 and 4041.27(c) of this part no earlier than the 61st day and (except as provided in § 4041.8 or 4041.27 (e) or (f)) no later than the 180th day following the day on which the plan administrator completes the issuance of the notices of benefit distribution pursuant to § 4041.46(a), or, where applicable, within the time prescribed in part 4050 of this chapter. For purposes of applying § 4041.27(e)(1)(i), the phrase “the date that the plan administrator files the standard termination notice with the PBGC” shall be replaced by “the date that the plan administrator completes issuance of the notices of benefit distribution.”

(2) *Notice of annuity contract*. If any of the plan's benefit liabilities payable to a participant or beneficiary have been distributed through the purchase of irrevocable commitments, the plan administrator shall provide such participant or beneficiary with a notice, contract, or certificate in accordance with § 4041.27(g).

(b) *Post-distribution certification*. Within 30 days after the last distribution date, the plan administrator shall file with the PBGC a PBGC Form 602, Post-Distribution Certification for Distress Termination, that has been completed in accordance with the instructions thereto. This requirement shall be considered satisfied if, in accordance with § 4050.6 (a)(2) and (a)(3) of this chapter, the plan administrator files a preliminary post-distribution certification within 30 days after the last distribution date and, in addition, timely files an amended post-distribution certification that otherwise satisfies all applicable requirements.

Appendix to Part 4041—Agreement for Commitment To Make Plan Sufficient for Benefit Liabilities

This agreement, by and between [name of company] XXXXXXXXXX (the “Company”) and [name of plan] XXXXXXXXXX (the “Plan”) shall be effective as of the last date executed.

Whereas, the Plan is an employee pension benefit plan as described in section 3(2)(A) of the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. 1001–1461; and

Whereas the Company is [describe entity, e.g., corporation, partnership] XXXXXXXXXX; and

Whereas, the Company is a contributing sponsor of the Plan, or a member of the contributing sponsor's controlled group, as described in section 4001(a) (13) and (14) of ERISA, 29 U.S.C. 1301(2) (13) and (14); and

Whereas, the Plan is covered by the termination insurance provisions of Title IV of ERISA, 29 U.S.C. 1301–1461; and

Whereas, the Plan administrator has issued or intends to issue to each affected party a notice of intent to terminate the Plan, pursuant to section 4041(a)(2) of ERISA, 29 U.S.C. 1341(a)(2); and

Whereas, the Company wishes the Plan to be sufficient for benefit liabilities, as described in section 4001(a)(16) of ERISA, 29 U.S.C. 1301(a)(16); and

Whereas, the parties understand that if the Plan is not able to satisfy all its obligations for benefit liabilities, it will not be able to terminate in a standard termination under section 4041(b) of ERISA, 29 U.S.C. 1341(b); and

Whereas, the Company is not a debtor in a bankruptcy or other insolvency proceeding. [Alternative Paragraph]

Whereas, the Company is a debtor in a bankruptcy or other insolvency proceeding and the court before which the proceeding is pending approves this commitment.

Whereas, the Company is a debtor in a bankruptcy or other insolvency proceeding and this commitment is unconditionally guaranteed, by an entity or person not in bankruptcy, to be met at or before the time distribution is required in this standard termination.

Now Therefore, the parties hereto agree as follows:

1. The Company promises to pay to the Plan, on or before the date prescribed for distribution of Plan assets by the plan administrator, the amount necessary, if any, to ensure that, on the date the plan administrator distributes the assets of the Plan, the Plan is able to provide all benefit liabilities.

2. For the sole purpose of determining whether the Plan is sufficient to provide all benefit liabilities, an amount equal to the amount described in paragraph 1 shall be deemed a Plan asset available for allocation among the participants and beneficiaries of the Plan, in accordance with section 4044 of ERISA, 29 U.S.C. 1344.

3. This Agreement shall in no way relieve the Company of its obligations to pay contributions under the Plan.

Date:

By:

Company:

By:

Plan:

PART 4041A—TERMINATION OF MULTIEMPLOYER PLANS

Subpart A—General Provisions

Sec.

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4041A.44 Cessation of withdrawal liability.

Authority: 29 U.S.C. 1302(b)(3), 1341a, 1441.

Subpart A—General Provisions

§ 4041A.1 Purpose and scope.

The purpose of this part is to establish rules for notifying the PBGC of the termination of a multiemployer plan and rules for the administration of multiemployer plans that have terminated by mass withdrawal. Subpart B prescribes the contents of and procedures for filing a Notice of Termination for a multiemployer plan. Subpart C prescribes basic duties of plan sponsors of mass-withdrawal-terminated plans. (Other duties are prescribed in part 4281 of this chapter.) Subpart D contains procedures for closing out sufficient plans. This part applies to terminated multiemployer plans covered by title IV of ERISA but, in the case of subparts C and D, only to plans terminated by mass withdrawal under section 4041A(a)(2) of ERISA (including plans created by partition pursuant to section 4233 of ERISA).

§ 4041A.2 Definitions.

The following terms are defined in § 4001.1 of this chapter: annuity, ERISA, insurer, IRS, mass withdrawal, multiemployer plan, nonforfeitable benefit, PBGC, plan, and plan year.

In addition, for purposes of this part:

Available resources means, for a plan year, available resources as described in section 4245(b)(3) of ERISA.

Benefits subject to reduction means those benefits accrued under plan amendments (or plans) adopted after March 26, 1980, or under collective bargaining agreements entered into after March 26, 1980, that are not eligible for the PBGC's guarantee under section 4022A(b) of ERISA.

Financial assistance means financial assistance from the PBGC under section 4261 of ERISA.

Insolvency benefit level means the greater of the resource benefit level or the benefit level guaranteed by the

PBGC for each participant and beneficiary in pay status.

Insolvency year means insolvency year as described in section 4245(b)(4) of ERISA.

Insolvent means that a plan is unable to pay benefits when due during the plan year. A plan terminated by mass withdrawal is not insolvent unless it has been amended to eliminate all benefits that are subject to reduction under section 4281(c) of ERISA, or, in the absence of an amendment, no benefits under the plan are subject to reduction under section 4281(c) of ERISA.

Nonguaranteed benefits means those benefits that are eligible for the PBGC's guarantee under section 4022A(b) of ERISA, but exceed the guarantee limits under section 4022A(c).

Resource benefit level means resource benefit level as described in section 4245(b)(2) of ERISA.

§ 4041A.3 Submission of documents.

(a) *Filing date.* Any notice, document, or information required to be filed with the PBGC under this part shall be deemed filed on the date of the postmark stamped on the cover in which the notice, document, or information is mailed, provided that the postmark was made by the United States Postal Service and the document was mailed postage prepaid, properly packaged and addressed to the PBGC. If these conditions are not met, the document is considered filed on the date it is received by the PBGC. Documents received after regular business hours are considered filed on the next regular business day.

(b) *Address.* Any notice, document, or information required to be filed with the PBGC under this part shall be sent by mail or submitted by hand during normal working hours to Reports Processing, Insurance Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005-4026.

Subpart B—Notice of Termination

§ 4041A.11 Requirement of notice.

(a) *General.* A Notice of Termination shall be filed with the PBGC by a multiemployer plan when the plan has terminated as described in section 4041A(a) of ERISA.

(b) *Who shall file.* The plan sponsor or a duly authorized representative acting on behalf of the plan sponsor shall sign and file the Notice.

(c) *When to file.* (1) For a termination pursuant to a plan amendment, the Notice shall be filed with the PBGC within thirty days after the amendment is adopted or effective, whichever is later.

(2) For a termination that results from a mass withdrawal, the Notice shall be filed with the PBGC within thirty days after the last employer withdrew from the plan or thirty days after the first day of the first plan year for which no employer contributions were required under the plan, whichever is earlier.

(Approved by the Office of Management and Budget under control number 1212-0020)

§ 4041A.12 Contents of notice.

(a) *Information to be contained in notice.* Except to the extent provided in paragraph (d), each Notice shall contain:

(1) The name of the plan;

(2) The name, address and telephone number of the plan sponsor and of the plan sponsor's duly authorized representative, if any;

(3) The name, address, and telephone number of the person that will administer the plan after the date of termination, if other than the plan sponsor;

(4) A copy of the plan's most recent Form 5500 (Annual Report Form), including schedules; and

(5) The date of termination of the plan.

(b) *Information to be contained in a notice involving a mass withdrawal.* In addition to the information contained in paragraph (a) and except as provided in paragraph (d), the following information shall be contained in a Notice filed by a plan that has terminated by mass withdrawal:

(1) A copy of the plan document in effect 5 years prior to the date of termination and copies of any amendments adopted after that date.

(2) A copy (or copies) of the trust agreement (or agreements), if any, authorizing the plan sponsor to control and manage the operation and administration of the plan.

(3) A copy of the most recent actuarial statement and opinion (if any) relating to the plan.

(4) A statement of any material change in the assets or liabilities of the plan occurring after either the date of the actuarial statement referred to in item (5) or the date of the plan's Form 5500 submitted as part of the Notice.

(5) Complete copies of any letters of determination issued by the IRS relating to the establishment of the plan, any letters of determination relating to the disqualification of the plan and any subsequent requalification, and any letters of determination relating to the termination of the plan.

(6) A statement whether the plan assets will be sufficient to pay all benefits in pay status during the 12-month period following the date of termination.

(7) If plan assets on hand are sufficient to satisfy all nonforfeitable benefits under the plan, and if the plan sponsor intends to distribute such assets, a brief description of the proposed method of distributing the plan assets.

(8) If plan assets on hand are not sufficient to satisfy all nonforfeitable benefits under the plan, the name and address of any employer who contributed to the plan within 3 plan years prior to the date of termination.

(c) *Certification.* As part of the Notice, the plan sponsor or duly authorized representatives shall certify that all information and documents submitted pursuant to this section are true and correct to the best of the plan sponsor's or representative's knowledge and belief.

(d) *Avoiding duplication.* Information described in paragraphs (a) and (b) of this section need not be supplied if it duplicates information contained in Form 5500, or a schedule thereof, that a plan submits as part of the Notice.

(e) *Additional information.* In addition to the information described in paragraphs (a) and (b) of this section, the PBGC may require the submission of any other information which the PBGC determines is necessary for review of a Notice of Termination.

Subpart C—Plan Sponsor Duties

§ 4041A.21 General rule.

The plan sponsor of a multiemployer plan that terminates by mass withdrawal shall continue to administer the plan in accordance with applicable statutory provisions, regulations, and plan provisions until a trustee is appointed under section 4042 of ERISA or until plan assets are distributed in accordance with subpart D of this part. In addition, the plan sponsor shall be responsible for the specific duties described in this subpart.

§ 4041A.22 Payment of benefits.

(a) Except as provided in paragraph (b), the plan sponsor shall pay any benefit attributable to employer contributions, other than a death benefit, only in the form of an annuity.

(b) The plan sponsor may pay a benefit in a form other than an annuity if—

(1) The plan distributes plan assets in accordance with subpart D of this part;

(2) The PBGC approves the payment of the benefit in an alternative form pursuant to § 4041A.27; or

(3) The value of the entire nonforfeitable benefit does not exceed \$1,750.

(c) Except to the extent provided in the next sentence, the plan sponsor

shall not pay benefits in excess of the amount that is nonforfeitable under the plan as of the date of termination, unless authorized to do so by the PBGC pursuant to § 4041A.27. Subject to the restriction stated in paragraph (d) of this section, however, the plan sponsor may pay a qualified preretirement survivor annuity with respect to a participant who died after the date of termination.

(d) The payment of benefits subject to reduction shall be discontinued to the extent provided in § 4281.31 if the plan sponsor determines, in accordance with § 4041A.24, that the plan's assets are insufficient to provide all nonforfeitable benefits.

(e) The plan sponsor shall, to the extent provided in § 4281.41, suspend the payment of nonguaranteed benefits if the plan sponsor determines, in accordance with § 4041A.25, that the plan is insolvent.

(f) The plan sponsor shall, to the extent required by § 4281.42, make retroactive payments of suspended benefits if it determines under that section that the level of the plan's available resources requires such payments.

§ 4041A.23 Imposition and collection of withdrawal liability.

Until plan assets are distributed in accordance with subpart D of this part, or until the end of the plan year as of which the PBGC determines that plan assets (exclusive of claims for withdrawal liability) are sufficient to satisfy all nonforfeitable benefits under the plan, the plan sponsor shall be responsible for determining, imposing and collecting withdrawal liability (including the liability arising as a result of the mass withdrawal), in accordance with part 4219, subpart C, of this chapter and sections 4201 through 4225 of ERISA.

§ 4041A.24 Annual plan valuations and monitoring.

(a) *Annual valuation.* Not later than 150 days after the end of the plan year, the plan sponsor shall determine or cause to be determined in writing the value of nonforfeitable benefits under the plan and the value of the plan's assets, in accordance with part 4281, subpart B. This valuation shall be done as of the end of the plan year in which the plan terminates and each plan year thereafter (exclusive of a plan year for which the plan receives financial assistance from the PBGC under section 4261 of ERISA) up to but not including the plan year in which the plan is closed out in accordance with subpart D of this part.

(b) *Plan monitoring.* Upon receipt of the annual valuation described in paragraph (a) of this section, the plan sponsor shall determine whether the value of nonforfeitable benefits exceeds the value of the plan's assets, including claims for withdrawal liability owed to the plan. When benefits do exceed assets, the plan sponsor shall—

(1) If the plan provides benefits subject to reduction, amend the plan to reduce those benefits in accordance with the procedures in part 4281, subpart C, of this chapter to the extent necessary to ensure that the plan's assets are sufficient to discharge when due all of the plan's obligations with respect to nonforfeitable benefits; or

(2) If the plan provides no benefits subject to reduction, make periodic determinations of plan solvency in accordance with § 4041A.25.

(c) *Notices of benefit reductions.* The plan sponsor of a plan that has been amended to reduce benefits shall provide participants and beneficiaries and the PBGC notice of the benefit reduction in accordance with § 4281.32.

§ 4041A.25 Periodic determinations of plan solvency.

(a) *Annual insolvency determination.* The plan sponsor of a plan that has been amended to eliminate all benefits that are subject to reduction under section 4281(c) of ERISA shall determine in writing whether the plan is expected to be insolvent for the first plan year beginning after the effective date of the amendment and for each plan year thereafter. In the event that a plan adopts more than one amendment reducing benefits under section 4281(c) of ERISA, the initial determination shall be made for the first plan year beginning after the effective date of the amendment that effects the elimination of all such benefits, and a determination shall be made for each plan year thereafter. The plan sponsor of a plan under which no benefits are subject to reduction under section 4281(c) of ERISA as of the date the plan terminated shall determine in writing whether the plan is expected to be insolvent. The initial determination shall be made for the second plan year beginning after the first plan year for which it is determined under section 4281(b) of ERISA that the value of nonforfeitable benefits under the plan exceeds the value of the plan's assets. The plan sponsor shall also make a solvency determination for each plan year thereafter. A determination required under this paragraph shall be made no later than six months before the beginning of the plan year to which it applies.

(b) *Other determination of insolvency.* Whether or not a prior determination of plan solvency has been made under paragraph (a) of this section (or under section 4245 of ERISA), a plan sponsor that has reason to believe, taking into account the plan's recent and anticipated financial experience, that the plan is or may be insolvent for the current or next plan year shall determine in writing whether the plan is expected to be insolvent for that plan year.

(c) *Benefit suspensions.* If the plan sponsor determines that the plan is, or is expected to be, insolvent for a plan year, it shall suspend benefits in accordance with § 4281.41.

(d) *Insolvency notices.* If the plan sponsor determines that the plan is, or is expected to be, insolvent for a plan year, it shall issue notices of insolvency or annual updates and notices of insolvency benefit level of the PBGC and to plan participants and beneficiaries in accordance with part 4281, subpart D.

§ 4041A.26 Financial assistance.

A plan sponsor that determines a resource benefit level under section 4245(b)(2) of ERISA that is below the level of guaranteed benefits or that determines that the plan will be unable to pay guaranteed benefits for any month during an insolvency year shall apply for financial assistance from the PBGC in accordance with § 4281.47.

§ 4041A.27 PBGC approval to pay benefits not otherwise permitted.

Upon written application by the plan sponsor, the PBGC may authorize the plan to pay benefits other than nonforfeitable benefits or to pay benefits valued at more than \$1,750 in a form other than an annuity. The PBGC will approve such payments if it determines that the plan sponsor has demonstrated that the payments are not adverse to the interests of the plan's participants and beneficiaries generally and do not unreasonably increase the PBGC's risk of loss with respect to the plan.

Subpart D—Closeout of Sufficient Plans

§ 4041A.41 General rule.

If a plan's assets, excluding any claim of the plan for unpaid withdrawal liability, are sufficient to satisfy all obligations for nonforfeitable benefits provided under the plan, the plan sponsor may close out the plan in accordance with this subpart by distributing plan assets in full satisfaction of all nonforfeitable benefits under the plan.

§ 4041A.42 Method of distribution.

The plan sponsor shall distribute plan assets by purchasing from an insurer contracts to provide all benefits required by § 4041A.43 to be provided in annuity form and by paying in a lump sum (or other alternative elected by the participant) all other benefits.

§ 4041A.43 Benefit forms.

(a) *General rule.* Except as provided in paragraph (b) of this section, the sponsor of a plan that is closed out shall provide for the payment of any benefit attributable to employer contributions only in the form of an annuity.

(b) *Exceptions.* The plan sponsor may pay a benefit attributable to employer contributions in a form other than an annuity if:

(1) The present value of the participant's entire nonforfeitable benefit, determined using the interest assumption under §§ 4044.41 through 4044.57, does not exceed \$3,500.

(2) The payment is for death benefits provided under the plan.

(3) The participant elects an alternative form of distribution under paragraph (c) of this section.

(c) *Alternative forms of distribution.* The plan sponsor may allow participants to elect alternative forms of distribution in accordance with this paragraph. When a form of distribution is offered as an alternative to the normal form, the plan sponsor shall notify each participant, in writing, of the form and estimated amount of the participant's normal form of distribution. The notification shall also describe any risks attendant to the alternative form. Participants' elections of alternative forms shall be in writing.

§ 4041A.44 Cessation of withdrawal liability.

The obligation of an employer to make payments of initial withdrawal liability and mass withdrawal liability shall cease on the date on which the plan's assets are distributed in full satisfaction of all nonforfeitable benefits provided by the plan.

PART 4043—REPORTABLE EVENTS AND CERTAIN OTHER NOTIFICATION REQUIREMENTS**Subpart A—Reportable Events; In General**

Sec.

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Subpart B—Section 302(f); Notice of Failure to Make Required Contributions

- 4043.31 PBGC Form 200, notice of failure to make required contributions; supplementary information.

Authority: 29 U.S.C. 1082(f), 1302(b)(3), 1343, 1365.

Subpart A—Reportable Events; In General**§ 4043.1 Purpose and scope.**

(a) Subpart A of this part contains definitions applicable to this part and prescribes specific requirements for notification of the reportable events in section 4043 of ERISA, including the reportable events specified in section 4043 (c)(1) through (c)(8) and other events that the PBGC has determined, under section 4043(c)(13) (formerly section 4043(b)(9)), may be indicative of a need to terminate the plan. It also implements the PBGC's authority to waive the requirement that plan administrators notify the PBGC with respect to certain reportable events and with respect to certain plans. (The PBGC has waived the requirements of section 4043 with respect to multiemployer plans.) However, it does not include rules based on the amendments made to section 4043 by the Retirement Protection Act of 1994 (Pub. L. 103-465, section 771). Subpart B contains rules for notifying the PBGC of a failure to make certain required contributions under section 302(f)(4) of ERISA or section 412(n)(4) of the Code.

(b) This subpart applies with respect to any single-employer plan which is covered by section 4021 of ERISA and for which either no notice of intent to terminate has been issued or, if such a notice has been issued, until the proposed termination date specified under section 4041 (b) or (c) of ERISA and part 4041 of this chapter; provided, that, if a termination proceeding is suspended pursuant to § 4041.5 of this chapter, this subpart continues to apply

unless and until the PBGC reactivates the termination proceeding. The collection of information requirements contained in this subpart have been approved by the Office of Management and Budget under control number 1212-0013.

§ 4043.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: Code, contributing sponsor, controlled group, ERISA, fair market value, insurer, irrevocable commitment, IRS, multiemployer plan, nonforfeitable benefit, notice of intent to terminate, PBGC, person, plan, plan administrator, plan year, proposed termination date, and single-employer plan.

In addition, for purposes of this part, the following definitions apply:

Distribution means a direct or indirect benefit payment made in any form by a plan to a participant, including but not limited to, a monthly annuity payment, a lump-sum payment or a direct transfer of a plan asset other than cash. A cash payment made by an insurer pursuant to an irrevocable commitment shall not be considered a distribution.

Nonforfeitable benefits which are not funded means nonforfeitable benefits, as provided in § 4022.5 of this chapter, in excess of plan assets.

Parent means the parent of a parent-subsidary controlled group of corporations or group of trades or businesses under common control (within the meaning of subsection (b) or (c) of section 414 of the Code and the regulations thereunder). Where there is more than one parent in a parent-subsidary group, the term parent (for purposes of subpart B) refers to the parent at the highest level in the chain of corporations and/or other organizations comprising the group.

Participant has the same meaning as in § 4007.2 of this chapter.

Retirement benefit means a benefit payable upon late, normal, early, or disability retirement, other than a welfare benefit described in section 3(1) of ERISA, to a participant who leaves or has left covered employment.

§ 4043.3 Requirement of notice.

(a) *Obligation to file.* Except where the requirement is expressly waived by this subpart, the plan administrator, or a duly authorized representative, shall file with the PBGC a notice of all reportable events described in this subpart no later than 30 days after the plan administrator knows or has reason to know a reportable event has occurred. When a notice is submitted by a plan administrator's duly authorized representative, other than an attorney at

law, it shall be accompanied by a notarized power of attorney, signed by the plan administrator, which authorizes the representative to sign and submit a notice and, if desired, also authorizes the representative to act on behalf of the plan administrator in connection with the notice.

(b) *Contents of notice.* The plan administrator shall include the information listed in this paragraph, and when applicable, the information specified in paragraph (c) of this section, in a notice required to be submitted under this section. The plan administrator shall submit the most recent information available. The plan administrator shall identify the response to each numbered item in this paragraph by item number. If any requested information is included in an IRS form or submission attached to the notice, instead, the information may be incorporated by reference to the number, date, and page(s) of the IRS form or submission where it appears. Any required documentation previously filed with the PBGC need not be refiled, but may be incorporated by reference to the previous submission. The plan administrator shall include the following information in a notice:

(1) The name of the plan;
 (2) The name, address, and telephone number of the contributing sponsor(s);
 (3) The name, address, and telephone number of the plan administrator. If the plan administrator is a corporate body, the name of an individual that should be contacted;

(4) The nine-digit Employer Identification Number (EIN) assigned by the IRS to the contributing sponsor and the three-digit Plan Number (PN) assigned by the contributing sponsor to the plan, and, if different, also state the EIN-PN last filed with the PBGC. If an EIN-PN has not been assigned, so indicate;

(5) A brief statement of the pertinent facts relating to the reportable event;

(6) A copy of the plan document currently in effect, *i.e.*, a copy of the last restatement of the plan and all subsequent amendments;

(7) A copy of the most recent actuarial statement and opinion (if any) relating to the plan;

(8) A statement of any material change in the assets or liabilities of the plan occurring after the date of the most recent actuarial statement and opinion relating to the plan; and

(9) A copy of the most recent determination letter issued by the IRS (if any) relating to the plan.

(c) *Additional information.* With respect to the following reportable events, the information specified below

must be submitted in addition to that listed in paragraph (b) of this section:

(1) For an event described in § 4043.14(a) (relating to an active participant reduction): The number of participants and the number of active participants as of the beginning of the immediately preceding and the current plan year and as of the date of the event; the number of active participants with fully vested rights, the number of such participants with partially vested rights, and the number of such participants without vested rights, as of the date of the event or, if this information is not available as of this date, as of the beginning of the current plan year; the number of retired participants receiving benefits as of the date of the event or, if this information is not available as of this date, as of the beginning of the current plan year; the number of former employees with vested rights and the number of deceased participants whose beneficiaries are receiving or entitled to receive benefits as of the date of the event or, if this information is not available as of this date, the beginning of the current plan year. (For those plans determining the number of active participants as of the end of a plan year, instead of at the beginning of a plan year, in accordance with § 4043.14(c), the information required by this paragraph as of the beginning of a plan year shall be provided as of the end of the previous plan year.)

(2) For an event described in § 4043.16(a) (relating to a minimum funding violation):

A statement of the current funding standard account, or its alternative, showing the balance at the beginning of the plan year and the charges and credits to the account for the plan year that are required under section 302 of ERISA and section 412 of the Code; in the case of a plan maintained by one contributing sponsor or by two or more contributing sponsors that are members of the same controlled group, a copy of the most recent audited (or if not available, unaudited) financial statements, and the most recent interim financial statements, of the contributing sponsor (individually or where financial statements are only available on a consolidated basis with other members of the same controlled group, on a consolidated basis), including balance sheets, income statements, statements of changes in financial position and annual reports.

(3) For an event described in § 4043.17(a) (relating to an inability to pay benefits when due):

The reason(s) why the plan is unable to pay benefits, including a statement of how long this inability is likely to

continue; the amount of the benefits due during the current payment period and the amount of assets available to pay those benefits; the normal date of benefit payment; the amount and date of the last benefit payment.

(4) For an event described in § 4043.18(a) (relating to a distribution to a substantial owner):

The amount and form of the distribution; a statement of whether an indemnity agreement has been entered into between the participant receiving the distribution and the plan trustee concerning lump-sum distributions to the 25 highest paid employees of the benefits subject to the early termination restrictions of Treas. Reg. § 1.401-4(c).

(5) For an event described in § 4043.21(a) (relating to a bankruptcy, insolvency, or similar settlement):

A copy of all papers filed in the relevant proceedings, including but not limited to, petitions and supporting schedules; the last date for filing claims, if known; the name, address and telephone number of any trustee or receiver of the contributing sponsor.

(6) For an event described in § 4043.23(a) (relating to a transaction involving a change in the same controlled group as a contributing sponsor):

The name, address, and telephone number of the new contributing sponsor or of the person no longer under common control with the contributing sponsor, as applicable; a copy of the most recent audited (or if not available, unaudited) financial statements, and the most recent interim financial statements, of the contributing sponsor before and after the transaction and of the person no longer under common control with the contributing sponsor (individually or where financial statements are only available on a consolidated basis with other members of the same controlled group, on a consolidated basis), including balance sheets, income statements, statements of changes in financial position and annual reports.

(d) *Requests for additional information.* The PBGC may, in any case, require the submission of additional information.

(e) *How and where to file.* A notice and information required to be filed with the PBGC by this subpart may be sent by mail or submitted by hand during normal working hours to: Reports Processing, Insurance Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005-4026.

(f) *Optional consolidated filing.* A plan administrator may file a single notice with respect to the occurrence of

more than one reportable event, or two or more plan administrators may file a single notice with respect to one or more reportable events when—

(1) More than one event for which a notice is required by this section has occurred and the plan administrator is able to give the PBGC simultaneous timely notification of the events; or

(2) An event described in §§ 4043.21(a), 4043.22(a), or 4043.23(a) has occurred, and all plan administrators who are required to file a notice pursuant to this section sign the same notice.

(g) *Effect of failure to file.* Failure to file a notice required by this section or failure to include all information required in the notice constitutes a violation of title IV of ERISA.

§ 4043.4 Reporting of reportable events on annual report.

The requirement that the plan administrator report the occurrence of a reportable event described in this subpart in the annual report filed pursuant to part 4065 of this chapter is waived pursuant to the provisions of section 4065 of ERISA.

§ 4043.5 Obligation of contributing sponsor.

Whenever a contributing sponsor under a plan covered by section 4021 of ERISA, knows or has reason to know that a reportable event has occurred, it shall notify the plan administrator immediately.

§ 4043.6 Date of filing.

(a) Any notice or document required to be filed under this subpart is considered filed on the date of the United States postmark stamped on the cover in which the document is mailed, if—

(1) The postmark was made by the United States Postal Service; and

(2) The document was mailed postage prepaid, properly packaged and addressed to the PBGC. If the conditions stated in both paragraphs (a)(1) and (a)(2) are not met, the notice or document is considered filed on the date it is received by the PBGC. Notices or documents received after regular business hours are considered filed on the next regular business day.

§ 4043.7 Computation of time.

In computing any period of time prescribed or allowed by the rules of this subpart, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the

end of the next day that is not a Saturday, Sunday, or Federal holiday.

§ 4043.11 Tax disqualification.

(a) *Reportable event.* A reportable event occurs when the Secretary of the Treasury issues a notice that a plan has ceased to be a plan described in section 4021(a)(2) of ERISA.

(b) *Waiver.* The 30-day notice requirement contained in § 4043.3(a) is waived for the event described in this section.

§ 4043.12 Title I non-compliance.

(a) *Reportable event.* A reportable event occurs when the Secretary of Labor determines that a plan is not in compliance with title I of ERISA.

(b) *Waiver.* The 30-day notice requirement contained in § 4043.3(a) is waived for the event described in this section.

§ 4043.13 Amendment decreasing benefits payable.

(a) *Reportable event.* A reportable event occurs when an amendment to a plan is adopted under which the retirement benefit payable from employer contributions with respect to any participant may be decreased.

(b) *Waiver.* The 30-day notice requirement contained in § 4043.3(a) is waived for the event described in this section.

§ 4043.14 Active participant reduction.

(a) *Reportable event.* A reportable event occurs when the number of active participants under a plan is less than 80 percent of the number of active participants at the beginning of the plan year, or is less than 75 percent of the number of active plan participants at the beginning of the previous plan year.

(b) *Waiver.* The 30-day notice requirement contained in § 4043.3(a) is waived for the event described in this section, if the conditions in paragraph (b)(1), (b)(2), or (b)(3) of this section exist.

(1) The plan has less than 100 participants as of the beginning of either the current or the previous plan year.

(2) With respect to a plan maintained by one contributing sponsor or by two or more contributing sponsors that are members of the same controlled group, as of the date of the event, the total number of active participants covered by all the plans covered by this part that are maintained by a contributing sponsor and all members of the same controlled group, if any, either is not less than 80 percent of the total number of active participants in all such plans determined as of the beginning of each such plan's current plan year, or is not less than 75 percent of the total number

of active participants in all such plans determined as of the beginning of each such plan's previous plan year.

(3) The present value of unfunded vested benefits under the plan (as reported on the most recently filed IRS/DOL/PBGC Form 5500 or Form 5500-C/R) is less than \$250,000.

(c) *Determination of the number of active participants.* (1) The number of active participants as of the beginning of a plan year may be determined as of the end of the previous plan year.

(2) For purposes of this section and information submitted pursuant to § 4043.3(c)(1), with respect to a plan maintained by one contributing sponsor or by two or more contributing sponsors that are members of the same controlled group, include as "active" only a participant who—

(i) Is receiving compensation for work performed;

(ii) Is on paid or unpaid leave granted for a reason other than a layoff;

(iii) Is laid off from work for a period of time that has lasted less than 30 days; or

(iv) Is absent from work due to a recurring reduction in employment that occurs at least annually.

§ 4043.15 Termination or partial termination.

(a) *Reportable event.* A reportable event occurs when the Secretary of the Treasury determines that there has been a termination or partial termination of a plan within the meaning of section 411(d)(3) of the Code.

(b) *Waiver.* The 30-day notice requirement contained in § 4043.3(a) is waived for the events described in this section.

§ 4043.16 Failure to meet minimum funding standards and granting of funding waiver.

(a) *Reportable event.* A reportable event occurs when a plan fails to meet the minimum funding standards or is granted a minimum funding waiver under section 412 of the Code or section 302 of ERISA.

(b) *Waiver.* The 30-day notice requirement contained in § 4043.3(a) is waived for the event described in this section, unless a plan fails to meet minimum funding standards or is granted a minimum funding waiver and the present value of unfunded vested benefits under the plan (as reported on the most recently filed IRS/DOL/PBGC Form 5500 or Form 5500-C/R) equals or exceeds \$250,000. In addition, the 30-day notice requirement contained in § 4043.3(a) is waived for the event described in this section if, with respect to the same failure, Form 200 has been

completed and submitted (including all required documentation and other information) in accordance with subpart B of this part.

§ 4043.17 Inability to pay benefits when due.

(a) *Reportable event.* A reportable event occurs when a plan is unable to pay benefits when due. Except as provided in paragraph (c) of this section, a plan is unable to pay benefits when due if the plan does not pay any participant, who is then entitled to benefit payments, the full promised benefits to which he or she is entitled in the form prescribed under the terms of the plan.

(b) *Waiver.* The 30-day notice requirement in § 4043.3(a) is not waived for the event described in this section.

(c) *Administrative delays.* A plan shall not be treated as being unable to pay benefits when due if its failure to pay benefits is caused solely by: (1) The need to verify any participant's eligibility for benefits; (2) the inability to locate any participant; or (3) any other administrative delay if such delay lasts less than the shorter of two months or two full benefit payment periods.

§ 4043.18 Distribution to a substantial owner.

(a) *Reportable event.* A reportable event occurs when there is a distribution or distributions under the plan to a participant who is a substantial owner if—

(1) The total of all distributions to the substantial owner within a 24-month period has a value of \$10,000 or more;

(2) The distribution or distributions were not made by reason of the death of the participant; and

(3) Immediately after the distribution or the last distribution in a series, the plan has nonforfeitable benefits which are not funded.

(b) *Waiver.* The 30-day notice requirement contained in § 4043.3 is waived for the event described in this section, unless—

(1) A plan makes a distribution or distributions within a 12-month period to a substantial owner having a total value of \$10,000 or more; and

(2) The amount of the distribution or distributions exceeds the amount of the maximum guaranteeable benefit for the substantial owner, determined under § 4022.27 of this chapter, for the year in which the distribution or the last distribution in a series was made.

(c) *Valuation of distribution.* The value of a distribution described in paragraph (a) or (b) of this section is determined in accordance with the provisions of this paragraph.

(1) The value of a distribution, other than an irrevocable commitment, equals the sum of the cash amounts actually received by the participant and the fair market value of any assets distributed in a form other than cash, determined as of the distribution date.

(2) The value of an irrevocable commitment is the purchase price of the irrevocable commitment, or the value, determined in accordance with reasonable actuarial assumptions, of the benefits payable pursuant to that irrevocable commitment. For this purpose, reasonable actuarial assumptions are the actuarial assumptions used by the PBGC under subpart B of part 4044 of this chapter, or the actuarial assumptions used by the plan for purposes of section 302 of ERISA and section 412 of the Code.

(d) *Date of substantial owner distribution.* The date of distribution to a substantial owner of an irrevocable commitment is the date on which the obligation to provide benefits passes from the plan to the insurer. The date of distribution to a substantial owner of a cash distribution shall be the date it is received by the participant. The date of all other distributions to a substantial owner shall be the date when the plan relinquishes control over the assets transferred directly or indirectly to the participant.

(e) *Determination date.* The determination of whether a participant is a substantial owner, or has been in the preceding 60 months, is made on the date when there has been a distribution or distributions with a total value of \$10,000 or more.

(f) *Valuation of assets and benefits.* For purposes of paragraph (a)(3) of this section, in determining whether a plan has nonforfeitable benefits which are not funded—

(1) Assets are valued at fair market value; and

(2) Benefits are valued in accordance with reasonable actuarial assumptions. For this purpose, reasonable actuarial assumptions are the actuarial assumptions used by the PBGC under subpart B of part 4044 of this chapter, or the actuarial assumptions used by the plan for purposes of section 302 of ERISA and section 412 of the Code.

§ 4043.19 Plan merger, consolidation or transfer.

(a) *Reportable event.* A reportable event occurs when a plan merges, consolidates, or transfers its assets or liabilities under section 208 of ERISA or section 414(1) of the Code.

(b) *Waiver.* The 30-day notice requirement contained in § 4043.3(a) is

waived for the events described in this section.

§ 4043.20 Alternative compliance with reporting and disclosure requirements of Title I.

(a) *Reportable event.* A reportable event occurs when an alternative method of compliance (not of general applicability) is prescribed for a plan by the Secretary of Labor under section 110 of ERISA.

(b) *Waiver.* The 30-day notice requirement contained in § 4043.3(a) is waived for the event described in this section.

§ 4043.21 Bankruptcy, insolvency, or similar settlements.

(a) *Reportable event.* A reportable event occurs with respect to a plan maintained by one contributing sponsor or by two or more contributing sponsors that are members of the same controlled group when a contributing sponsor—

(1) Commences a bankruptcy case (under Title 11, U.S.C.), or has a bankruptcy case commenced against it;

(2) Commences or has commenced against it, any other type of insolvency proceeding (including, but not limited to the appointment of a receiver);

(3) Commences, or has commenced against it, a proceeding to effect a composition, extension or settlement with creditors;

(4) Executes a general assignment for the benefit of creditors; or

(5) Undertakes to effect any other non-judicial composition, extension or settlement with substantially all its creditors.

(b) *Waiver.* The 30-day notice requirement contained in § 4043.3(a) is not waived for the event described in this section.

§ 4043.22 Liquidation or dissolution.

(a) *Reportable event.* Except as provided in paragraph (c) of this section, a reportable event occurs with respect to a plan maintained by one contributing sponsor or by two or more contributing sponsors that are members of the same controlled group when a contributing sponsor—

(1) Is involved in any transaction to implement its complete liquidation; or

(2) Institutes or has instituted against it a proceeding to be dissolved, or is dissolved, whichever occurs first.

(b) *Waiver.* The 30-day notice requirement contained in § 4043.3(a) is not waived for the event described in this section.

(c) *Reorganizations described in section 4069(b).* This section does not cover any of the reorganizations described in section 4069(b) of ERISA.

§ 4043.23 Transaction involving a change in contributing sponsor or controlled group.

(a) *Reportable event.* Except as provided in paragraph (c) of this section, a reportable event occurs with respect to a plan maintained by one contributing sponsor or by two or more contributing sponsors that are members of the same controlled group with nonforfeitable benefits which are not funded of \$1 million or more when—

(1) As a result of a transaction involving a transfer of assets of or an ownership interest in a contributing sponsor—

(i) There is or will be a new contributing sponsor that is not a member of the controlled group of the previous contributing sponsor;

(ii) The contributing sponsor leaves or will leave the controlled group; or

(iii) The contributing sponsor becomes or will become a member of a different controlled group, except where the new controlled group is or will be the same, but for the addition of another person, as the contributing sponsor's controlled group before the transaction; or

(2) As a result of a transaction involving a transfer by a contributing sponsor of assets of or an ownership interest in another person, the contributing sponsor and that person are or will be no longer part of the same controlled group.

(b) *Waiver.* The 30-day notice requirement contained in § 4043.3(a) is not waived for the event described in this section.

(c) *Certain reorganizations.* This section does not apply to—

(1) A reorganization involving a mere change in identity, form or place of organization, however effected;

(2) A reorganization involving a liquidation into a parent corporation; and

(3) A reorganization involving a merger, consolidation, or division solely between (or among) members of the same controlled group as the contributing sponsor.

(d) *Definition of transaction.* For purposes of this section, the term transaction includes, but is not limited to, a legally binding agreement, whether or not written, to transfer, and a change in ownership that occurs as a matter of law or through the exercise or lapse of pre-existing rights.

(e) *Valuation of assets and benefits.* For purposes of paragraph (a) of this section, in determining whether a plan has nonforfeitable benefits which are not funded of \$1 million or more—

(1) Assets are valued at fair market value; and

(2) Benefits are valued in accordance with reasonable actuarial assumptions. For this purpose, reasonable actuarial assumptions are the actuarial assumptions used by the PBGC under subpart B of part 4044 of this chapter, or the actuarial assumptions used by the plan for purposes of section 302 of ERISA and section 412 of the Code.

Subpart B—Section 302(f); Notice of Failure To Make Required Contributions**§ 4043.31 PBGC Form 200, notice of failure to make required contributions; supplementary information.**

(a) *General rules.* To comply with the notification requirement in section 302(f)(4) of ERISA and section 412(n)(4) of the Code, a contributing sponsor of a single-employer plan that is covered under section 4021 of ERISA and, if that contributing sponsor is a member of a parent-subsidiary controlled group, the parent must complete and submit a properly certified Form 200 that includes all required documentation and other information, as described in the related filing instructions, in accordance with this section. Notice of failure to make required contributions is required whenever the unpaid balance of a required installment or any other payment required under section 302 of ERISA and section 412 of the Code (including interest), when added to the aggregate unpaid balance of all preceding such installments or other payments for which payment was not made when due (including interest), exceeds \$1 million.

(1) Form 200 must be filed with the PBGC no later than 10 days after the due date for any required payment for which payment was not made when due.

(i) The 10-day period for filing Form 200 is computed in accordance with § 4043.7 of this chapter.

(ii) The filing date for Form 200 is the date on which it is received by the PBGC office specified in the instructions if it is received no later than 4 p.m. on a weekday other than a Federal holiday. If it is received after 4 p.m. or on a weekend or Federal holiday, the Form 200 is deemed to be filed on the next regular business day.

(2) If a contributing sponsor or the parent completes and submits Form 200 in accordance with this section, the PBGC will deem the other person to have so filed and it will consider the notification requirement in section 302(f)(4) of ERISA and section 412(n)(4) of the Code to be satisfied by all members of a controlled group of which the person who has filed Form 200 is a member.

(b) *Supplementary information.* If, upon review of a Form 200, the PBGC concludes that it needs additional information in order to make decisions regarding enforcement of a lien imposed by section 302(f) of ERISA and section 412(n) of the Code, the PBGC, by written notification, may require any contributing sponsor or member of a controlled group of which a contributing sponsor is a member to supplement the Form 200. Such additional information must be filed with the PBGC office specified within 7 days after the date of the written notification, as determined in accordance with §§ 4043.6 and 4043.7 of this chapter, or by a different time specified therein.

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS**Subpart A—Allocation of Assets***General Provisions**Sec.*

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- 4044.41 General valuation rules.

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- 4044.71 Valuation of annuity benefits.
- 4044.72 Form of annuity to be valued.
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- 4044.74 Withdrawal of employee contributions.
- 4044.75 Other lump sum benefits.

Appendix A to Part 4044—Mortality Rate Tables

Appendix B to Part 4044—Interest Rates Used to Value

Annuities and Lump Sums

Appendix C to Part 4044—Loading Assumptions

Appendix D to Part 4044—Tables Used To Determine Expected Retirement Age

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

Note: Certain provisions of part 4044 have been superseded by legislative changes. For example, there are references to provisions formerly codified in 29 CFR part 2617, subpart C (and to the Notice of Sufficiency provided for thereunder) that no longer exist because of changes in the PBGC's plan termination regulations in response to the Single-Employer Pension Plan Amendments Act of 1986 and the Pension Protection Act of 1987. The PBGC intends to amend part 4044 at a later date to conform it to current statutory provisions.

Subpart A—Allocation of Assets

General Provisions

§ 4044.1 Purpose and scope.

This part implements section 4044 of ERISA, which contains rules for allocating a plan's assets when the plan terminates. These rules have been in effect since September 2, 1974, the date of enactment of ERISA. This part applies to any single-employer plan covered by title IV of ERISA that submits a notice of intent to terminate, or for which PBGC commences an action to terminate the plan under section 4042 of ERISA.

(a) *Subpart A.* Sections 4044.1 through 4044.4 set forth general rules for applying §§ 4044.10 through 4044.17. Sections 4044.10 through 4044.17 interpret the rules and describe procedures for allocating plan assets to priority categories 1 through 6.

(b) *Subpart B.* The purpose of subpart B is to establish the method of determining the value of benefits and assets under terminating single-employer pension plans covered by title IV of ERISA. This valuation is needed for both plans trustee under title IV and plans which are not trustee. For the former, the valuation is needed to allocate plan assets in accordance with subpart A of this part and to determine the amount of any plan asset insufficiency. For the latter, the valuation is needed to allocate assets in accordance with subpart A and to distribute the assets in accordance with subpart B of part 4041 of this chapter.

(1) Section 4044.41 sets forth the general provisions of subpart B and applies to all terminating single-

employer plans. Sections 4044.51 through 4044.57 prescribe the benefit valuation rules for plans that receive or that expect to receive a Notice of Inability to Determine Sufficiency from PBGC and are placed into trusteeship by PBGC, including (in §§ 4044.55 through 4044.57) the rules and procedures a plan administrator shall follow to determine the expected retirement age (XRA) for a plan participant entitled to early retirement benefits for whom the annuity starting date is not known as of the valuation date. This applies to all trustee plans which have such early retirement benefits. The plan administrator shall determine an XRA under § 4044.55, § 4044.56 or § 4044.57, as appropriate, for each active participant or participant with a deferred vested benefit who is entitled to an early retirement benefit and who as of the valuation date has not selected an annuity starting date. [See Note at beginning of part 4044.]

(2) Sections 4044.71 through 4044.75 prescribe the benefit valuation rules for calculating the value of a benefit to be paid a participant or beneficiary under a terminating pension plan that is distributing assets where the plan has received a Notice of Sufficiency issued by PBGC pursuant to part 2617 of this chapter and has not been placed into trusteeship by PBGC. [See Note at beginning of part 4044.]

§ 4044.2 Definitions.

(a) The following terms are defined in § 4001.2 of this chapter: annuity, basic-type benefit, Code, distribution date, ERISA, fair market value, guaranteed benefit, insurer, IRS, irrevocable commitment, mandatory employee contributions, nonbasic-type benefit, nonforfeitable benefit, normal retirement age, notice of intent to terminate, PBGC, person, plan, plan administrator, single-employer plan, substantial owner, termination date, and voluntary employee contributions.

(b) For purposes of this part:

Deferred annuity means an annuity under which the specified date or age at which payments are to begin occurs after the valuation date.

Earliest retirement age at valuation date means the later of (a) a participant's age on his or her birthday nearest to the valuation date, or (b) the earliest age at which the participant can retire under the terms of the plan.

Early retirement benefit means an annuity benefit payable under the terms of the plan, under which the participant is entitled to begin receiving payments before his or her normal retirement age and which is not payable on account of the disability of the participant. It may

be reduced according to the terms of the plan.

Expected retirement age (XRA) means the age, determined in accordance with §§ 4044.55 through 4044.57, at which a participant is expected to begin receiving benefits when the participant has not elected, before the allocation date, an annuity starting date. This is the age to which a participant's benefit payment is assumed to be deferred for valuation purposes. An XRA is equal to or greater than the participant's earliest retirement age at valuation date but less than his or her normal retirement age.

Non-trusted plan means a single-employer plan which receives a Notice of Sufficiency from PBGC and is able to close out by purchasing annuities in the private sector in accordance with part 2617 of this chapter. [See Note at beginning of part 4044.]

Notice of Sufficiency means a notice issued by the PBGC that it has determined that plan assets are sufficient to discharge when due all obligations of the plan with respect to benefits in priority categories 1 through 4 after plan assets have been allocated to benefits in accordance with section 4044 of ERISA and this subpart. [See Note at beginning of part 4044.]

Priority category means one of the categories contained in sections 4044 (a)(1) through (a)(6) of ERISA that establish the order in which plan assets are to be allocated.

Trusted plan means a single-employer plan which has been placed into trusteeship by PBGC.

Unreduced retirement age (URA) means the earlier of the normal retirement age specified in the plan or the age at which an unreduced benefit is first payable.

Valuation date means (1) for non-trusted plans, the date of distribution and (2) for trustee plans, the date of termination.

(c) For purposes of subpart B of this part (unless otherwise required by the context):

Age means the participant's age at his or her nearest birthday and is determined by rounding the individual's exact age to the nearest whole year. Half years are rounded to the next highest year. This is also known as the "insurance age."

(d) For purposes of §§ 4044.55 through 4044.57:

Monthly benefit means the guaranteed benefit payable by PBGC.

(e) For purposes of §§ 4044.71 through 4044.75:

Lump sum payable in lieu of an annuity means a benefit that is payable in a single installment and is derived from an annuity payable under the plan.

Other lump sum benefit means a benefit in priority category 5 or 6, determined under subpart A of this part, that is payable in a single installment (or substantially so) under the terms of the plan, and that is not derived from an annuity payable under the plan. The benefit may be a severance pay benefit, a death benefit or other single installment benefit.

Qualifying bid means a bid obtained from an insurer in accordance with § 2617.14(b) of this chapter. [See Note at beginning of part 4044.]

§ 4044.3 General rule.

(a) *Asset allocation.* Upon the termination of a single-employer plan, the plan administrator shall allocate the plan assets available to pay for benefits under the plan in the manner prescribed by this subpart. Plan assets available to pay for benefits include all plan assets (valued according to § 4044.41(b)) remaining after the subtraction of all liabilities, other than liabilities for future benefit payments, paid or payable from plan assets under the provisions of the plan. Liabilities include expenses, fees and other administrative costs, and benefit payments due before the allocation date. Except as provided in § 4044.4(b), an irrevocable commitment by an insurer to pay a benefit, which commitment is in effect on the date of the asset allocation, is not considered a plan asset, and a benefit payable under such a commitment is excluded from the allocation process.

(b) *Allocation date.* For plans that close out pursuant to a Notice of Sufficiency under the provisions of subpart C of part 2617 of this chapter, assets shall be allocated as of the date plan assets are to be distributed. For other plans, assets shall be allocated as of the termination date. [See Note at beginning of part 4044.]

§ 4044.4 Violations.

(a) *General.* A plan administrator violates ERISA if plan assets are allocated or distributed upon plan termination in a manner other than that prescribed in section 4044 of ERISA and this subpart, except as may be required to prevent disqualification of the plan under the Code and regulations thereunder.

(b) *Distributions in anticipation of termination.* A distribution, transfer, or allocation of assets to a participant or to an insurance company for the benefit of a participant, made in anticipation of plan termination, is considered to be an allocation of plan assets upon termination, and is covered by paragraph (a) of this section. In determining whether a distribution,

transfer, or allocation of assets has been made in anticipation of plan termination PBGC will consider all of the facts and circumstances including—

(1) Any change in funding or operation procedures;

(2) Past practice with regard to employee requests for forms of distribution;

(3) Whether the distribution is consistent with plan provisions; and

(4) Whether an annuity contract that provides for a cutback based on the guarantee limits in subpart B of part 4022 of this chapter could have been purchased from an insurance company.

Allocation of Assets to Benefit Categories

§ 4044.10 Manner of allocation.

(a) *General.* The plan administrator shall allocate plan assets available to pay for benefits under the plan using the rules and procedures set forth in paragraphs (b) through (f) of this section, or any other procedure that results in each participant (or beneficiary) receiving the same benefits he or she would receive if the procedures in paragraphs (b) through (f) were followed.

(b) *Assigning benefits.* The basic-type and nonbasic-type benefits payable with respect to each participant in a terminated plan shall be assigned to one or more priority categories in accordance with §§ 4044.11 through 4044.16. Benefits derived from voluntary employee contributions, which are assigned only to priority category 1, are treated, under section 204(c)(4) of ERISA and section 411(d)(5) of the Code, as benefits under a separate plan. The amount of a benefit payable with respect to each participant shall be determined as of the termination date.

(c) *Valuing benefits.* The value of a participant's benefit or benefits assigned to each priority category shall be determined, as of the allocation date, in accordance with the provisions of subpart B of this part. The value of each participant's basic-type benefit or benefits in a priority category shall be reduced by the value of the participant's benefit of the same type that is assigned to a higher priority category. Except as provided in the next two sentences, the same procedure shall be followed for nonbasic-type benefits. The value of a participant's nonbasic-type benefits in priority categories 3, 5, and 6 shall not be reduced by the value of the participant's nonbasic-type benefit assigned to priority category 2. Benefits in priority category 1 shall neither be included in nor subtracted from lower priority categories. In no event shall a

benefit assigned to a priority category be valued at less than zero.

(d) *Allocating assets to priority categories.* Plan assets available to pay for benefits under the plan shall be allocated to each priority category in succession, beginning with priority category 1. If the plan has sufficient assets to pay for all benefits in a priority category, the remaining assets shall then be allocated to the next lower priority category. This process shall be repeated until all benefits in priority categories 1 through 6 have been provided or until all available plan assets have been allocated.

(e) *Allocating assets within priority categories.* Except for priority category 5, if the plan assets available for allocation to any priority category are insufficient to pay for all benefits in that priority category, those assets shall be distributed among the participants according to the ratio that the value of each participant's benefit or benefits in that priority category bears to the total value of all benefits in that priority category. If the plan assets available for allocation to priority category 5 are insufficient to pay for all benefits in that category, the assets shall be allocated, first, to the value of each participant's nonforfeitable benefits that would be assigned to priority category 5 under § 4044.15 after reduction for the value of benefits assigned to higher priority categories, based only on the provisions of the plan in effect at the beginning of the 5-year period immediately preceding the termination date. If assets available for allocation to priority category 5 are sufficient to fully satisfy the value of those benefits, assets shall then be allocated to the value of the benefit increase under the oldest amendment during the 5-year period immediately preceding the termination date, reduced by the value of benefits assigned to higher priority categories (including higher subcategories in priority category 5). This allocation procedure shall be repeated for each succeeding plan amendment within the 5-year period until all plan assets available for allocation have been exhausted. If an amendment decreased benefits, amounts previously allocated with respect to each participant in excess of the value of the reduced benefit shall be reduced accordingly. In the subcategory in which assets are exhausted, the assets shall be distributed among the participants according to the ratio that the value of each participant's benefit or benefits in that subcategory bears to the total value of all benefits in that subcategory.

(f) *Applying assets to basic-type or nonbasic-type benefits within priority*

categories. The assets allocated to a participant's benefit or benefits within each priority category shall first be applied to pay for the participant's basic-type benefit or benefits assigned to that priority category. Any assets allocated on behalf of that participant remaining after satisfying the participant's basic-type benefit or benefits in that priority category shall then be applied to pay for the participant's nonbasic-type benefit or benefits assigned to that priority category. If the assets allocable to a participant's basic-type benefit or benefits in all priority categories are insufficient to pay for all of the participant's guaranteed benefits, the assets allocated to that participant's benefit in priority category 4 shall be applied, first, to the guaranteed portion of the participant's benefit in priority category 4. The remaining assets allocated to that participant's benefit in priority category 4, if any, shall be applied to the nonguaranteed portion of the participant's benefit.

(g) *Allocation to established subclasses.* Notwithstanding paragraphs (e) and (f) of this section, the assets of a plan that has established subclasses within any priority category may be allocated to the plan's subclasses in accordance with the rules set forth in § 4044.17.

§ 4044.11 Priority category 1 benefits.

(a) *Definition.* The benefits in priority category 1 are participants' accrued benefits derived from voluntary employee contributions.

(b) *Assigning benefits.* Absent an election described in the next sentence, the benefit assigned to priority category 1 with respect to each participant is the balance of the separate account maintained for the participant's voluntary contributions. If a participant has elected to receive an annuity in lieu of his or her account balance, the benefit assigned to priority category 1 with respect to that participant is the present value of that annuity.

§ 4044.12 Priority category 2 benefits.

(a) *Definition.* The benefits in priority category 2 are participants' accrued benefits derived from mandatory employee contributions, whether to be paid as an annuity benefit with a pre-retirement death benefit that returns mandatory employee contributions or, if a participant so elects under the terms of the plan and subpart A of part 4022 of this chapter, as a lump sum benefit. Benefits are primarily basic-type benefits although nonbasic-type benefits may also be included as follows:

(1) *Basic-type benefits.* The basic-type benefit in priority category 2 with respect to each participant is the sum of the values of the annuity benefit and the pre-retirement death benefit determined under the provisions of paragraph (c)(1) of this section.

(2) *Nonbasic-type benefits.* If a participant elects to receive a lump sum benefit and if the value of the lump sum benefit exceeds the value of the basic-type benefit in priority category 2 determined with respect to the participant, the excess is a nonbasic-type benefit. There is no nonbasic-type benefit in priority category 2 for a participant who does not elect to receive a lump sum benefit.

(b) *Conversion of mandatory employee contributions to an annuity benefit.* Subject to the limitation set forth in paragraph (b)(3) of this section, a participant's accumulated mandatory employee contributions shall be converted to an annuity form of benefit payable at the normal retirement age or, if the plan provides for early retirement, at the expected retirement age. The conversion shall be made using the interest rates and factors specified in paragraph (b)(2) of this section. The form of the annuity benefit (e.g., straight life annuity, joint and survivor annuity, cash refund annuity, etc.) is the form that the participant or beneficiary is entitled to on the termination date. If the participant does not have a nonforfeitable right to a benefit, other than the return of his or her mandatory contributions in a lump sum, the annuity form of benefit is the form the participant would be entitled to if the participant had a nonforfeitable right to an annuity benefit under the plan on the termination date.

(1) *Accumulated mandatory employee contributions.* Subject to any addition for the cost of ancillary benefits plus interest, as provided in the following sentence, the amount of the accumulated mandatory employee contributions for each participant is the participant's total nonforfeitable mandatory employee contributions remaining in the plan on the termination date plus interest, if any, under the plan provisions. Mandatory employee contributions, if any, used after the effective date of the minimum vesting standards in section 203 of ERISA and section 411 of the Code for costs or to provide ancillary benefits such as life insurance or health insurance, plus interest under the plan provisions, shall be added to the contributions that remain in the plan to determine the accumulated mandatory employee contributions.

(2) *Interest rates and conversion factors.* The interest rates and conversion factors used in the administration of the plan shall be used to convert a participant's accumulated mandatory contributions to the annuity form of benefit. In the absence of plan rules and factors, the interest rates and conversion factors established by the IRS for allocation of accrued benefits between employer and employee contributions under the provisions of section 204(c) of ERISA and section 411(c) of the Code shall be used.

(3) *Minimum accrued benefit.* The annuity benefit derived from mandatory employee contributions may not be less than the minimum accrued benefit under the provisions of section 204(c) of ERISA and section 411(c) of the Code.

(c) *Assigning benefits.* If a participant or beneficiary elects to receive a lump sum benefit, his or her benefit shall be determined under paragraph (c)(2) of this section. Otherwise, the benefits with respect to a participant shall be determined under paragraph (c)(1) of this section.

(1) *Annuity benefit and pre-retirement death benefit.* The annuity benefit and the pre-retirement death benefit assigned to priority category 2 with respect to a participant are determined as follows:

(i) The annuity benefit is the benefit computed under paragraph (b) of this section.

(ii) Except for adjustments necessary to meet the minimum lump sum requirements as hereafter provided, the pre-retirement death benefit is the benefit under the plan that returns all or a portion of the participant's mandatory employee contributions upon the death of the participant before retirement. A benefit that became payable in a single installment (or substantially so) because the participant died before the termination date is a liability of the plan within the meaning of § 4044.3(a) and should not be assigned to priority category 2. A benefit payable upon a participant's death that is included in the annuity form of the benefit derived from mandatory employee contributions (e.g., the survivor's portion of a joint and survivor annuity or the cash refund portion of a cash refund annuity) is assigned to priority category 2 as part of the annuity benefit under paragraph (c)(1)(i) of this section and is not assigned as a death benefit. The pre-retirement death benefit may not be less than the minimum lump sum required upon withdrawal of mandatory employee contributions by the IRS under section 204(c) of ERISA and section 411(c) of the Code.

(2) *Lump sum benefit.* Except for adjustments necessary to meet the minimum lump sum requirements as hereafter provided, if a participant elects to receive a lump sum benefit under the provisions of the plan, the amount of the benefit that is assigned to priority category 2 with respect to the participant is—

(i) The combined value of the annuity benefit and the pre-retirement death benefit determined according to paragraph (c)(1) (which constitutes the basic-type benefit) plus

(ii) The amount, if any, of the participant's accumulated mandatory employee contributions that exceeds the combined value of the annuity benefit and the pre-retirement death benefit (which constitutes the nonbasic-type benefit), but not more than

(iii) The amount of the participant's accumulated mandatory contributions.

(3) For purposes of paragraph (c)(2) of this section, accumulated mandatory contributions means the contributions with interest, if any, payable under plan provisions to the participant or beneficiary on termination of the plan or, in the absence of such provisions, the amount that is payable if the participant withdrew his or her contributions on the termination date. The lump sum benefit may not be less than the minimum lump required by the IRS under section 204(c) of ERISA and section 411(c) of the Code upon withdrawal of mandatory employee contributions.

§ 4044.13 Priority category 3 benefits.

(a) *Definition.* The benefits in priority category 3 are those annuity benefits that were in pay status before the beginning of the 3-year period ending on the termination date, and those annuity benefits that could have been in pay status for participants who were eligible to receive annuity benefits before the beginning of the 3-year period ending on the termination date. Benefit increases that became effective before the beginning of the 5-year period ending on the termination date, including automatic benefit increases after that date to the extent provided in paragraph (b)(5) of this section, shall be included in determining the priority category 3 benefit. Benefits are primarily basic-type benefits, although nonbasic-type benefits will be included if any portion of a participant's priority category 3 benefit is not guaranteeable under the provisions of subpart A of part 4022 of this chapter.

(b) *Assigning benefits.* The annuity benefit that is assigned to priority category 3 with respect to each participant is the lowest annuity that

was paid or payable under the rules in paragraphs (b)(2) through (b)(6) of this section.

(1) *Eligibility of participants and beneficiaries.* A participant or beneficiary is eligible for a priority category 3 benefit if either of the following applies:

(i) The participant's (or beneficiary's) benefit was in pay status before the beginning of the 3-year period ending on the termination date.

(ii) The participant was eligible for an annuity and his or her benefit could have been in pay status before the beginning of the 3-year period ending on the termination date. Whether a participant was eligible to receive an annuity before the beginning of the 3-year period shall be determined using the plan provisions in effect on the day before the beginning of the 3-year period.

(iii) If a participant described in either of the preceding two paragraphs died during the 3-year period ending on the date of the plan termination and his or her beneficiary is entitled to an annuity, the beneficiary is eligible for a priority category 3 benefit.

(2) *Plan provisions governing determination of benefit.* In determining the amount of the priority category 3 annuity with respect to a participant, the plan administrator shall use the participant's age, service, actual or expected retirement age, and other relevant facts as of the following dates:

(i) Except as provided in the next sentence, for a participant or beneficiary whose benefit was in pay status before the beginning of the 3-year period ending on the termination date, the priority category 3 benefit shall be determined according to plan provisions in effect on the date the benefit commenced. Benefit increases that became effective before the beginning of the 5-year period ending on the date of plan termination, including automatic benefit increases after that date to the extent provided in paragraph (b)(5) of this section, shall be included in determining the priority category 3 benefit. The form of annuity elected by a retiree is considered the normal form of annuity for that participant.

(ii) For a participant who was eligible to receive an annuity before the beginning of the 3-year period ending on the termination date but whose benefit was not in pay status, the priority category 3 benefit and the normal form of annuity shall be determined according to plan provisions in effect on the day before the beginning of the 3-year period ending on the termination date as if the benefit had commenced at that time.

(3) *General benefit limitations.* The general benefit limitation is determined as follows:

(i) If a participant's benefit was in pay status before the beginning of the 3-year period, the benefit assigned to priority category 3 with respect to that participant is limited to the lesser of the lowest annuity benefit in pay status during the 3-year period ending on the termination date and the lowest annuity benefit payable under the plan provisions at any time during the 5-year period ending on the termination date.

(ii) Unless a benefit was in pay status before the beginning of the 3-year period ending on the termination date, the benefit assigned to priority category 3 with respect to a participant is limited to the lowest annuity benefit payable under the plan provisions, including any reduction for early retirement, at any time during the 5-year period ending on the termination date. If the annuity form of benefit under a formula that appears to produce the lowest benefit differs from the normal annuity form for the participant under paragraph (b)(2)(ii) of this section, the benefits shall be compared after the differing form is converted to the normal annuity form, using plan factors. In the absence of plan factors, the factors in subpart B of part 4022 of this chapter shall be used.

(iii) For purposes of this paragraph, if a terminating plan has been in effect less than five years on the termination date, computed in accordance with paragraph (b)(6) of this section, the lowest annuity benefit under the plan during the 5-year period ending on the termination date is zero. If the plan is a successor to a previously established defined benefit plan within the meaning of section 4021(a) of ERISA, the time it has been in effect will include the time the predecessor plan was in effect.

(4) *Determination of beneficiary's benefit.* If a beneficiary is eligible for a priority category 3 benefit because of the death of a participant during the 3-year period ending on the termination date, the benefit assigned to priority category 3 for the beneficiary shall be determined as if the participant had died the day before the 3-year period began.

(5) *Automatic benefit increases.* If plan provisions adopted and effective before the beginning of the 5-year period ending on the termination date provided for automatic increases in the benefit formula for both active participants and those in pay status or for participants in pay status only, the lowest annuity benefit payable during the 5-year period ending on the termination date determined under paragraph (b)(3) of this section includes the automatic

increases scheduled during the fourth and fifth years preceding termination, subject to the restriction that benefit increases for active participants in excess of the increases for retirees shall not be taken into account.

(6) *Computation of time periods.* For purposes of this section, a plan or amendment is "in effect" on the later of the date on which it is adopted or the date it becomes effective.

§ 4044.14 Priority category 4 benefits.

The benefits assigned to priority category 4 with respect to each participant are the participant's basic-type benefits that do not exceed the guarantee limits set forth in subpart B of part 4022 of this chapter, except as provided in the next sentence. The benefit assigned to priority category 4 with respect to a participant is not limited by the aggregate benefits limitations set forth in § 4022B.1 of this chapter for individuals who are participants in more than one plan or by the phase-in limitation applicable to substantial owners set forth in § 4022.26.

§ 4044.15 Priority category 5 benefits.

The benefits assigned to priority category 5 with respect to each participant are all of the participant's nonforfeitable benefits under the plan.

§ 4044.16 Priority category 6 benefits.

The benefits assigned to priority category 6 with respect to each participant are all of the participant's benefits under the plan, whether forfeitable or nonforfeitable.

§ 4044.17 Subclasses.

(a) *General rule.* A plan may establish one or more subclasses within any priority category, other than priority categories 1 and 2, which subclasses will govern the allocation of assets within that priority category. The subclasses may be based only on a participant's longer service, older age, or disability, or any combination thereof.

(b) *Limitation.* Except as provided in paragraph (c) of this section, whenever the allocation within a priority category on the basis of the subclasses established by the plan increases or decreases the cumulative amount of assets that otherwise would be allocated to guaranteed benefits, the assets so shifted shall be reallocated to other participants' benefits within the priority category in accordance with the subclasses.

(c) *Exception for subclasses in effect on September 2, 1974.* A plan administrator may allocate assets to subclasses within any priority category,

other than priority categories 1 and 2, without regard to the limitation in paragraph (b) of this section if, on September 2, 1974, the plan provided for allocation of plan assets upon termination of the plan based on a participant's longer service, older age, or disability, or any combination thereof, and—

(1) Such provisions are still in effect; or

(2) The plan, if subsequently amended to modify or remove those subclasses, is re-amended to re-establish the same subclasses on or before July 28, 1981.

(d) *Discrimination under Code.* Notwithstanding the provisions of paragraphs (a) through (c) of this section, allocation of assets to subclasses established under this section is permitted only to the extent that the allocation does not result in discrimination prohibited under the Code and regulations thereunder.

Allocation of Residual Assets

§ 4044.30 [Reserved.]

Subpart B—Valuation of Benefits and Assets

General Provisions

§ 4044.41 General valuation rules.

(a) *Valuation of benefits—(1) Trusteed plans.* The plan administrator of a plan that has been or will be placed into trusteeship by the PBGC shall value plan benefits in accordance with §§ 4044.51 through 4044.57.

(2) *Non-trusteed plans.* The plan administrator of a non-trusteed plan shall value plan benefits in accordance with § 4044.71 through 4044.75. If a plan with respect to which PBGC has issued a Notice of Sufficiency is unable to satisfy all benefits assigned to priority categories 1 through 4 on the distribution date, the PBGC will place it into trusteeship and the plan administrator shall re-value the benefits in accordance with §§ 4044.51 through 4044.57. [See Note at beginning of part 4044.]

(b) *Valuation of assets.* Plan assets shall be valued at their fair market value, based on the method of valuation that most accurately reflects such fair market value.

Trusteed Plans

§ 4044.51 Benefits to be valued.

(a) *Form of benefit.* The plan administrator shall determine the form of each benefit to be valued in accordance with the following rules:

(1) If a benefit is in pay status as of the valuation date, the plan

administrator shall value the form of the benefit being paid.

(2) If a benefit is not in pay status as of the valuation date but a valid election with respect to the form of benefit has been made on or before the valuation date, the plan administrator shall value the form of benefit so elected.

(3) If a benefit is not in pay status as of the valuation date and no valid election with respect to the form of benefit has been made on or before the valuation date, the plan administrator shall value the form of benefit that, under the terms of the plan, is payable in the absence of a valid election.

(b) *Timing of benefit.* The plan administrator shall value benefits whose starting date is subject to election using the assumption specified in paragraph (b)(1) or (b)(2) of this section.

(1) *Where election made.* If a valid election of the starting date of a benefit has been made on or before the valuation date, the plan administrator shall assume that the starting date of the benefit is the starting date so elected.

(2) *Where no election made.* If no valid election of the starting date of a benefit has been made on or before the valuation date, the plan administrator shall assume that the starting date of the benefit is the later of—

(i) The expected retirement age, as determined under §§ 4044.55 through 4044.57, of the participant with respect to whom the benefit is payable, or

(ii) The valuation date.

§ 4044.52 Valuation of benefits.

(a) *General rule.* Except as otherwise provided in paragraph (b) of this section (regarding the valuation of benefits payable as lump sums), the plan administrator shall value annuity benefits as of the valuation date by—

(1) Using the mortality assumptions prescribed by § 4044.53 and the interest assumptions prescribed by Table I of appendix B to this part;

(2) Using interpolation methods, where necessary, at least as accurate as linear interpolation;

(3) Using valuation formulas that accord with generally accepted actuarial principles and practices;

(4) Taking mortality into account during the deferral period of a deferred joint and survivor benefit only with respect to the participant (or other principal annuitant), if upon the death of the beneficiary the participant may elect an actuarially increased single life annuity or if a new beneficiary may succeed to the survivor portion of the benefit; and

(5) Adjusting the values to reflect the loading for expenses in accordance with appendix C to this part.

(b) *Benefits payable as lump sums.* For valuing benefits payable as lump sums (including the return of accumulated employee contributions upon death), and for determining whether the lump sum value of a benefit exceeds \$3,500, the plan administrator shall value benefits in the same manner as benefits to be paid as annuities except that—

(1) The mortality assumptions prescribed in § 4044.54 and the interest assumptions set forth in Table II of appendix B to this part shall apply,

(2) There shall be no adjustment to reflect the loading for expenses, and

(3) Beneficiary mortality during the deferral period shall be disregarded as provided in paragraph (a)(4) of this section without regard to whether the participant may elect an actuarially increased single life annuity upon the death of the beneficiary or whether a new beneficiary may succeed to the survivor portion of the benefit.

§ 4044.53 Mortality assumptions—in general.

(a) *General rule.* Subject to paragraph (b) of this section (regarding certain death benefits), the plan administrator shall use the mortality factors prescribed in paragraphs (c), (d), and (e) of this section to value benefits under § 4044.52(a).

(b) *Certain death benefits.* If an annuity for one person is in pay status on the valuation date, and if the payment of a death benefit after the valuation date to another person, who need not be identifiable on the valuation date, depends in whole or in part on the death of the pay status annuitant, then the plan administrator shall value the death benefit using—

(1) the mortality rates that are applicable to the annuity in pay status under this section to represent the mortality of the pay status annuitant; and

(2) the mortality rates applicable to annuities not in pay status and to deferred benefits other than annuities, under paragraph (c) of this section, to represent the mortality of the death beneficiary.

(c) *Mortality rates for healthy lives.* The mortality rates applicable to annuities in pay status on the valuation date that are not being received as disability benefits, to annuities not in pay status on the valuation date, and to deferred benefits other than annuities, are—

(1) For male participants, the rates in Table 1 of appendix A to this part, and

(2) For female participants, the rates in Table 1 of appendix A to this part, set back 6 years.

(d) *Mortality rates for disabled lives (other than Social Security disability).* The mortality rates applicable to annuities in pay status on the valuation date that are being received as disability benefits and for which neither eligibility for, nor receipt of, Social Security disability benefits is a prerequisite, are—

(1) For male participants, the rates in Table 1 of appendix A to this part, set forward 3 years, and

(2) For female participants, the rates in Table 1 of appendix A to this part, set back 3 years.

(e) *Mortality rates for disabled lives (Social Security disability).* The mortality rates applicable to annuities in pay status on the valuation date that are being received as disability benefits and for which either eligibility for, or receipt of, Social Security disability benefits is a prerequisite, are the rates in Tables 2–M and 2–F of appendix A to this part.

§ 4044.54 Mortality assumptions—lump sums.

For determining whether the value of a benefit is \$3,500 or less under § 4022.7(b)(1) of this chapter and for calculating the amount of a lump sum benefit, the PBGC will use the mortality rates in Table 3 of appendix A to this part.

Expected Retirement Age

§ 4044.55 XRA when a participant must retire to receive a benefit.

(a) *Applicability.* Except as provided in § 4044.57, the plan administrator shall determine the XRA under this section when plan provisions or established plan practice require a participant to retire from his or her job to begin receiving an early retirement benefit.

(b) *Data needed.* The plan administrator shall determine for each participant who is entitled to an early retirement benefit—

(1) The amount of the participant's monthly benefit payable at unreduced retirement age in the normal form payable under the terms of the plan or in the form validly elected by the participant before the termination date;

(2) The calendar year in which the participant reaches unreduced retirement age ("URA");

(3) The participant's URA; and

(4) The participant's earliest retirement age at the valuation date.

(c) *Procedure.* (1) The plan administrator shall determine whether a participant is in the high, medium or low retirement rate category using the applicable Selection of Retirement Rate Category Table in appendix D, based on the participant's benefit determined

under paragraph (b)(1) of this section and the year in which the participant reaches URA.

(2) Based on the retirement rate category determined under paragraph (c)(1), the plan administrator shall determine the XRA from Table II–A, II–B or II–C, as appropriate, by using the participant's URA and earliest retirement age at valuation date.

§ 4044.56 XRA when a participant need not retire to receive a benefit.

(a) *Applicability.* Except as provided in § 4044.57, the plan administrator shall determine the XRA under this section when plan provisions or established plan practice do not require a participant to retire from his or her job to begin receiving his or her early retirement benefit.

(b) *Data needed.* The plan administrator shall determine for each participant—

(1) The participant's URA; and

(2) The participant's earliest retirement age at valuation date.

(c) *Procedure.* Participants in this case are always assigned to the high retirement rate category and therefore the plan administrator shall use Table II–C of appendix D to determine the XRA. The plan administrator shall determine the XRA from Table II–C by using the participant's URA and earliest retirement age at termination date.

§ 4044.57 Special rule for facility closing.

(a) *Applicability.* The plan administrator shall determine the XRA under this section, rather than § 4044.55 or § 4044.56, when both the conditions set forth in paragraphs (a)(1) and (a)(2) of this section exist.

(1) The facility at which the participant is or was employed permanently closed within one year before the valuation date, or is in the process of being permanently closed on the valuation date.

(2) The participant left employment at the facility less than one year before the valuation date or was still employed at the facility on the valuation date.

(b) *XRA.* The XRA is equal to the earliest retirement age at valuation date.

Non-Trusteed Plans

§ 4044.71 Valuation of annuity benefits.

The value of a benefit which is to be paid as an annuity is the cost of purchasing the annuity on the date of distribution from an insurer under the qualifying bid.

§ 4044.72 Form of annuity to be valued.

(a) When both the participant and beneficiary are alive on the date of distribution, the form of annuity to be valued is—

(1) For a participant or beneficiary already receiving a monthly benefit, that form which is being received, or

(2) For a participant or beneficiary not receiving a monthly benefit, the normal annuity form payable under the plan or the optional form for which the participant has made a valid election pursuant to § 2617.4(c) of this chapter. [See Note at beginning of part 4044.]

(b) When the participant dies after the date of plan termination but before the date of distribution, the form of annuity to be valued is determined under paragraph (b)(1) or (b)(2) of this section:

(1) For a participant who was entitled to a deferred annuity—

(i) If the form was a single or joint life annuity, no benefit shall be valued; or

(ii) If the participant had made a valid election of a lump sum benefit before he or she died, the form to be valued is the lump sum.

(2) For a participant who was eligible for immediate retirement, and for a participant who was in pay status at the date of termination—

(i) If the form was a single life annuity, no benefit shall be valued;

(ii) If the form was an annuity for a period certain and life thereafter, the form to be valued is an annuity for the certain period;

(iii) If the form was a joint and survivor annuity, the form to be valued is a single life annuity payable to the beneficiary, unless the beneficiary has also died, in which case no benefit shall be valued;

(iv) If the form was an annuity for a period certain and joint and survivor thereafter, the form to be valued is an annuity for the certain period and the life of the beneficiary thereafter, unless the beneficiary has also died, in which case the form to be valued is an annuity for the certain period;

(v) If the form was a cash refund annuity, the form to be valued is the remaining lump sum death benefit; or

(vi) If the participant had elected a lump sum benefit before he or she died, the form to be valued is the lump sum.

(c) When the participant is still living and the named beneficiary or spouse dies after the date of termination but before the date of distribution, the form of annuity to be valued is determined under paragraph (c)(1) or (c)(2) of this section:

(1) For a participant entitled to a deferred annuity—

(i) If the form was a joint and survivor annuity, the form to be valued is a single life annuity payable to the participant; or

(ii) If the form was an annuity for a period certain and joint and survivor thereafter, the form to be valued is an

annuity for the certain period and the life of the participant thereafter.

(2) For a participant eligible for immediate retirement and for a participant in pay status at the date of termination—

(i) If the form was a joint and survivor annuity, the form to be valued is a single life annuity payable to the participant; or

(ii) If the form was an annuity for a period certain and joint survivor thereafter annuity, the form to be valued is an annuity for the certain period and for the life of the participant thereafter.

§ 4044.73 Lump sums and other alternative forms of distribution in lieu of annuities.

(a) *Valuation.* (1) The value of the lump sum or other alternative form of distribution is the present value of the normal form of benefit provided by the plan payable at normal retirement age, determined as of the date of distribution using reasonable actuarial assumptions as to interest and mortality.

(2) If the participant dies before the date of distribution, but had elected a lump sum benefit, the present value shall be determined as if the participant were alive on the date of distribution.

(b) *Actuarial assumptions.* The plan administrator shall specify the actuarial assumptions used to determine the value calculated under paragraph (a) of this section when the plan administrator submits the benefit valuation data to the PBGC pursuant to § 2617.12 of part 2617 of this chapter. The same actuarial assumptions shall be used for all such calculations. The PBGC reserves the right to review the actuarial assumptions used and to re-value the benefits determined by the plan administrator if the actuarial assumptions are found to be unreasonable.

[See Note at beginning of part 4044.]

§ 4044.74 Withdrawal of employee contributions.

(a) If a participant has not started to receive monthly benefit payments on the date of distribution, the value of the lump sum which returns mandatory employee contributions is equal to the total amount of contributions made by the participant, plus interest that is payable to the participant under the terms of the plan, plus interest on that total amount from the date of termination to the date of distribution.

The rate of interest credited on employee contributions up to the date of termination shall be the greater of the interest rate provided under the terms of the plan or the interest rate required under section 204(c) of ERISA or section 411(c) of the IRC.

(b) If a participant has started to receive monthly benefit payments on the date of distribution, part of which are attributable to his or her contributions, the value of the lump sum which returns employee contributions is equal to the excess of the amount described in paragraph (b)(1) of this section over the amount computed in paragraph (b)(2) of this section.

(1) The amount of accumulated mandatory employee contributions remaining in the plan as of the date of termination plus interest from the date of termination to the date of distribution.

(2) The excess of benefit payments made from the plan between date of plan termination and the date of distribution, over the amount of payments that would have been made if the employee contributions had been paid as a lump sum on the date of plan termination, with interest accumulated on the excess from the date of payment to the date of distribution.

(c) *Interest assumptions.* The interest rate used under this section to credit interest between the date of termination to the date of distribution shall be a reasonable rate and shall be the same for both paragraphs (a) and (b).

§ 4044.75 Other lump sum benefits.

The value of a lump sum benefit which is not covered under § 4044.73 or § 4044.74 is equal to—

(a) The value under the qualifying bid, if an insurer provides the benefit; or

(b) The present value of the benefit as of the date of distribution, determined using reasonable actuarial assumptions, if the benefit is to be distributed other than by the purchase of the benefit from an insurer. The PBGC reserves the right to review the actuarial assumptions as to reasonableness and re-value the benefit if the actuarial assumptions are unreasonable.

[See Note at beginning of part 4044.]

Appendix A to Part 4044—Mortality Rate Tables

The tables in this appendix set forth for each age x the probability q_x that an individual aged x will not survive to attain age $x+1$.

TABLE 1.—MORTALITY TABLE FOR HEALTHY MALE PARTICIPANTS

Age x	q_x
5	0.000342
6	0.000318
7	0.000302
8	0.000294
9	0.000292

TABLE 1.—MORTALITY TABLE FOR
HEALTHY MALE PARTICIPANTS—Con-
tinued

Age x	q _x
10	0.000293
11	0.000298
12	0.000304
13	0.000310
14	0.000317
15	0.000325
16	0.000333
17	0.000343
18	0.000353
19	0.000365
20	0.000377
21	0.000392
22	0.000408
23	0.000424
24	0.000444
25	0.000464
26	0.000488
27	0.000513
28	0.000542
29	0.000572
30	0.000607
31	0.000645
32	0.000687
33	0.000734
34	0.000785
35	0.000860
36	0.000907
37	0.000966
38	0.001039
39	0.001128
40	0.001238
41	0.001370
42	0.001527
43	0.001715
44	0.001932
45	0.002183
46	0.002471
47	0.002790
48	0.003138
49	0.003513
50	0.003909
51	0.004324
52	0.004755
53	0.005200
54	0.005660
55	0.006131
56	0.006618
57	0.007139
58	0.007719
59	0.008384
60	0.009158
61	0.010064
62	0.011133
63	0.012391
64	0.013868
65	0.015592
66	0.017579
67	0.019804
68	0.022229
69	0.024817
70	0.027530
71	0.030354
72	0.033370
73	0.036680
74	0.040388
75	0.044597
76	0.049388
77	0.054758
78	0.060678
79	0.067125

TABLE 1.—MORTALITY TABLE FOR
HEALTHY MALE PARTICIPANTS—Con-
tinued

Age x	q _x
80	0.074070
81	0.081484
82	0.089320
83	0.097525
84	0.106047
85	0.114836
86	0.124170
87	0.133870
88	0.144073
89	0.154859
90	0.166307
91	0.178214
92	0.190460
93	0.203007
94	0.217904
95	0.234086
96	0.248436
97	0.263954
98	0.280803
99	0.299154
100	0.319185
101	0.341086
102	0.365052
103	0.393102
104	0.427255
105	0.469531
106	0.521945
107	0.586518
108	0.665268
109	0.760215
110	1.000000

TABLE 2.—M.—MORTALITY TABLE FOR
DISABLED MALE PARTICIPANTS RE-
CEIVING SOCIAL SECURITY DISABIL-
ITY BENEFIT PAYMENTS

Age x	T2x
5	0.000000
6	0.000000
7	0.000000
8	0.000000
9	0.000000
10	0.000000
11	0.000000
12	0.000000
13	0.000000
14	0.000000
15	0.000000
16	0.000000
17	0.000000
18	0.000000
19	0.000000
20	0.048300
21	0.048300
22	0.048300
23	0.048300
24	0.048300
25	0.048300
26	0.046100
27	0.043600
28	0.041100
29	0.038600
30	0.036200
31	0.033900
32	0.032000
33	0.032000

TABLE 2.—M.—MORTALITY TABLE FOR
DISABLED MALE PARTICIPANTS RE-
CEIVING SOCIAL SECURITY DISABIL-
ITY BENEFIT PAYMENTS—Continued

Age x	T2x
34	0.028800
35	0.027800
36	0.027200
37	0.027100
38	0.027300
39	0.027600
40	0.028200
41	0.028800
42	0.029700
43	0.030500
44	0.031400
45	0.032200
46	0.033000
47	0.034000
48	0.035300
49	0.036700
50	0.038300
51	0.040100
52	0.042000
53	0.043900
54	0.046000
55	0.048200
56	0.050600
57	0.053100
58	0.055500
59	0.058100
60	0.060300
61	0.062400
62	0.064300
63	0.065700
64	0.066800
65	0.069225
66	0.071813
67	0.074526
68	0.077350
69	0.080366
70	0.083676
71	0.087384
72	0.091593
73	0.096384
74	0.101754
75	0.107674
76	0.114121
77	0.121066
78	0.128480
79	0.136316
80	0.144521
81	0.153043
82	0.161832
83	0.171166
84	0.180866
85	0.191069
86	0.201855
87	0.213303
88	0.225210
89	0.237456
90	0.250003
91	0.264900
92	0.281082
93	0.295432
94	0.310950
95	0.327799
96	0.346150
97	0.366181
98	0.388082
99	0.412048
100	0.440098
101	0.474251

TABLE 2—M.—MORTALITY TABLE FOR DISABLED MALE PARTICIPANTS RECEIVING SOCIAL SECURITY DISABILITY BENEFIT PAYMENTS—Continued

Age x	T2x
102	0.516527
103	0.568941
104	0.633514
105	0.712264
106	0.807211
107	1.000000

TABLE 2—F.—MORTALITY TABLE FOR DISABLED FEMALE PARTICIPANTS RECEIVING SOCIAL SECURITY DISABILITY BENEFIT PAYMENTS

Age x	q _x
5	0.000000
6	0.000000
7	0.000000
8	0.000000
9	0.000000
10	0.000000
11	0.000000
12	0.000000
13	0.000000
14	0.000000
15	0.000000
16	0.000000
17	0.000000
18	0.000000
19	0.000000
20	0.026300
21	0.026300
22	0.026300
23	0.026300
24	0.026300
25	0.026300
26	0.025700
27	0.025300
28	0.024700
29	0.024200
30	0.023700
31	0.023200
32	0.022700
33	0.022200
34	0.021800
35	0.021400
36	0.021200
37	0.021000
38	0.020800
39	0.020800
40	0.020900
41	0.021000
42	0.021300
43	0.021600
44	0.021900
45	0.022400
46	0.022900
47	0.023500
48	0.024200
49	0.024900
50	0.025700
51	0.026400
52	0.027200
53	0.028100
54	0.028800
55	0.029500
56	0.030100
57	0.030700

TABLE 2—F.—MORTALITY TABLE FOR DISABLED FEMALE PARTICIPANTS RECEIVING SOCIAL SECURITY DISABILITY BENEFIT PAYMENTS—Continued

Age x	q _x
58	0.031500
59	0.032300
60	0.033100
61	0.033900
62	0.034700
63	0.035500
64	0.036200
65	0.037269
66	0.038527
67	0.040004
68	0.041728
69	0.043715
70	0.045940
71	0.048365
72	0.050953
73	0.053666
74	0.056490
75	0.059506
76	0.062816
77	0.066524
78	0.070733
79	0.075724
80	0.080894
81	0.086814
82	0.093261
83	0.100206
84	0.107620
85	0.115456
86	0.123661
87	0.132183
88	0.140972
89	0.150306
90	0.160006
91	0.170209
92	0.180995
93	0.192443
94	0.204350
95	0.216596
96	0.229143
97	0.244040
98	0.260222
99	0.274572
100	0.290090
101	0.306939
102	0.325290
103	0.345321
104	0.367222
105	0.391188
106	0.419238
107	0.453391
108	0.495667
109	0.548081
110	0.612654
111	0.691404
112	0.786351
113	1.000000

TABLE 3.—LUMP SUM MORTALITY TABLE

Age	q _x
12	0.000000
13	0.000000
14	0.000000
15	0.000000

TABLE 3.—LUMP SUM MORTALITY TABLE—Continued

Age	q _x
16	0.001437
17	0.001414
18	0.001385
19	0.001351
20	0.001311
21	0.001267
22	0.001219
23	0.001167
24	0.001149
25	0.001129
26	0.001107
27	0.001083
28	0.001058
29	0.001083
30	0.001111
31	0.001141
32	0.001173
33	0.001208
34	0.001297
35	0.001398
36	0.001513
37	0.001643
38	0.001792
39	0.001948
40	0.002125
41	0.002327
42	0.002556
43	0.002818
44	0.003095
45	0.003410
46	0.003769
47	0.004180
48	0.004635
49	0.005103
50	0.005616
51	0.006196
52	0.006853
53	0.007543
54	0.008278
55	0.009033
56	0.009875
57	0.010814
58	0.011863
59	0.012952
60	0.014162
61	0.015509
62	0.017010
63	0.018685
64	0.020517
65	0.022562
66	0.024847
67	0.027232
68	0.029634
69	0.032073
70	0.034743
71	0.037667
72	0.040871
73	0.044504
74	0.048504
75	0.052913
76	0.057775
77	0.063142
78	0.068628
79	0.074648
80	0.081256
81	0.088518
82	0.096218
83	0.104310
84	0.112816
85	0.122079
86	0.132174

TABLE 3.—LUMP SUM MORTALITY
TABLE—Continued

Age	q _x
87	0.143179
88	0.155147
89	0.168208
90	0.182461
91	0.198030
92	0.215035
93	0.232983
94	0.252545
95	0.273878

TABLE 3.—LUMP SUM MORTALITY
TABLE—Continued

Age	q _x
96	0.297152
97	0.322553
98	0.349505
99	0.378865
100	0.410875
101	0.445768
102	0.483830
103	0.524301
104	0.568365

TABLE 3.—LUMP SUM MORTALITY
TABLE—Continued

Age	q _x
105	0.616382
106	0.668696
107	0.725745
108	0.786495
109	0.852659
110	0.924666
111	1.000000

Appendix B to Part 4044—Interest Rates Used To Value Annuities and Lump Sums

TABLE I.—[ANNUITY VALUATIONS]

[This table sets forth, for each indicated calendar month, the interest rates (denoted by $i_1, i_2, \dots$, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.]

For valuation dates occurring in the month—	The values of i_1 are:					
	i_1	for $t=$	i_1	for $t=$	i_1	for $t=$
November 1993	.0560	1–25	.0525	>25	N/A	N/A
December 1993	.0560	1–25	.0525	>25	N/A	N/A
January 1994	.0590	1–25	.0525	>25	N/A	N/A
February 1994	.0590	1–25	.0525	>25	N/A	N/A
March 1994	.0580	1–25	.0525	>25	N/A	N/A
April 1994	.0620	1–25	.0525	>25	N/A	N/A
May 1994	.0650	1–25	.0525	>25	N/A	N/A
June 1994	.0670	1–25	.0525	>25	N/A	N/A
July 1994	.0690	1–25	.0525	>25	N/A	N/A
August 1994	.0700	1–25	.0525	>25	N/A	N/A
September 1994	.0690	1–25	.0525	>25	N/A	N/A
October 1994	.0700	1–25	.0525	>25	N/A	N/A
November 1994	.0730	1–25	.0525	>25	N/A	N/A
December 1994	.0750	1–25	.0525	>25	N/A	N/A
January 1995	.0750	1–20	.0575	>20	N/A	N/A
February 1995	.0730	1–20	.0575	>20	N/A	N/A
March 1995	.0730	1–20	.0575	>20	N/A	N/A
April 1995	.0710	1–20	.0575	>20	N/A	N/A
May 1995	.0690	1–20	.0575	>20	N/A	N/A
June 1995	.0680	1–20	.0575	>20	N/A	N/A
July 1995	.0630	1–20	.0575	>20	N/A	N/A
August 1995	.0620	1–20	.0575	>20	N/A	N/A
September 1995	.0640	1–20	.0575	>20	N/A	N/A
October 1995	.0630	1–20	.0575	>20	N/A	N/A
November 1995	.0620	1–20	.0575	>20	N/A	N/A
December 1995	.0600	1–20	.0575	>20	N/A	N/A
January 1996	.0560	1–20	.0475	>20	N/A	N/A
February 1996	.0540	1–20	.0475	>20	N/A	N/A
March 1996	.0550	1–20	.0475	>20	N/A	N/A
April 1996	.0580	1–20	.0475	>20	N/A	N/A
May 1996	.0600	1–20	.0475	>20	N/A	N/A
June 1996	.0620	1–20	.0475	>20	N/A	N/A
July 1996	.0620	1–20	.0475	>20	N/A	N/A

TABLE II.—[LUMP SUM VALUATIONS]

[In using this table: (1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply; (2) For benefits for which the deferral period is y years (where y is an integer and $0 < y \leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply; (3) For benefits for which the deferral period is y years (where y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply; (4) For benefits for which the deferral period is y years (where y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years; interest rate i_2 shall apply for the following n_2 years; interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
1	11-1-93	12-1-93	4.25	4.00	4.00	4.00	7	8
2	12-1-93	1-1-94	4.25	4.00	4.00	4.00	7	8
3	1-1-94	2-1-94	4.50	4.00	4.00	4.00	7	8
4	2-1-94	3-1-94	4.50	4.00	4.00	4.00	7	8
5	3-1-94	4-1-94	4.50	4.00	4.00	4.00	7	8
6	4-1-94	5-1-94	4.75	4.00	4.00	4.00	7	8
7	5-1-94	6-1-94	5.25	4.50	4.00	4.00	7	8
8	6-1-94	7-1-94	5.25	4.50	4.00	4.00	7	8
9	7-1-94	8-1-94	5.50	4.75	4.00	4.00	7	8
10	8-1-94	9-1-94	5.75	5.00	4.00	4.00	7	8
11	9-1-94	10-1-94	5.50	4.75	4.00	4.00	7	8
12	10-1-94	11-1-94	5.50	4.75	4.00	4.00	7	8
13	11-1-94	12-1-94	6.00	5.25	4.00	4.00	7	8
14	12-1-94	1-1-95	6.25	5.50	4.25	4.00	7	8
15	1-1-95	2-1-95	6.00	5.25	4.00	4.00	7	8
16	2-1-95	3-1-95	6.00	5.25	4.00	4.00	7	8
17	3-1-95	4-1-95	6.00	5.25	4.00	4.00	7	8
18	4-1-95	5-1-95	5.75	5.00	4.00	4.00	7	8
19	5-1-95	6-1-95	5.50	4.75	4.00	4.00	7	8
20	6-1-95	7-1-95	5.50	4.75	4.00	4.00	7	8
21	7-1-95	8-1-95	4.75	4.00	4.00	4.00	7	8
22	8-1-95	9-1-95	4.75	4.00	4.00	4.00	7	8
23	9-1-95	10-1-95	5.00	4.25	4.00	4.00	7	8
24	10-1-95	11-1-95	4.75	4.00	4.00	4.00	7	8
25	11-1-95	12-1-95	4.75	4.00	4.00	4.00	7	8
26	12-1-95	1-1-96	4.50	4.00	4.00	4.00	7	8
27	1-1-96	2-1-96	4.50	4.00	4.00	4.00	7	8
28	2-1-96	3-1-96	4.25	4.00	4.00	4.00	7	8
29	3-1-96	4-1-96	4.25	4.00	4.00	4.00	7	8
30	4-1-96	5-1-96	4.75	4.00	4.00	4.00	7	8
31	5-1-96	6-1-96	5.00	4.25	4.00	4.00	7	8
32	6-1-96	7-1-96	5.00	4.25	4.00	4.00	7	8
33	7-1-96	8-1-96	5.00	4.25	4.00	4.00	7	8

Appendix C to Part 4044—Loading Assumptions

If the total value of the plan's benefit liabilities (as defined in 29 U.S.C. § 1301(a)(16)), exclusive of the loading charge, is—		The loading charge equals—
greater than	but less than or equal to	
\$0	\$200,000	5% of the total value of the plan's benefits, plus \$200 for each plan participant.
\$200,000 .....	.....	\$10,000, plus a percentage of the excess of the total value over \$200,000, plus \$200 for each plan participant; the percentage is equal to $1\% + [(P\% - 7.50\%) / 10]$, where $P\%$ is the initial rate, expressed as a percentage, set forth in Table I of appendix B for the valuation of annuities.

Appendix D to Part 4044—Tables Used To Determine Expected Retirement Age

TABLE I-96.—SELECTION OF RETIREMENT RATE CATEGORY

[For Plans with valuation dates after December 31, 1995, and before January 1, 1997]

Participant reaches NRA in year—	Participant's retirement rate category is—			
	Low ¹ if monthly benefit at NRA is less than—	Medium ² if monthly benefit at NRA is		High ³ if monthly benefit at NRA is greater than—
		From	To	
1997	400	400	1,684	1,684
1998	413	413	1,738	1,738
1999	426	426	1,794	1,794
2000	440	440	1,850	1,850
2001	453	453	1,907	1,907
2002	467	467	1,966	1,966
2003	482	482	2,027	2,027
2004	497	497	2,090	2,090
2005	512	512	2,155	2,155
2006 or later	528	528	2,221	2,221

¹ Table II-A.² Table II-B.³ Table II-C.

TABLE II-A.—EXPECTED RETIREMENT AGES FOR INDIVIDUALS IN THE LOW CATEGORY

Participant's earliest retirement age at valuation date.	Normal retirement age										
	60	61	62	63	64	65	66	67	68	69	70
42	53	53	53	54	54	54	54	54	54	54	54
43	53	54	54	54	55	55	55	55	55	55	55
44	54	54	55	55	55	55	55	56	56	56	56
45	54	55	55	56	56	56	56	56	56	56	56
46	55	55	56	56	56	57	57	57	57	57	57
47	56	56	56	57	57	57	57	57	57	57	57
48	56	57	57	57	58	58	58	58	58	58	58
49	56	57	58	58	58	58	59	59	59	59	59
50	57	57	58	58	59	59	59	59	59	59	59
51	57	58	58	59	59	60	60	60	60	60	60
52	58	58	59	59	60	60	60	60	60	60	60
53	58	59	59	60	60	61	61	61	61	61	61
54	58	59	60	60	61	61	61	61	61	61	61
55	59	59	60	61	61	61	62	62	62	62	62
56	59	60	60	61	61	62	62	62	62	62	62
57	59	60	61	61	62	62	62	62	62	62	62
58	59	60	61	61	62	62	63	63	63	63	63
59	59	60	61	62	62	63	63	63	63	63	63
60	60	60	61	62	62	63	63	63	63	63	63
61 .....	.....	61	61	62	63	63	63	63	64	64	64
62 .....	.....	.....	62	62	63	63	63	64	64	64	64
63 .....	.....	.....	.....	63	63	64	64	64	65	65	65
64 .....	.....	.....	.....	.....	64	64	65	65	65	65	65
65 .....	.....	.....	.....	.....	.....	65	65	65	65	65	65
66 .....	.....	.....	.....	.....	.....	.....	66	66	66	66	66
67 .....	.....	.....	.....	.....	.....	.....	.....	67	67	67	67
68 .....	.....	.....	.....	.....	.....	.....	.....	.....	68	68	68
69 .....	.....	.....	.....	.....	.....	.....	.....	.....	.....	69	69
70 .....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	70

TABLE II-B.—EXPECTED RETIREMENT AGES FOR INDIVIDUALS IN THE MEDIUM CATEGORY

Participant's earliest retirement age at valuation date	Normal retirement age										
	60	61	62	63	64	65	66	67	68	69	70
42	49	49	49	49	49	49	49	49	49	49	49
43	50	50	50	50	50	50	50	50	50	50	50
44	50	51	51	51	51	51	51	51	51	51	51
45	51	51	52	52	52	52	52	52	52	52	52
46	52	52	52	53	53	53	53	53	53	53	53

TABLE II-B.—EXPECTED RETIREMENT AGES FOR INDIVIDUALS IN THE MEDIUM CATEGORY—Continued

[illegible]

TABLE II-C.—EXPECTED RETIREMENT AGES FOR INDIVIDUALS IN THE HIGH CATEGORY

[illegible]

PART 4047—RESTORATION OF TERMINATING AND TERMINATED PLANS

Sec.

- 4047.1 Purpose and scope.
- 4047.2 Definitions.
- 4047.3 Funding of restored plan.
- 4047.4 Payment of premiums.
- 4047.5 Repayment of PBGC payments of guaranteed benefits.

Authority: 29 U.S.C. 1302(b)(3), 1347.

§ 4047.1 Purpose and scope.

Section 4047 of ERISA gives the PBGC broad authority to take any necessary actions in furtherance of a plan restoration order issued pursuant to section 4047. This part (along with Treasury regulation 26 CFR 1.412(c)(1)–3) describes certain legal obligations that arise incidental to a plan restoration under section 4047. This part also establishes procedures with respect to these obligations that are intended to facilitate the orderly transition of a restored plan from terminated (or terminating) status to ongoing status, and to help ensure that the restored plan will continue to be ongoing consistent with the best interests of the plan's participants and beneficiaries and the single-employer insurance program. This part applies to terminated and terminating single-employer plans (except for plans terminated and terminating under ERISA section 4041(b)) with respect to which the PBGC has issued or is issuing a plan restoration order pursuant to ERISA section 4047.

§ 4047.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: controlled group, ERISA, IRS, PBGC, plan, plan administrator, plan year, and single-employer plan.

§ 4047.3 Funding of restored plan.

(a) *General.* Whenever the PBGC issues or has issued a plan restoration order under ERISA section 4047, it shall issue to the plan sponsor a restoration payment schedule order in accordance with the rules of this section. PBGC, through its Executive Director, shall also issue a certification to its Board of Directors and the IRS, as described in paragraph (c) of this section. If more than one plan is or has been restored, the PBGC shall issue a separate restoration payment schedule order and separate certification with respect to each restored plan.

(b) *Restoration payment schedule order.* A restoration payment schedule order shall set forth a schedule of payments sufficient to amortize the initial restoration amortization base

described in paragraph (b) of 26 CFR 1.412(c)(1)–3 over a period extending no more than 30 years after the initial post-restoration valuation date, as defined in paragraph (a)(1) of 26 CFR 1.412(c)(1)–3. The restoration payment schedule shall be consistent with the requirements of 26 CFR 1.412(c)(1)–3 and may require payments at intervals of less than one year, as determined by the PBGC. The PBGC may, in its discretion, amend the restoration payment schedule at any time, consistent with the requirements of 26 CFR 1.412(c)(1)–3.

(c) *Certification.* The Executive Director's certification to the Board of Directors and the IRS pursuant to paragraph (a) of this section shall state that the PBGC has reviewed the funding of the plan, the financial condition of the plan sponsor and its controlled group members, the payments required under the restoration payment schedule (taking into account the availability of deferrals as permitted under paragraph (c)(4) of 26 CFR 1.412(c)(1)–3) and any other factor that the PBGC deems relevant, and, based on that review, determines that it is in the best interests of the plan's participants and beneficiaries and the single-employer insurance program that the restored plan not be reterminated.

(d) *Periodic PBGC review.* As long as a restoration payment schedule order issued under this section is in effect, the PBGC shall review annually the funding status of the plan with respect to which the order applies. As part of this review, the PBGC, through its Executive Director, shall issue a certification in the form described in paragraph (c) of this section. As a result of its funding review, PBGC may amend the restoration payment schedule, consistent with the requirements of paragraph (c)(2) of 26 CFR 1.412(c)(1)–3.

§ 4047.4 Payment of premiums.

(a) *General.* Upon restoration of a plan pursuant to ERISA section 4047, the obligation to pay PBGC premiums pursuant to ERISA section 4007 is reinstated as of the date on which the plan was trustee under section 4042 of ERISA. Except as otherwise specifically provided in paragraphs (b) and (c) of this section, the amount of the outstanding premiums owed shall be computed and paid by the plan administrator in accordance with part 4006 of this chapter (Premium Rates) and the forms and instructions issued pursuant thereto, as in effect for the plan years for which premiums are owed.

(b) *Notification of premiums owed.* Whenever the PBGC issues or has issued a plan restoration order, it shall send a written notice to the plan administrator of the restored plan advising the plan administrator of the plan year(s) for which premiums are owed. PBGC will include with the notice the necessary premium payment forms and instructions. The notice shall prescribe the payment due dates for the outstanding premiums.

(c) *Methods for determining variable rate portion of the premium.* In general, the variable rate portion of the outstanding premiums shall be determined in accordance with the premium regulation and forms, as provided in paragraph (a) of this section, except that for any plan year following a plan year for which Form 5500, Schedule B was not filed because the plan was terminated, the alternative calculation method in § 4006.4(c) of this chapter may not be used.

§ 4047.5 Repayment of PBGC payments of guaranteed benefits.

(a) *General.* Upon restoration of a plan pursuant to ERISA section 4047, amounts paid by the PBGC from its single-employer insurance fund (the fund established pursuant to ERISA section 4005(a)) to pay guaranteed benefits and related expenses under the plan while it was terminated are a debt of the restored plan. The terms and conditions for payment of this debt shall be determined by the PBGC.

(b) *Repayment terms.* The PBGC shall prescribe reasonable terms and conditions for payment of the debt described in paragraph (a) of this section, including the number, amount and commencement date of the payments. In establishing the terms, PBGC will consider the cash needs of the plan, the timing and amount of contributions owed to the plan, the liquidity of plan assets, the interests of the single-employer insurance program, and any other factors PBGC deems relevant. PBGC may, in its discretion, revise any of the payment terms and conditions, upon written notice to the plan administrator in accordance with paragraph (c) of this section.

(c) *Notification to plan administrator.* Whenever the PBGC issues or has issued a plan restoration order, it shall send a written notice to the plan administrator of the restored plan advising the plan administrator of the amount owed the PBGC pursuant to paragraph (a) of this section. The notice shall also include the terms and conditions for payment of this debt, as established under paragraph (b) of this section.

PART 4050—MISSING PARTICIPANTS

Sec.

4050.1 Purpose and scope.

4050.2 Definitions.

4050.3 Method of distribution for missing participants.

4050.4 Diligent search.

4050.5 Designated benefit.

4050.6 Payment and required documentation.

4050.7 Benefits of missing participants—in general.

4050.8 Automatic lump sum.

4050.9 Annuity or elective lump sum—living missing participant.

4050.10 Annuity or elective lump sum—beneficiary of deceased missing participant.

4050.11 Limitations.

4050.12 Special rules.

4050.13 OMB control number.

Appendix A to Part 4050—Examples of Designated Benefit Determinations for Missing Participants Under § 4050.5

Appendix B to Part 4050—Examples of Benefit Payments for Missing Participants Under §§ 4050.8 Through 4050.10

§ 4050.1 Purpose and scope.

This part prescribes rules for distributing benefits under a terminating single-employer plan for any individual whom the plan administrator has not located when distributing benefits under § 4041.27(c) of this chapter. This part applies to a plan if the plan's deemed distribution date (or the date of a payment made in accordance with § 4050.12) is in a plan year beginning on or after January 1, 1996.

§ 4050.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: annuity, benefit liabilities, Code, ERISA, insurer, irrevocable commitment, mandatory employee contributions, normal retirement age, PBGC, person, plan, plan administrator, plan year and title IV benefit.

In addition, for purposes of this part:

Deemed distribution date means the last day of the period in which distribution may be made (determined without regard to the provisions of this part) under § 4041.27(a) or § 4041.48(a) of this chapter (whichever applies) or such earlier date as may be selected by the plan administrator of a terminating plan that is on or after the date when all benefit distributions have been made under the plan except for distributions to—

- (1) Late-discovered participants,
- (2) Missing participants (including recently-missing participants) whose designated benefits are paid to the PBGC, and
- (3) Recently-missing participants whose benefits are distributed by

purchasing an irrevocable commitment from an insurer.

Designated benefit means the amount payable to the PBGC for a missing participant pursuant to § 4050.5.

Designated benefit interest rate means the rate of interest applicable to underpayments of guaranteed benefits by the PBGC under § 4022.81(d) of this chapter.

Guaranteed benefit form means, with respect to a benefit, the form in which the PBGC would pay a guaranteed benefit to a participant or beneficiary in the PBGC's program for trustee plans under subparts A and B of part 4022 of this chapter (treating the deemed distribution date as the termination date for this purpose).

Late-discovered participant means a participant or beneficiary entitled to a distribution under a terminating plan whom the plan administrator locates before the plan administrator pays the individual's designated benefit to the PBGC (or distributes the individual's benefit by purchasing an irrevocable commitment from an insurer) and not more than 90 days before the deemed distribution date.

Missing participant means a participant or beneficiary entitled to a distribution under a terminating plan whom the plan administrator has not located as of the date when the plan administrator pays the individual's designated benefit to the PBGC (or distributes the individual's benefit by purchasing an irrevocable commitment from an insurer). In the absence of proof of death, individuals not located are presumed living.

Missing participant annuity assumptions means the interest rate assumptions and actuarial methods (using the interest rates for annuity valuations in Table I of appendix B to part 4044 of this chapter) for valuing a benefit to be paid by the PBGC as an annuity under subpart B of part 4044, applied—

- (1) As if the deemed distribution date were the termination date;
- (2) Using unisex mortality rates that are a fixed blend of 50 percent of the male mortality rates and 50 percent of the female mortality rates from the 1983 Group Annuity Mortality Table as prescribed in Rev. Rul. 95–6, 1995–1 C.B. 80 (Cumulative Bulletins are available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402);
- (3) Without using the expected retirement age assumptions in §§ 4044.55 through 4044.57 of this chapter;

(4) Without making the adjustment for expenses provided for in § 4044.52(a)(5) of this chapter; and

(5) By adding \$300, as an adjustment (loading) for expenses, for each missing participant whose designated benefit without such adjustment would be greater than \$3,500.

Missing participant forms and instructions means PBGC Forms 501 and 602, Schedule MP thereto, and related forms, and their instructions.

Missing participant lump sum assumptions means the interest rate assumptions and actuarial methods (using the interest rates for lump sum valuations in Table II of appendix B to part 4044 of this chapter) for valuing a benefit to be paid by the PBGC as a lump sum under subpart B of part 4044 of this chapter, applied—

- (1) As if the deemed distribution date were the termination date;
- (2) Using mortality assumptions from Table 3 of appendix A to part 4044 of this chapter; and
- (3) Without using the expected retirement age assumptions in §§ 4044.55 through 4044.57 of this chapter.

Pay status means, with respect to a benefit under a plan, that the plan administrator has made or (except for administrative delay or a waiting period) would have made one or more benefit payments.

Post-distribution certification means the post-distribution certification required by § 4041.27(h) or § 4041.48(b) of this chapter.

Recently-missing participant means a participant or beneficiary whom the plan administrator discovers to be a missing participant on or after the 90th day before the deemed distribution date.

Unloaded designated benefit means the designated benefit reduced by \$300; except that the reduction shall not apply in the case of a designated benefit determined using the missing participant annuity assumptions without adding the \$300 load described in paragraph (5) of the definition of “missing participant annuity assumptions.”

§ 4050.3 Method of distribution for missing participants.

The plan administrator of a terminating plan shall distribute benefits for each missing participant by—

- (a) purchasing from an insurer an irrevocable commitment that satisfies the requirements of § 4041.27(c) or § 4041.48(a)(1) of this chapter (whichever is applicable); or
- (b) paying the PBGC a designated benefit in accordance with §§ 4050.4

through 4050.6 (subject to the special rules in § 4050.12).

§ 4050.4 Diligent search.

(a) *Search required.* A diligent search shall be made for each missing participant whose designated benefit (or voluntary employee contributions under § 4050.12(d)(2)) is paid to the PBGC. The search shall be made before the payment is made.

(b) *Diligence.* A search is a diligent search only if the search—

(1) Begins not more than 6 months before notices of intent to terminate are issued and is carried on in such a manner that if the individual is found, distribution to the individual can reasonably be expected to be made on or before the deemed distribution date (or, in the case of a recently-missing participant, on or before the 90th day after the deemed distribution date);

(2) Includes inquiry of any plan beneficiaries (including alternate payees) of the missing participant whose names and addresses are known to the plan administrator; and

(3) Includes use of a commercial locator service to search for the missing participant (without charge to the missing participant or reduction of the missing participant's plan benefit).

§ 4050.5 Designated benefit.

(a) *Amount of designated benefit.* The amount of the designated benefit shall be the amount determined under paragraph (a)(1), (a)(2), (a)(3), or (a)(4) of this section (whichever is applicable) or, if less, the maximum amount that could be provided under the plan to the missing participant in the form of a single sum in accordance with section 415 of the Code.

(1) *Mandatory lump sum.* The designated benefit of a missing participant required under a plan to receive a mandatory lump sum as of the deemed distribution date shall be the lump sum payment that the plan administrator would have distributed to the missing participant as of the deemed distribution date.

(2) *De minimis lump sum.* The designated benefit of a missing participant not described in paragraph (a)(1) of this section whose benefit is not in pay status as of the deemed distribution date and whose benefit has a *de minimis* actuarial present value (\$3,500 or less) as of the deemed distribution date under the missing participant lump sum assumptions shall be such value.

(3) *No lump sum.* The designated benefit of a missing participant not described in paragraph (a)(1) or (a)(2) of this section who, as of the deemed

distribution date, cannot elect an immediate lump sum under the plan shall be the actuarial present value of the missing participant's benefit as of the deemed distribution date under the missing participant annuity assumptions.

(4) *Elective lump sum.* The designated benefit of a missing participant not described in paragraph (a)(1), (a)(2), or (a)(3) of this section shall be the greater of the amounts determined under the methodologies of paragraph (a)(1) or (a)(3) of this section.

(b) *Assumptions.* When the plan administrator uses the missing participant annuity assumptions or the missing participant lump sum assumptions for purposes of determining the designated benefit under paragraph (a) of this section, the plan administrator shall value the most valuable benefit, as determined under paragraph (b)(1) of this section, using the assumptions described in paragraph (b)(2) or (b)(3) of this section (whichever is applicable).

(1) *Most valuable benefit.* For a missing participant whose benefit is in pay status as of the deemed distribution date, the most valuable benefit is the pay status benefit. For a missing participant whose benefit is not in pay status as of the deemed distribution date, the most valuable benefit is the benefit payable at the age on or after the deemed distribution date (beginning with the participant's earliest early retirement age and ending with the participant's normal retirement age) for which the present value as of the deemed distribution date is the greatest. The present value as of the deemed distribution date with respect to any age is determined by multiplying:

(i) the monthly (or other periodic) benefit payable under the plan; by

(ii) the present value (determined as of the deemed distribution date using the missing participant annuity assumptions) of a \$1 monthly (or other periodic) annuity beginning at the applicable age.

(2) *Participant.* A missing participant who is a participant, and whose benefit is not in pay status as of the deemed distribution date, is assumed to be married to a spouse the same age, and the form of benefit that must be valued is the qualified joint and survivor annuity benefit that would be payable under the plan. If the participant's benefit is in pay status as of the deemed distribution date, the form and beneficiary of the participant's benefit are the form of benefit and beneficiary of the pay status benefit.

(3) *Beneficiary.* A missing participant who is a beneficiary, and whose benefit

is not in pay status as of the deemed distribution date, is assumed not to be married, and the form of benefit that must be valued is the survivor benefit that would be payable under the plan. If the beneficiary's benefit is in pay status as of the deemed distribution date, the form and beneficiary of the beneficiary's benefit are the form of benefit and beneficiary of the pay status benefit.

(4) *Examples.* See Appendix A to this part for examples illustrating the provisions of this section.

(c) *Missed payments.* In determining the designated benefit, the plan administrator shall include the value of any payments that were due before the deemed distribution date but that were not made.

(d) *Payment of designated benefits.* Payment of designated benefits shall be made in accordance with § 4050.6 and shall be deemed made on the deemed distribution date.

§ 4050.6 Payment and required documentation.

(a) *Time of payment and filing—*(1) *General rule.* The plan administrator shall pay designated benefits, and file the information and certifications (of the plan administrator and the plan's enrolled actuary) specified in the missing participant forms and instructions, by the time the post-distribution certification is due (determined in accordance with § 4041.9 of this chapter). Except as otherwise provided in the missing participant forms and instructions, the plan administrator shall submit the designated benefits, information, and certifications with the post-distribution certification.

(2) *Recently-missing participants.* For a recently-missing participant, the plan administrator shall either purchase an irrevocable commitment from an insurer not later than 90 days after the deemed distribution date or pay a designated benefit to the PBGC by the time the amended post-distribution certification is due under paragraph (a)(2)(ii) of this section. Except as otherwise provided in the missing participant forms and instructions—

(i) *Payment.* The plan administrator shall submit the designated benefit with the amended post-distribution certification described in paragraph (a)(2)(ii) of this section; and

(ii) *Filing.* If (in the case of a recently-missing participant for whom a designated benefit is to be paid to the PBGC) a diligent search has not been completed or (in the case of any other recently-missing participant) an irrevocable commitment has not been

purchased when the plan administrator submits the filing described in paragraph (a)(1) of this section, the plan administrator shall so indicate in that filing and submit an amended filing (including an amended post-distribution certification) within 120 days after the deemed distribution date (subject to extension under § 4050.12(h)) in accordance with the missing participant forms and instructions.

(3) *Late-discovered participants.* When it is impracticable for the plan administrator to include complete and accurate final information on a late-discovered participant in a timely post-distribution certification, the plan administrator shall submit an amended post-distribution certification within 120 days after the deemed distribution date (subject to extension under § 4050.12(h)) in accordance with the missing participant forms and instructions.

(b) *Interest on late payments.* If the plan administrator does not pay a designated benefit by the time specified in paragraph (a) of this section, the plan administrator shall pay interest as assessed by the PBGC for the period beginning on the deemed distribution date and ending on the date when the payment is received by the PBGC. Interest will be assessed at the rate provided for late premium payments in § 4007.7 of this chapter. Interest assessed under this paragraph shall be deemed paid in full if payment of the amount assessed is received by the PBGC within 30 days after the date of a PBGC bill for such amount.

(c) *Supplemental information.* Within 30 days after the date of a written request from the PBGC, a plan administrator required to provide the information and certifications described in paragraph (a) of this section shall file supplemental information, as requested, for the purpose of verifying designated benefits, determining benefits to be paid by the PBGC under this part, and substantiating diligent searches.

(1) *Information mailed.* Supplemental information filed under this paragraph (c) is considered filed on the date of the United States postmark stamped on the cover in which the information is mailed, if—

(i) The postmark was made by the United States Postal Service; and

(ii) The information was mailed postage prepaid, properly addressed to the PBGC.

(2) *Information delivered.* When the plan administrator sends or transmits the information to the PBGC by means other than the United States Postal Service, the information is considered filed on the date it is received by the

PBGC. Information received on a weekend or Federal holiday or after 5:00 p.m. on a weekday is considered filed on the next regular business day.

§ 4050.7 Benefits of missing participants—in general.

(a) *If annuity purchased.* If a plan administrator distributes a missing participant's benefit by purchasing an irrevocable commitment from an insurer, and the missing participant (or his or her beneficiary or estate) later contacts the PBGC, the PBGC will inform the person of the identity of the insurer and the relevant policy number.

(b) *If designated benefit paid.* If the PBGC locates or is contacted by a missing participant (or his or her beneficiary or estate) for whom a plan administrator paid a designated benefit to the PBGC, the PBGC will pay benefits in accordance with §§ 4050.8 through 4050.10 (subject to the limitations and special rules in §§ 4050.11 and 4050.12).

(c) *Examples.* See Appendix B to this part for examples illustrating the provisions of §§ 4050.8 through 4050.10.

§ 4050.8 Automatic lump sum.

This section applies to a missing participant whose designated benefit was determined under § 4050.5(a)(1) (mandatory lump sum) or § 4050.5(a)(2) (*de minimis* lump sum).

(a) *General rule—(1) Benefit paid.* The PBGC will pay a single sum benefit equal to the designated benefit plus interest at the designated benefit interest rate from the deemed distribution date to the date on which the PBGC pays the benefit.

(2) *Payee.* Payment shall be made—

(i) To the missing participant, if located;

(ii) If the missing participant died before the deemed distribution date, and if the plan so provides, to the missing participant's beneficiary or estate; or

(iii) If the missing participant dies on or after the deemed distribution date, to the missing participant's estate.

(b) *De minimis annuity alternative.* If the guaranteed benefit form for a missing participant whose designated benefit was determined under § 4050.5(a)(2) (*de minimis* lump sum) (or the guaranteed benefit form for a beneficiary of such a missing participant) would provide for the election of an annuity, the missing participant (or the beneficiary) may elect to receive an annuity. If such an election is made—

(1) The PBGC will pay the benefit in the elected guaranteed benefit form, beginning on the annuity starting date elected by the missing participant (or the beneficiary), which shall not be

before the later of the date of the election or the earliest date on which the missing participant (or the beneficiary) could have begun receiving benefits under the plan; and

(2) The benefit paid will be actuarially equivalent to the designated benefit, *i.e.*, each monthly (or other periodic) benefit payment will equal the designated benefit divided by the present value (determined as of the deemed distribution date under the missing participant lump sum assumptions) of a \$1 monthly (or other periodic) annuity beginning on the annuity starting date.

§ 4050.9 Annuity or elective lump sum—living missing participant.

This section applies to a missing participant whose designated benefit was determined under § 4050.5(a)(3) (no lump sum) or § 4050.5(a)(4) (elective lump sum) and who is living on the date as of which the PBGC begins paying benefits.

(a) *Missing participant whose benefit was not in pay status as of the deemed distribution date.* The PBGC will pay the benefit of a missing participant whose benefit was not in pay status as of the deemed distribution date as follows.

(1) *Time and form of benefit.* The PBGC will pay the missing participant's benefit in the guaranteed benefit form, beginning on the annuity starting date elected by the missing participant (which shall not be before the later of the date of the election or the earliest date on which the missing participant could have begun receiving benefits under the plan).

(2) *Amount of benefit.* The PBGC will pay a benefit that is actuarially equivalent to the unloaded designated benefit, *i.e.*, each monthly (or other periodic) benefit payment will equal the unloaded designated benefit divided by the present value (determined as of the deemed distribution date under the missing participant annuity assumptions) of a \$1 monthly (or other periodic) annuity beginning on the annuity starting date.

(b) *Missing participant whose benefit was in pay status as of the deemed distribution date.* The PBGC will pay the benefit of a missing participant whose benefit was in pay status as of the deemed distribution date as follows.

(1) *Time and form of benefit.* The PBGC will pay the benefit in the form that was in pay status, beginning when the missing participant is located.

(2) *Amount of benefit.* The PBGC will pay the monthly (or other periodic) amount of the pay status benefit, plus a lump sum equal to the payments the missing participant would have

received under the plan, plus interest on the missed payments (at the plan rate up to the deemed distribution date and thereafter at the designated benefit interest rate) to the date as of which the PBGC pays the lump sum.

(c) *Payment of lump sum.* If a missing participant whose designated benefit was determined under § 4050.5(a)(4) (elective lump sum) so elects, the PBGC will pay his or her benefit in the form of a single sum. This election is not effective unless the missing participant's spouse consents (if such consent would be required under section 205 of ERISA). The single sum equals the designated benefit plus interest (at the designated benefit interest rate) from the deemed distribution date to the date as of which the PBGC pays the benefit.

§ 4050.10 Annuity or elective lump sum—beneficiary of deceased missing participant.

This section applies to a beneficiary of a deceased missing participant whose designated benefit was determined under § 4050.5(a)(3) (no lump sum) or § 4050.5(a)(4) (elective lump sum) and whose benefit is not payable under § 4050.9.

(a) *If deceased missing participant's benefit was not in pay status as of the deemed distribution date.* The PBGC will pay a benefit with respect to a deceased missing participant whose benefit was not in pay status as of the deemed distribution date as follows.

(1) *General rule.*—(i) *Beneficiary.* The PBGC will pay a benefit to the surviving spouse of a missing participant who was a participant (unless the surviving spouse has properly waived a benefit in accordance with section 205 of ERISA).

(ii) *Form and amount of benefit.* The PBGC will pay the survivor benefit in the form of a single life annuity. Each monthly (or other periodic) benefit payment will equal 50% of the quotient that results when the unloaded designated benefit is divided by the present value (determined as of the deemed distribution date under the missing participant annuity assumptions, and assuming that the missing participant survived to the deemed distribution date) of a \$1 monthly (or other periodic) joint and 50 percent survivor annuity beginning on the annuity starting date, under which reduced payments (at the 50 percent level) are made only after the death of the missing participant during the life of the spouse (and not after the death of the spouse during the missing participant's life).

(iii) *Time of benefit.* The PBGC will pay the survivor benefit beginning at the

time elected by the surviving spouse (which shall not be before the later of the date of the election or the earliest date on which the surviving spouse could have begun receiving benefits under the plan).

(2) *If missing participant died before deemed distribution date.*

Notwithstanding the provisions of paragraph (a)(1) of this section, if a beneficiary of a missing participant who died before the deemed distribution date establishes to the PBGC's satisfaction that he or she is the proper beneficiary or would have received benefits under the plan in a form, at a time, or in an amount different from the benefit paid under paragraph (a)(1)(ii) or (a)(1)(iii) of this section, the PBGC will make payments in accordance with the facts so established, but only in the guaranteed benefit form.

(3) *Elective lump sum.*

Notwithstanding the provisions of paragraphs (a)(1) and (a)(2) of this section, if the beneficiary of a missing participant whose designated benefit was determined under § 4050.5(a)(4) (elective lump sum) so elects, the PBGC will pay his or her benefit in the form of a single sum. The single sum will be equal to the actuarial present value (determined as of the deemed distribution date under the missing participant annuity assumptions) of the death benefit payable on the annuity starting date, plus interest (at the designated benefit interest rate) from the deemed distribution date to the date as of which the PBGC pays the benefit.

(b) *If deceased missing participant's benefit was in pay status as of the deemed distribution date.* The PBGC will pay a benefit with respect to a deceased missing participant whose benefit was in pay status as of the deemed distribution date as follows.

(1) *Beneficiary.* The PBGC will pay a benefit to the beneficiary (if any) of the benefit that was in pay status as of the deemed distribution date.

(2) *Form and amount of benefit.* The PBGC will pay a monthly (or other periodic) amount equal to the monthly (or other periodic) amount, if any, that the beneficiary would have received under the form of payment in effect, plus a lump sum payment equal to the payments the beneficiary would have received under the plan subsequent to the missing participant's death and prior to the date as of which the benefit is paid under paragraph (b)(4) of this section, plus interest on the missed payments (at the plan rate up to the deemed distribution date and thereafter at the designated benefit interest rate) to the date as of which the benefit is paid under paragraph (b)(4) of this section.

(3) *Lump sum payment to estate.* The PBGC will make a lump sum payment to the missing participant's estate equal to the payments that the missing participant would have received under the plan for the period prior to the missing participant's death, plus interest on the missed payments (at the plan rate up to the deemed distribution date and thereafter at the designated benefit interest rate) to the date when the lump sum is paid. Notwithstanding the preceding sentence, if a beneficiary of a missing participant other than the estate establishes to the PBGC's satisfaction that the beneficiary is entitled to the lump sum payment, the PBGC will pay the lump sum to such beneficiary.

(4) *Time of benefit.* The PBGC will pay the survivor benefit beginning when the beneficiary is located.

(5) *Spouse deceased.* If the PBGC locates the estate of the deceased missing participant's spouse under circumstances where a benefit would have been paid under this paragraph (b) if the spouse had been located while alive, the PBGC shall pay to the spouse's estate a lump sum payment computed in the same manner as provided for in paragraph (b)(2) of this section based on the period from the missing participant's death to the death of the spouse.

§ 4050.11 Limitations.

(a) *Exclusive benefit.* The benefits provided for under this part shall be the only benefits payable by the PBGC to missing participants or to beneficiaries based on the benefits of deceased missing participants.

(b) *Limitation on benefit value.* The total actuarial present value of all benefits paid with respect to a missing participant under §§ 4050.8 through 4050.10, determined as of the deemed distribution date, shall not exceed the missing participant's designated benefit.

(c) *Guaranteed benefit.* If a missing participant or his or her beneficiary establishes to the PBGC's satisfaction that the benefit under §§ 4050.8 through 4050.10 (based on the designated benefit actually paid to the PBGC) is less than the minimum benefit in this paragraph (c), the PBGC shall instead pay the minimum benefit. The minimum benefit shall be the lesser of:

(1) The benefit as determined under the PBGC's rules for paying guaranteed benefits in trustee plans under subparts A and B of part 4022 of this chapter (treating the deemed distribution date as the termination date for this purpose); or

(2) The benefit based on the designated benefit that should have been paid under § 4050.5.

(d) *Limitation on annuity starting date.* A missing participant (or his or her survivor) may not elect an annuity starting date after the later of—

(1) the required beginning date under section 401(a)(9) of the Code; or

(2) the date when the missing participant (or the survivor) is notified of his or her right to a benefit.

§ 4050.12 Special rules.

(a) *Late-discovered participants.* The plan administrator of a plan that terminates with one or more late-discovered participants shall (after issuing notices to each such participant in accordance with §§ 4041.21 and 4041.41 or 4041.46 of this chapter (whichever apply)), distribute each such late-discovered participant's benefit within the period (determined without regard to the provisions of this part) described in § 4041.27(a) or § 4041.48(a) of this chapter (whichever applies) if practicable or (if not) as soon thereafter as practicable, but not more than 90 days after the deemed distribution date (subject to extension under § 4050.12(h)).

(b) *Missing participants located quickly.* Notwithstanding the provisions of §§ 4050.8 through 4050.10, if the PBGC or the plan administrator locates a missing participant within 30 days after the PBGC receives the missing participant's designated benefit, the PBGC may in its discretion return the missing participant's designated benefit to the plan administrator, and the plan administrator shall treat the missing participant like a late-discovered participant.

(c) *Qualified domestic relations orders.* Plan administrators and the PBGC shall take the provisions of qualified domestic relations orders (QDROs) under section 206(d)(3) of ERISA or section 414(p) of the Code into account in determining designated benefits and benefit payments by the PBGC, including treating an alternate payee under an applicable QDRO as a missing participant or as a beneficiary of a missing participant, as appropriate, in accordance with the terms of the QDRO. For purposes of calculating the amount of the designated benefit of an alternate payee, the plan administrator shall use the assumptions for a missing participant who is a beneficiary under § 4050.5(b).

(d) *Employee contributions—(1) Mandatory employee contributions.* Notwithstanding the provisions of § 4050.5, if a missing participant made mandatory contributions (within the

meaning of section 4044(a)(2) of ERISA), the missing participant's designated benefit shall not be less than the sum of the missing participant's mandatory contributions and interest to the deemed distribution date at the plan's rate or the rate under section 204(c) of ERISA (whichever produces the greater amount).

(2) *Voluntary employee contributions.*

(i) *Applicability.* This paragraph (d)(2) applies to any employee contributions that were not mandatory (within the meaning of section 4044(a)(2) of ERISA) to which a missing participant is entitled in connection with the termination of a defined benefit plan.

(ii) *Payment to PBGC.* A plan administrator, in accordance with the missing participant forms and instructions, shall pay the employee contributions described in paragraph (d)(2)(i) of this section (together with any earnings thereon) to the PBGC, and shall file Schedule MP with the PBGC, by the time the designated benefit is due under § 4050.6. Any such amount shall be in addition to the designated benefit and shall be separately identified.

(iii) *Payment by PBGC.* In addition to any other amounts paid by the PBGC under §§ 4050.8 through 4050.10, the PBGC shall pay any amount paid to it under paragraph (d)(2)(ii) of this section, with interest at the designated benefit interest rate from the date of receipt by the PBGC to the date of payment by the PBGC, in the same manner as described in § 4050.8 (automatic lump sums), except that if the missing participant died before the deemed distribution date and there is no beneficiary, payment shall be made to the missing participant's estate.

(e) *Residual assets.* The PBGC shall determine, in a manner consistent with the purposes of this part and section 4050 of ERISA, how the provisions of this part shall apply to any distribution, to participants and beneficiaries who cannot be located, of residual assets remaining after the satisfaction of benefit liabilities in connection with the termination of a defined benefit plan. Unless the PBGC otherwise determines, the deadline for payment of residual assets for a missing participant and for submission to the PBGC of a Schedule MP (or an amended Schedule MP) is the 30th day after the date on which all residual assets have been distributed to all participants and beneficiaries other than missing participants for whom payment of residual assets is made to the PBGC.

(f) *Sufficient distress terminations.* In the case of a plan undergoing a distress termination (under section 4041(c) of ERISA) that is sufficient for at least all

guaranteed benefits and that distributes its assets in the manner described in section 4041(b)(3) of ERISA, the benefit assumed to be payable by the plan for purposes of determining the amount of the designated benefit under § 4050.5 shall be limited to the Title IV benefit plus any benefit to which funds under section 4022(c) of ERISA have been allocated.

(g) *Similar rules for later payments.* If the PBGC determines that one or more persons should receive benefits (which may be in addition to benefits already provided) in order for a plan termination to be valid (e.g., upon audit of the termination), and one or more of such individuals cannot be located, the PBGC shall determine, in a manner consistent with the purposes of this part and section 4050 of ERISA, how the provisions of this part shall apply to such benefits.

(h) *Discretionary extensions.* The PBGC may in its sole discretion extend the 120-day amended filing periods in § 4050.6(a)(2)(ii) and (3) and the 90-day distribution periods in § 4050.6(a)(2) and in paragraph (a) of this section—

(1) Where a recently-missing participant becomes a late-discovered participant,

(2) Where the PBGC returns the designated benefit of a missing participant who is located quickly to the plan administrator under § 4050.12(b), or

(3) In other unusual circumstances.

(i) *Payments beginning after age 70½.* If the PBGC begins paying an annuity under § 4050.9(a) or 4050.10(a) to a participant or a participant's spouse after the January 1 following the date when the participant attained or would have attained age 70½, the PBGC shall pay to the participant or the spouse (or their respective estates) or both, as appropriate, the lump sum equivalent of the past annuity payments the participant and spouse would have received if the PBGC had begun making payments on such January 1. The PBGC shall also pay lump sum equivalents under this paragraph (i) if the PBGC locates the estate of the participant or spouse after both are deceased. (Nothing in this paragraph (i) shall increase the total value of the benefits payable with respect to a missing participant.)

§ 4050.13 OMB control number.

The collection of information requirements contained in this part have been approved by the Office of Management under OMB Control Number 1212-0036.

Appendix A to part 4050—Examples of Designated Benefit Determinations for Missing Participants under § 4050.5

The calculation of the designated benefit under § 4050.5 is illustrated by the following examples.

Example 1. Plan A provides that any participant whose benefit has a value at distribution of \$1,750 or less will be paid a lump sum, and that no other lump sums will be paid. P, Q, and R are missing participants.

(1) As of the deemed distribution date, the value of P's benefit is \$1,700 under plan A's assumptions. Under § 4050.5(a)(1), the plan administrator pays the PBGC \$1,700 as P's designated benefit.

(2) As of the deemed distribution date, the value of Q's benefit is \$3,700 under plan A's assumptions and \$3,200 under the missing participant lump sum assumptions. Under § 4050.5(a)(2), the plan administrator pays the PBGC \$3,200 as Q's designated benefit.

(3) As of the deemed distribution date, the value of R's benefit is \$3,400 under plan A's assumptions, \$3,600 under the missing participant lump sum assumptions, and \$3,450 under the missing participant annuity assumptions. Under § 4050.5(a)(3), the plan administrator pays the PBGC \$3,450 as R's designated benefit.

Example 2. Plan B provides for a normal retirement age of 65 and permits early commencement of benefits at any age between 60 and 65, with benefits reduced by 5 percent for each year before age 65 that the benefit begins. The qualified joint and 50 percent survivor annuity payable under the terms of the plan requires in all cases a 16 percent reduction in the benefit otherwise payable. The plan does not provide for elective lump sums.

(1) M is a missing participant who separated from service under plan B with a deferred vested benefit. M is age 50 at the deemed distribution date, and has a normal retirement benefit of \$1,000 per month payable at age 65 in the form of a single life annuity. M's benefit as of the deemed distribution date has a value greater than \$3,500 using either plan assumptions or the missing participant lump sum assumptions. Accordingly, M's designated benefit is to be determined under § 4050.5(a)(3).

(2) For purposes of determining M's designated benefit, M is assumed to be married to a spouse who is also age 50 on the deemed distribution date. M's monthly benefit in the form of the qualified joint and survivor annuity under the plan varies from \$840 at age 65 (the normal retirement age) ($\$1,000 \times (1 - .16)$) to \$630 at age 60 (the earliest retirement age) ($\$1,000 \times (1 - 5 \times (.05)) \times (1 - .16)$).

(3) Under § 4050.5(a)(3), M's benefit is to be valued using the missing participant annuity assumptions. The select and ultimate interest rates on Plan B's deemed distribution date are 7.50 percent for the first 20 years and 5.75 percent thereafter. Using these rates and the blended mortality table described in paragraph (2) of the definition of "missing participant annuity assumptions" in § 4050.2, the plan administrator determines that the benefit commencing at age 60 is the most valuable benefit (i.e., the benefit at age

60 is more valuable than the benefit at ages 61, 62, 63, 64 or 65). The present value as of the deemed distribution date of each dollar of annual benefit (payable monthly as a joint and 50 percent survivor annuity) is \$5.4307 if the benefit begins at age 60. (Because a new spouse may succeed to the survivor benefit, the mortality of the spouse during the deferral period is ignored.) Thus, without adjustment (loading) for expenses, the value of the benefit beginning at age 60 is \$41,056 ($12 \times \$630 \times 5.4307$). The designated benefit is equal to this value plus an expense adjustment of \$300, or a total of \$41,356.

Appendix B to Part 4050—Examples of Benefit Payments for Missing Participants Under §§ 4050.8 Through 4050.10

The provisions of §§ 4050.8 through 4050.10 are illustrated by the following examples.

Example 1. Participant M from Plan B (see Example 2 in Appendix A of this part) is located. M's spouse is ten years younger than M. M elects to receive benefits in the form of a joint and 50 percent survivor annuity commencing at age 62.

(1) M's designated benefit was \$41,356. The unloaded designated benefit was \$41,056. As of Plan B's deemed distribution date (and using the missing participant annuity assumptions), the present value per dollar of monthly benefit (payable monthly as a joint and 50 percent survivor annuity commencing at age 62 and reflecting the actual age of M's spouse) is \$4.7405. Thus, the monthly benefit to M at age 62 is \$722 ($\$41,056 / (4.7405 \times 12)$). M's spouse will receive \$361 (50 percent of \$722) per month for life after the death of M.

(2) If M had instead been found to have died on or after the deemed distribution date, and M's spouse wanted benefits to commence when M would have attained age 62, the same calculation would be performed to arrive at a monthly benefit of \$361 to M's spouse.

Example 2. Participant P is a missing participant from Plan C, a plan that allows elective lump sums upon plan termination. Plan C's administrator pays a designated benefit of \$10,000 to the PBGC on behalf of P, who was age 30 on the deemed distribution date.

(1) P's spouse, S, is located and has a death certificate showing that P died on or after the deemed distribution date with S as spouse. S is the same age as P, and would like survivor benefits to commence immediately, at age 55 (as permitted by the plan). S's benefit is the survivor's share of the joint and 50 percent survivor annuity which is actuarially equivalent, as of the deemed distribution date, to \$9,700 (the unloaded designated benefit).

(2) The select and ultimate interest rates on Plan C's deemed distribution date were 7.50 percent for the first 20 years and 5.75 percent thereafter. Using these rates and the blended mortality table described in paragraph (2) of the definition of "missing participant annuity assumptions" in § 4050.2, the present value as of the deemed distribution date of each dollar of annual benefit (payable monthly as a joint and 50 percent survivor annuity) is

\$2.4048 if the benefit begins when S and P would have been age 55. Thus, the monthly benefit to S commencing at age 55 is \$168 (50 percent of $\$9,700 / (2.4048 \times 12)$). Since P could have elected a lump sum upon plan termination, S may elect a lump sum. S's lump sum is the present value as of the deemed distribution date (using the missing participant annuity assumptions) of the monthly benefit of \$168, accumulated with interest at the designated benefit interest rate to the date paid.

PART 4061—AMOUNTS PAYABLE BY THE PENSION BENEFIT GUARANTY CORPORATION

§ 4061.1 Cross-references.

See part 4022 of this chapter regarding benefits payable under terminated single-employer plans and § 4281.47 of this chapter regarding financial assistance to pay benefits under insolvent multiemployer plans.

PART 4062—LIABILITY FOR TERMINATION OF SINGLE-EMPLOYER PLANS

Sec.

- 4062.1 Purpose and scope.
- 4062.2 Definitions.
- 4062.3 Amount and payment of section 4062(b) liability.
- 4062.4 Determinations of net worth and collective net worth.
- 4062.5 Net worth record date.
- 4062.6 Net worth notification and information.
- 4062.7 Calculating interest on liability and refunds of overpayments.
- 4062.8 Arrangements for satisfying liability.
- 4062.9 Filing of documents.
- 4062.10 Computation of time.

Authority: 29 U.S.C. 1302(b)(3), 1362–1364, 1367, 1368.

§ 4062.1 Purpose and scope.

The purpose of this part is to set forth rules for determination and payment of the liability incurred, under section 4062(b) of ERISA, upon termination of any single-employer plan and, to the extent appropriate, determination of the liability incurred with respect to multiple employer plans under sections 4063 and 4064 of ERISA. The provisions of this part regarding the amount of liability to the PBGC that is incurred upon termination of a single-employer plan apply with respect to a plan for which a notice of intent to terminate under section 4041(c) of ERISA is issued or proceedings to terminate under section 4042 of ERISA are instituted after December 17, 1987. Those provisions also apply, to the extent described in paragraph (a) of this section, to the amount of liability for withdrawal from a multiple employer plan after that date.

§ 4062.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: benefit liabilities, Code, contributing sponsor, controlled group, ERISA, fair market value, guaranteed benefit, multiple employer plan, notice of intent to terminate, PBGC, person, plan, plan administrator, proposed termination date, single-employer plan, and termination date.

In addition, for purposes of this part, the term *collective net worth of persons subject to liability in connection with a plan termination* means the sum of the individual net worths of all persons that have individual net worths which are greater than zero and that (as of the termination date) are contributing sponsors of the terminated plan or members of their controlled groups, as determined in accordance with section 4062(d)(1) of ERISA and § 4062.4 of this part.

§ 4062.3 Amount and payment of section 4062(b) liability.

(a) *Amount of liability.*—(1) *General rule.* Except as provided in paragraph (a)(2) of this section, the amount of section 4062(b) liability is the total amount (as of the termination date) of the unfunded benefit liabilities (within the meaning of section 4001(a)(18) of ERISA) to all participants and beneficiaries under the plan, together with interest calculated from the termination date in accordance with § 4062.7.

(2) *Special rule in case of subsequent finding of inability to pay guaranteed benefits.* In any distress termination proceeding under section 4041(c) of ERISA and part 4041 of this chapter in which (as described in section 4041(c)(3)(C)(ii) of ERISA), after a determination that the plan is sufficient for benefit liabilities or for guaranteed benefits, the plan administrator finds that the plan is or will be insufficient for guaranteed benefits and the PBGC concurs with that finding, or the PBGC makes such a finding on its own initiative, actuarial present values shall be determined as of the date of the notice to, or the finding by, the PBGC of insufficiency for guaranteed benefits.

(b) *Payment of liability.* Section 4062(b) liability is due and payable as of the termination date, in cash or securities acceptable to the PBGC, except that, as provided in § 4062.8(c), the PBGC shall prescribe commercially reasonable terms for payment of so much of such liability as exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination. The PBGC may make alternative

arrangements, as provided in § 4062.8(b).

§ 4062.4 Determinations of net worth and collective net worth.

(a) *General rules.* When a contributing sponsor, or member(s) of a contributing sponsor's controlled group, notifies and submits information to the PBGC in accordance with § 4062.6, the PBGC shall determine the net worth, as of the net worth record date, of that contributing sponsor and any members of its controlled group based on the factors set forth in paragraph (c) of this section and shall include the value of any assets that it determines, pursuant to paragraph (d) of this section, have been improperly transferred. In making such determinations, the PBGC will consider information submitted pursuant to § 4062.6. The PBGC shall then determine the collective net worth of persons subject to liability in connection with a plan termination.

(b) *Partnerships and sole proprietorships.* In the case of a person that is a partnership or a sole proprietorship, net worth does not include the personal assets and liabilities of the partners or sole proprietor, except for the assets included pursuant to paragraph (d) of this section. As used in this paragraph, "personal assets" are those assets which do not produce income for the business being valued or are not used in the business.

(c) *Factors for determining net worth.* A person's net worth is equal to its fair market value and fair market value shall be determined on the basis of the factors set forth below, to the extent relevant; different factors may be considered with respect to different portions of the person's operations.

(1) A bona fide sale of, agreement to sell, or offer to purchase or sell the business of the person made on or about the net worth record date.

(2) A bona fide sale of, agreement to sell, or offer to purchase or sell stock or a partnership interest in the person, made on or about the net worth record date.

(3) If stock in the person is publicly traded, the price of such stock on or about the net worth record date.

(4) The price/earnings ratios and prices of stocks of similar trades or businesses on or about the net worth record date.

(5) The person's economic outlook, as reflected by its earnings and dividend projections, current financial condition, and business history.

(6) The economic outlook for the person's industry and the market it serves.

(7) The appraised value, including the liquidating value, of the person's tangible and intangible assets.

(8) The value of the equity assumed in a plan of reorganization of a person in a case under title 11, United States Code, or any similar law of a state or political subdivision thereof.

(9) Any other factor relevant in determining the person's net worth.

(d) *Improper transfers.* A person's net worth shall include the value of any assets transferred by the person which the PBGC determines were improperly transferred for the purpose, as inferred from all the facts and circumstances, and with the effect of avoiding liability under this part. Assets "improperly transferred" include but are not limited to assets sold, leased or otherwise transferred for less than adequate consideration and assets distributed as gifts, capital distributions and stock redemptions inconsistent with past practices of the employer. The word "transfer" includes but is not limited to sales, assignments, pledges, leases, gifts and dividends.

§ 4062.5 Net worth record date.

(a) *General.* Unless the PBGC establishes an earlier net worth record date pursuant to paragraph (b) of this section, the net worth record date, for all purposes under this part, is the plan's termination date.

(b) *Establishment of an earlier net worth record date.* At any time during a termination proceeding, the PBGC, in order to prevent undue loss to or abuse of the plan termination insurance system, may establish as the net worth record date an earlier date during the 120-day period ending with the termination date.

(c) *Notification.* Whenever the PBGC establishes an earlier net worth record date, it shall immediately give liable person(s) written notification of that fact. The written notice may also include a request for additional information, as provided in § 4062.6(a)(3).

§ 4062.6 Net worth notification and information.

(a) *General.* (1) A contributing sponsor or member of the contributing sponsor's controlled group that believes section 4062(b) liability exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination shall—

(i) So notify the PBGC by the 90th day after the notice of intent to terminate is filed with the PBGC or, if no notice of intent to terminate is filed with the PBGC and the PBGC institutes

proceedings under section 4042 of ERISA, within 30 days after the establishment of the plan's termination date in such proceedings; and

(ii) Submit to the PBGC the information specified in paragraph (b) of this section with respect to the contributing sponsor and each member of the contributing sponsor's controlled group (if any)—

(A) By the 120th day after the proposed termination date, or

(B) If no notice of intent to terminate is filed with the PBGC and the PBGC institutes proceedings under section 4042 of ERISA, within 120 days after the establishment of the plan's termination date in such proceedings.

(2) If a contributing sponsor or a member of its controlled group complies with the requirements of paragraph (a)(1) of this section, the PBGC will consider the requirements to be satisfied by all members of that controlled group.

(3) The PBGC may require any person subject to liability—

(i) To submit the information specified in paragraph (b) of this section within a shorter period whenever the PBGC believes that its ability to obtain information or payment of liability is in jeopardy, and

(ii) To submit additional information within 30 days, or a different specified time, after the PBGC's written notification that it needs such information to make net worth determinations.

(4) If a provision of paragraph (b) of this section or a PBGC notice specifies information previously submitted to the PBGC, a person may respond by identifying the previous submission in which the response was provided.

(b) *Net worth information.* The following information specifications apply, individually, with respect to each person subject to liability:

(1) An estimate, made in accordance with § 4062.4, of the person's net worth on the net worth record date and a statement, with supporting evidence, of the basis for the estimate.

(2) A copy of the person's audited (or if not available, unaudited) financial statements for the 5 full fiscal years plus any partial fiscal year preceding the net worth record date. The statements must include balance sheets, income statements, and statements of changes in financial position and must be accompanied by the annual reports, if available.

(3) A statement of all sales and copies of all offers or agreements to buy or sell at least 25 percent of the person's assets or at least 5 percent of the person's stock or partnership interest, made on or about the net worth record date.

(4) A statement of the person's current financial condition and business history.

(5) A statement of the person's business plans, including projected earnings and, if available, dividend projections.

(6) Any appraisal of the person's fixed and intangible assets made on or about the net worth record date.

(7) A copy of any plan of reorganization, whether or not confirmed, with respect to a case under title 11, United States Code, or any similar law of a state or political subdivision thereof, involving the person and occurring within 5 calendar years prior to or any time after the net worth record date.

(c) *Incomplete submission.* If a contributing sponsor and/or members of the contributing sponsor's controlled group do not submit all of the information required pursuant to paragraph (a) of this section (other than the estimate described in paragraph (b)(1) of this section) with respect to each person subject to liability, the PBGC may base determinations of net worth and the collective net worth of persons subject to liability in connection with a plan termination on any such information that such person(s) did submit, as well as any other pertinent information that the PBGC may have. In general, the PBGC will view information as of a date further removed from the net worth record date as having less probative value than information as of a date nearer to the net worth record date.

§ 4062.7 Calculating interest on liability and refunds of overpayments.

(a) *Interest.* Whether or not the PBGC has granted deferred payment terms pursuant to § 4062.8, the amount of liability under this part includes interest, from the termination date, on any unpaid portion of the liability. Such interest accrues at the rate set forth in paragraph (c) of this section until the liability is paid in full and is compounded daily. When liability under this part is paid in more than one payment, the PBGC will apply each payment to the satisfaction of accrued interest and then to the reduction of principal.

(b) *Refunds.* If a contributing sponsor or member(s) of a contributing sponsor's controlled group pays the PBGC an amount that exceeds the full amount of liability under this part, the PBGC shall refund the excess amount, with interest at the rate set forth in paragraph (c) of this section. Interest on an overpayment accrues from the later of the date of the overpayment or 10 days prior to the

termination date until the date of the refund and is compounded daily.

(c) *Interest rate.* The interest rate on liability under this part and refunds thereof is the annual rate prescribed in section 6601(a) of the Code, and will change whenever the interest rate under section 6601(a) of the Code changes.

§ 4062.8 Arrangements for satisfying liability.

(a) *General.* The PBGC will defer payment, or agree to other arrangements for the satisfaction, of any portion of liability to the PBGC only when—

(1) As provided in paragraph (b) of this section, the PBGC determines that such action is necessary to avoid the imposition of a severe hardship and that there is a reasonable possibility that the terms so prescribed will be met and the entire liability paid; or

(2) As provided in paragraph (c) of this section, the PBGC determines that section 4062(b) liability exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination.

(b) *Upon request.* If the PBGC determines that such action is necessary to avoid the imposition of a severe hardship on persons that are or may become liable under section 4062, 4063, or 4064 of ERISA and that there is a reasonable possibility that persons so liable will be able to meet the terms prescribed and pay the entire liability, the PBGC, in its discretion and when so requested in accordance with paragraph (b)(2) of this section, may grant deferred payment or other terms for the satisfaction of such liability.

(1) In determining what, if any, terms to grant, the PBGC shall examine the following factors:

(i) The ratio of the liability to the net worth of the person making the request and (if different) to the collective net worth of persons subject to liability in connection with a plan termination.

(ii) The overall financial condition of persons that are or may become liable, including, with respect to each such person—

(A) The amounts and terms of existing debts;

(B) The amount and availability of liquid assets;

(C) Current and past cash flow; and

(D) Projected cash flow, including a projection of the impact on operations that would be caused by the immediate full payment of the liability.

(iii) The availability of credit from private sector sources to the person making the request and to other liable persons.

(2) A contributing sponsor or member of a contributing sponsor's controlled

group may request deferred payment or other terms for the satisfaction of any portion of the liability under section 4062, 4063, or 4064 of ERISA at any time by filing a written request. The request must include the information specified in § 4062.6(b), except that—

(i) If the request is filed one year or more after the net worth record date, references to “the net worth record date” in § 4062.6(b) shall be replaced by “the most recent annual anniversary of the net worth record date”; and

(ii) Information that already has been submitted to the PBGC need not be submitted again.

(c) *Liability exceeding 30 percent of collective net worth.* If the PBGC determines that section 4062(b) liability exceeds 30 percent of the collective net worth of persons subject to the liability, the PBGC will, after making a reasonable effort to reach agreement with such persons, prescribe commercially reasonable terms for payment of so much of the liability as exceeds 30 percent of the collective net worth of such persons. The terms prescribed by the PBGC for payment of that portion of the liability (including interest) will provide for deferral of 50 percent of any amount otherwise payable for any year if a person subject to such liability demonstrates to the satisfaction of the PBGC that no person subject to such liability has any individual pre-tax profits (within the meaning of section 4062(d)(2) of ERISA) for such person's last full fiscal year ending during that year.

(d) *Interest.* Interest on unpaid liability is calculated in accordance with § 4062.7(a).

(e) *Security during period of deferred payment.* As a condition to the granting of deferred payment terms, PBGC may, in its discretion, require that the liable person(s) provide PBGC with such security for its obligations as the PBGC deems adequate.

§ 4062.9 Filing of documents.

(a) *Date of filing.* Any document (including information) required or permitted to be filed under this part is considered filed on the date of the United States postmark stamped on the cover in which the document is mailed, provided that—

(1) The postmark was made by the United States Postal Service; and

(2) The document was mailed postage prepaid, properly packaged and addressed to the PBGC. If the conditions stated in both paragraphs (a)(1) and (a)(2) of this section are not met, the document is considered filed on the date it is received by the PBGC. Documents received after regular

business hours are considered filed on the next regular business day.

(b) *Where to file.* Payments of liability shall be clearly designated as such and include the name of the plan. Such payments shall be sent to the address specified in the notification or demand for liability issued by the PBGC under § 4068.3 or, if not so specified, to the address provided, upon request, by the Investment Management Division, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026. Any document (including information) required or permitted to be filed under this part, except for documents relating to appeals, shall be submitted to the Insurance Operations Department, Pension Benefit Guaranty Corporation, at the above address. Any document submitted pursuant to part 4003 in connection with an appeal of an initial determination shall be submitted to the Appeals Board, Pension Benefit Guaranty Corporation, at the above address.

§ 4062.10 Computation of time.

In computing any period of time prescribed or allowed by this subpart, the day of the act, event, or default from which the designated period of time begins to run is not counted. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or a Federal holiday. For the purpose of computing interest accrued, a Saturday, Sunday or Federal holiday referred to in the previous sentence shall be included.

(Approved by the Office of Management and Budget under control number 1212–0017.)

PART 4063—WITHDRAWAL LIABILITY; PLANS UNDER MULTIPLE CONTROLLED GROUPS

Authority: 29 U.S.C. 1302(b)(3).

§ 4063.1 Cross-references.

(a) Part 4062, subpart A, of this chapter sets forth rules for determination and payment of the liability incurred, under section 4062(b) of ERISA, upon termination of any single-employer plan and, to the extent appropriate, determination of the liability incurred with respect to multiple employer plans under sections 4063 and 4064 of ERISA.

(b) Part 4068 of this chapter includes rules regarding the PBGC's lien under section 4068 of ERISA with respect to liability arising under section 4062, 4063, or 4064.

PART 4064—LIABILITY ON TERMINATION OF SINGLE-EMPLOYER PLANS UNDER MULTIPLE CONTROLLED GROUPS

Authority: 29 U.S.C. 1302(b)(3).

§ 4064.1 Cross-references.

(a) Part 4062, subpart A, of this chapter sets forth rules for determination and payment of the liability incurred under section 4062(b) of ERISA, upon termination of any single-employer plan and, to the extent appropriate, determination of the liability incurred with respect to multiple employer plans under sections 4063 and 4064 of ERISA.

(b) Part 4068 of this chapter includes rules regarding the PBGC's lien under section 4068 of ERISA with respect to liability arising under section 4062, 4063, or 4064.

PART 4065—ANNUAL REPORT

Sec.

4065.1 Purpose and scope.

4065.2 Definitions.

4065.3 Filing requirement.

Authority: 29 U.S.C. 1302, 1365.

§ 4065.1 Purpose and scope.

The purpose of this part is to specify the form and content of the Annual Report required by section 4065 of ERISA. This part applies to all plans covered by title IV of ERISA.

§ 4065.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: ERISA, IRS, PBGC, and plan.

§ 4065.3 Filing requirement.

Plan administrators shall file the Annual Report on IRS/DOL/PBGC Forms 5500, 5500–C, 5500–K or 5500–R, as appropriate, in accordance with the instructions therein. (Approved by the Office of Management and Budget under control number 1212–0026.)

PART 4067—RECOVERY OF LIABILITY FOR PLAN TERMINATIONS

§ 4067.1 Cross-reference.

Section 4062.8 of this chapter contains rules on deferred payment and other arrangements for satisfaction of liability to the PBGC after termination of single-employer plans.

PART 4068—LIEN FOR LIABILITY

Sec.

4068.1 Purpose; cross-references.

4068.2 Definitions.

4068.3 Notification of and demand for liability.

4068.4 Lien.

Authority: 29 U.S.C. 1302(b)(3), 1362–1364, 1367–1368.

§ 4068.1 Purpose; cross-references.

This part contains rules regarding the PBGC's lien under section 4068 of ERISA with respect to liability arising under section 4062, 4063, or 4064 of ERISA.

§ 4068.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: ERISA, PBGC, person, plan, and termination date.

Collective net worth of persons subject to liability in connection with a plan termination has the meaning in § 4062.2.

§ 4068.3 Notification of and demand for liability.

(a) *Notification of liability.* Except as provided in paragraph (c) of this section, when the PBGC has determined the amount of the liability under part 4062 and whether or not the liability has already been paid, the PBGC shall notify liable person(s) in writing of the amount of the liability. If the full liability has not yet been paid, the notification will include a request for payment of the full liability and will indicate that, as provided in § 4062.8, the PBGC will prescribe commercially reasonable terms for payment of so much of the liability as it determines exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination. In all cases, the notification will include a statement of the right to appeal the assessment of liability pursuant to part 4003.

(b) *Demand for liability.* Except as provided in paragraph (c) of this section, if person(s) liable to the PBGC fail to pay the full liability and no appeal is filed or an appeal is filed and the decision on appeal finds liability, the PBGC will issue a demand letter for the liability—

(1) If no appeal is filed, upon the expiration of time to file an appeal under part 4003; or

(2) If an appeal is filed, upon issuance of a decision on the appeal finding that there is liability under this part.

The demand letter will indicate that, as provided in § 4062.8, the PBGC will prescribe commercially reasonable terms for payment of so much of the liability as it determines exceeds 30 percent of the collective net worth of such persons.

(c) *Special rule.* Notwithstanding paragraphs (a) and (b) of this section, the PBGC may, in any case in which it believes that its ability to assert or obtain payment of liability is in jeopardy, issue a demand letter for the

liability under this part immediately upon determining the liability, without first issuing a notification of liability pursuant to paragraph (a) of this section. When the PBGC issues a demand letter under this paragraph, there is no right to an appeal pursuant to part 4003 of this chapter.

§ 4068.4 Lien.

If any person liable to the PBGC under section 4062, 4063, or 4064 of ERISA fails or refuses to pay the full amount of such liability within the time specified in the demand letter issued under § 4068.3, the PBGC shall have a lien in the amount of the liability, including interest, arising as of the plan's termination date, upon all property and rights to property, whether real or personal, belonging to that person, except that such lien may not be in an amount in excess of 30 percent of the collective net worth of all persons described in section 4062(a) of ERISA and part 4062 of this chapter.

PART 4203—EXTENSION OF SPECIAL WITHDRAWAL LIABILITY RULES

Sec.

4203.1 Purpose and scope.

4203.2 Definitions.

4203.3 Plan adoption of special withdrawal rules.

4203.4 Requests for PBGC approval of plan amendments.

4203.5 PBGC action on requests.

4203.6 OMB control number.

Authority: 29 U.S.C. 1302(b)(3).

§ 4203.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to prescribe procedures whereby a multiemployer plan may, pursuant to sections 4203(f) and 4208(e)(3) of ERISA, request the PBGC to approve a plan amendment which establishes special complete or partial withdrawal liability rules.

(b) *Scope.* This part applies to a multiemployer pension plan covered by Title IV of ERISA.

§ 4203.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: complete withdrawal, employer, ERISA, multiemployer plan, PBGC, person, plan, plan sponsor, and plan year.

§ 4203.3 Plan adoption of special withdrawal rules.

(a) *General rule.* A plan may, subject to the approval of the PBGC, establish by plan amendment special complete or partial withdrawal liability rules. A complete withdrawal liability rule adopted pursuant to this part shall be similar to the rules for the construction and entertainment industries described

in section 4203 (b) and (c) of ERISA. A partial withdrawal liability rule adopted pursuant to this part shall be consistent with the complete withdrawal rule adopted by the plan. A plan amendment adopted under this part may not be put into effect until it is approved by the PBGC.

(b) *Discretionary provisions of the plan amendment.* A plan amendment adopted pursuant to this part may—

(1) Cover an entire industry or industries, or be limited to a segment of an industry; and

(2) Apply to cessations of the obligation to contribute that occurred prior to the adoption of the amendment.

§ 4203.4 Requests for PBGC approval of plan amendments.

(a) *Filing of request.* A plan shall apply to the PBGC for approval of a plan amendment which establishes special complete or partial withdrawal liability rules. The request for approval shall be filed after the amendment is adopted. PBGC approval shall also be required for any subsequent modification of the plan amendment, other than a repeal of the amendment which results in employers being subject to the general statutory rules on withdrawal.

(b) *Who may request.* The plan sponsor, or a duly authorized representative acting on behalf of the plan sponsor, shall sign and submit the request.

(c) *Where to file.* The request shall be delivered by mail or submitted by hand to Reports Processing, Insurance Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026.

(d) *Information.* Each request shall contain the following information:

(1) The name and address of the plan for which the plan amendment is being submitted, and the telephone number of the plan sponsor or its authorized representative.

(2) A copy of the executed amendment, including the proposed effective date.

(3) A statement certifying that notice of the adoption of the amendment and the request for approval filed under this part has been given to all employers who have an obligation to contribute under the plan and to all employee organizations representing employees covered under the plan.

(4) A statement indicating how the withdrawal rules in the plan amendment would operate in the event of a sale of assets by a contributing employer or the cessation of the obligation to contribute or the cessation of covered operations by all employers.

(5) A copy of the plan's most recent actuarial valuation.

(6) For each of the previous five plan years, information on the number of plan participants by category (active, retired and separate vested) and a complete financial statement. This requirement may be satisfied by the submission for each of those years of Form 5500, including schedule B, or similar reports required under prior law.

(7) A detailed description of the industry to which the plan amendment will apply, including information sufficient to demonstrate the effect of withdrawals on the plan's contribution base, and information establishing industry characteristics which would indicate that withdrawals in the industry do not typically have an adverse effect on the plan's contribution base. Such industry characteristics include the mobility of employees, the intermittent nature of employment, the project-by-project nature of the work, extreme fluctuations in the level of an employer's covered work under the plan, the existence of a consistent pattern of entry and withdrawal by employers, and the local nature of the work performed.

(e) *Supplemental information.* In addition to the information described in paragraph (d) of this section, a plan may submit any other information it believes is pertinent to its request. The PBGC may require the plan sponsor to submit any other information the PBGC determines it needs to review a request under this part.

§ 4203.5 PBGC action on requests.

(a) *General.* The PBGC shall approve a plan amendment providing for the application of special complete or partial withdrawal liability rules upon a determination by the PBGC that the plan amendment—

(1) Will apply only to an industry that has characteristics that would make use of the special withdrawal rules appropriate; and

(2) Will not pose a significant risk to the insurance system.

(b) *Notice of pendency of request.* As soon as practicable after receiving a request for approval of a plan amendment containing all the information required under § 4203.4, the PBGC shall publish a notice of the pendency of the request in the Federal Register. The notice shall contain a summary of the request and invite interested persons to submit written comments to the PBGC concerning the request. The notice will normally provide for a comment period of 45 days.

(c) *PBGC decision on request.* After the close of the comment period, PBGC shall issue its decision in writing on the

request for approval of a plan amendment. Notice of the decision shall be published in the Federal Register.

§ 4203.6 OMB control number.

The collections of information contained in this part have been approved by the Office of Management and Budget under OMB control number 1212-0050.

PART 4204—VARIANCES FOR SALE OF ASSETS

Subpart A—General

Sec.

4204.1 Purpose and scope.

4204.2 Definitions.

Subpart B—Variance of the Statutory Requirements

4204.11 Variance of the bond/escrow and sale-contract requirements.

4204.12 *De minimis* transactions.

4204.13 Net income and net tangible assets tests.

Subpart C—Procedures for Individual and Class Variances or Exemptions

4204.21 Requests to PBGC for variances and exemptions.

4204.22 PBGC action on requests.

Authority: 29 U.S.C. 1302(b)(3), 1384(c).

Subpart A—General

§ 4204.1 Purpose and scope.

(a) *Purpose.* Under section 4204 of ERISA, an employer that ceases covered operations under a multiemployer plan, or ceases to have an obligation to contribute for such operations, because of a bona fide, arm's-length sale of assets to an unrelated purchaser does not incur withdrawal liability if certain conditions are met. One condition is that the sale contract provide that the seller will be secondarily liable if the purchaser withdraws from the plan within five years and does not pay its withdrawal liability. Another condition is that the purchaser furnish a bond or place funds in escrow, for a period of five plan years, in a prescribed amount. Section 4204 also authorizes the PBGC to provide for variances or exemptions from these requirements. Subpart B of this part provides variances and exemptions from the requirements for certain sales of assets. Subpart C of this part establishes procedures under which a purchaser or seller may, when the conditions set forth in subpart B are not satisfied or when the parties decline to provide certain financial information to the plan, request the PBGC to grant individual or class variances or exemptions from the requirements.

(b) *Scope.* In general, this part applies to any sale of assets described in section 4204(a)(1) of ERISA. However, this part

does not apply to a sale of assets involving operations for which the seller is obligated to contribute to a plan described in section 404(c) of the Code, or a continuation of such a plan, unless the plan is amended to provide that section 4204 applies.

§ 4204.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: Code, employer, ERISA, IRS, multiemployer plan, PBGC, person, plan, plan administrator, plan sponsor, and plan year.

In addition, for purposes of this part:

Date of determination means the date on which a seller ceases covered operations or ceases to have an obligation to contribute for such operations as a result of a sale of assets within the meaning of section 4204(a) of ERISA.

Net income after taxes means revenue minus expenses after taxes (excluding extraordinary and non-recurring income or expenses), as presented in an audited financial statement or, in the absence of such statement, in an unaudited financial statement, each prepared in conformance with generally accepted accounting principles.

Net tangible assets means tangible assets (assets other than licenses, patents copyrights, trade names, trademarks, goodwill, experimental or organizational expenses, unamortized debt discounts and expenses and all other assets which, under generally accepted accounting principles, are deemed intangible) less liabilities (other than pension liabilities). Encumbered assets shall be excluded from net tangible assets only to the extent of the amount of the encumbrance.

Purchaser means a purchaser described in section 4204(a)(1) of ERISA.

Seller means a seller described in section 4204(a)(1) of ERISA.

Subpart B—Variance of the Statutory Requirements

§ 4204.11 Variance of the bond/escrow and sale-contract requirements.

(a) *General rule.* A purchaser's bond or escrow under section 4204(a)(1)(B) of ERISA and the sale-contract provision under section 4204(a)(1)(C) are not required if the parties to the sale inform the plan in writing of their intention that the sale be covered by section 4204 of ERISA and demonstrate to the satisfaction of the plan that at least one of the criteria contained in § 4204.12 or § 4204.13(a) is satisfied.

(b) *Requests after posting of bond or establishment of escrow.* A request for a

variance may be filed at any time. If, after a purchaser has posted a bond or placed money in escrow pursuant to section 4204(a)(1)(B) of ERISA, the purchaser demonstrates to the satisfaction of the plan that the criterion in either § 4204.13 (a)(1) or (a)(2) is satisfied, then the bond shall be cancelled or the amount in escrow shall be refunded. For purposes of considering a request after the bond or escrow is in place, the words "the year preceding the date of the variance request" shall be substituted for "the date of determination" for the first mention of that term in both § 4204.13 (a)(1) and (a)(2). In addition, in determining the purchaser's average net income after taxes under § 4204.13(a)(1), for any year included in the average for which the net income figure does not reflect the interest expense incurred with respect to the sale, the purchaser's net income shall be reduced by the amount of interest paid with respect to the sale in the fiscal year following the date of determination.

(c) *Information required.* A request for a variance shall contain financial or other information that is sufficient to establish that one of the criteria in § 4204.12 or § 4204.13(a) is satisfied. A request on the basis of either § 4204.13 (a)(1) or (a)(2) shall also include a copy of the purchaser's audited (if available) or (if not) unaudited financial statements for the specified time period.

(d) *Limited exemption during pendency of request.* Provided that all of the information required to be submitted is submitted before the first day of the first plan year beginning after the sale, a plan may not, pending its decision on the variance, require a purchaser to post a bond or place an amount in escrow pursuant to section 4204(a)(1)(B). In the event a bond or escrow is not in place pursuant to the preceding sentence, and the plan determines that the request does not qualify for a variance, the purchaser shall comply with section 4204(a)(1)(B) within 30 days after the date on which it receives notice of the plan's decision.

(Approved by the Office of Management and Budget under control number 1212-0021)

§ 4204.12 De minimis transactions.

The criterion under this section is that the amount of the bond or escrow does not exceed the lesser of \$250,000 or two percent of the average total annual contributions made by all employers to the plan, for the purposes of section 412(b)(3)(A) of the Code, for the three most recent plan years ending before the date of determination. For this purpose, "contributions made" shall have the

same meaning as the term has under § 4211.12(a) of this chapter.

§ 4204.13 Net income and net tangible assets tests.

(a) *General.* The criteria under this section are that either—

(1) *Net income test.* The purchaser's average net income after taxes for its three most recent fiscal years ending before the date of determination (as defined in § 4204.12), reduced by any interest expense incurred with respect to the sale which is payable in the fiscal year following the date of determination, equals or exceeds 150 percent of the amount of the bond or escrow required under ERISA section 4204(a)(1)(B); or

(2) *Net tangible assets test.* The purchaser's net tangible assets at the end of the fiscal year preceding the date of determination (as defined in § 4204.12), equal or exceed—

(i) If the purchaser was not obligated to contribute to the plan before the sale, the amount of unfunded vested benefits allocable to the seller under section 4211 (with respect to the purchased operations), as of the date of determination, or

(ii) If the purchaser was obligated to contribute to the plan before the sale, the sum of the amount of unfunded vested benefits allocable to the purchaser and to the seller under ERISA section 4211 (with respect to the purchased operations), each as of the date of determination.

(b) *Special rule when more than one plan is covered by request.* For the purposes of paragraphs (a)(1) and (a)(2), if the transaction involves the assumption by the purchaser of the seller's obligation to contribute to more than one multiemployer plan, then the total amount of the bond or escrow or of the unfunded vested benefits, as applicable, for all of the plans with respect to which the purchaser has not posted a bond or escrow shall be used to determine whether the applicable test is met.

(c) *Non-applicability of tests in event of purchaser's insolvency.* A purchaser will not qualify for a variance under this subpart pursuant to paragraph (a)(1) or (a)(2) of this section if, as of the earlier of the date of the plan's decision on the variance request or the first day of the first plan year beginning after the date of determination, the purchaser is the subject of a petition under title 11, United States Code, or of a proceeding under similar provisions of state insolvency laws.

Subpart C—Procedures for Individual and Class Variances or Exemptions

§ 4204.21 Requests to PBGC for variances and exemptions.

(a) *General.* If a transaction covered by this part does not satisfy the conditions set forth in subpart B of this part, or if the parties decline to provide to the plan privileged or confidential financial information within the meaning of section 552(b)(4) of the Freedom of Information Act (5 U.S.C. 552), the purchaser or seller may request from the PBGC an exemption or variance from the requirements of section 4204(a)(1) (B) and (C) of ERISA.

(b) *Who may request.* A purchaser or a seller may file a request for a variance or exemption. The request may be submitted by one or more duly authorized representatives acting on behalf of the party or parties. When a contributing employer withdraws from a plan as a result of related sales of assets involving several purchasers, or withdraws from more than one plan as a result of a single sale, the application may request a class variance or exemption for all the transactions.

(c) *Where to file.* The request shall be delivered by mail or submitted by hand to Reports Processing, Insurance Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005-4026.

(d) *Information.* Each request shall contain the following information:

(1) The name and address of the plan or plans for which the variance or exemption is being requested, and the telephone number of the plan administrator of each plan.

(2) For each plan described in paragraph (d)(1) of this section, the nine-digit Employer Identification Number (EIN) assigned by the IRS to the plan sponsor and the three-digit Plan Identification Number (PN) assigned by the plan sponsor to the plan, and, if different, also the EIN and PN last filed with the PBGC. If an EIN or PN has not been assigned, that should be indicated.

(3) The name, address and telephone number of the seller and of its duly authorized representative, if any.

(4) The name, address and telephone number of the purchaser and of its duly authorized representative, if any.

(5) A full description of each transaction for which the request is being made, including effective date.

(6) A statement explaining why the requested variance or exemption would not significantly increase the risk of financial loss to the plan, including evidence, financial or otherwise, that supports that conclusion.

(7) When the request for a variance or exemption is filed by the seller alone, a statement signed by the purchaser indicating its intention that section 4204 of ERISA apply to the sale of assets.

(8) A statement indicating the amount of the purchaser's bond or escrow required under section 4204(a)(1)(B) of ERISA.

(9) The estimated amount of withdrawal liability that the seller would otherwise incur as a result of the sale if section 4204 did not apply to the sale.

(10) A certification that a complete copy of the request has been sent to each plan described in paragraph (d)(1) of this section and each collective bargaining representative of the seller's employees by certified mail, return receipt requested.

(e) *Additional information.* In addition to the information described in paragraph (d) of this section, the PBGC may require the purchaser, the seller, or the plan to submit any other information the PBGC determines it needs to review the request.

(f) *Disclosure of information.* Any party submitting information pursuant to this section may include a statement of whether any of the information is of a nature that its disclosure may not be required under the Freedom of Information Act, 5 U.S.C. 552. The statement should specify the information that may not be subject to disclosure and the grounds therefor.

(Approved by the Office of Management and Budget under control number 1212-0021)

§ 4204.22 PBGC action on requests.

(a) *General.* The PBGC shall approve a request for a variance or exemption if PBGC determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purposes of title IV of ERISA; and

(2) Would not significantly increase the risk of financial loss to the plan.

(b) *Notice of pendency of request.* As soon as practicable after receiving a variance or exemption request containing all the information specified in § 4204.21, the PBGC shall publish a notice of the pendency of the request in the Federal Register. The notice shall provide that any interested person may, within the period of time specified therein, submit written comments to the PBGC concerning the request. The notice will usually provide for a comment period of 45 days.

(c) *PBGC decision on request.* The PBGC shall issue a decision on a variance or exemption request as soon as practicable after the close of the comment period described in paragraph

(b) of this section. PBGC's decision shall be in writing, and if the PBGC disapproves the request, the decision shall state the reasons therefor. Notice of the decision shall be published in the Federal Register.

PART 4206—ADJUSTMENT OF LIABILITY FOR A WITHDRAWAL SUBSEQUENT TO A PARTIAL WITHDRAWAL

Sec.

4206.1 Purpose and scope.

4206.2 Definitions.

4206.3 Credit against liability for a subsequent withdrawal.

4206.4 Amount of credit in plans using the presumptive method.

4206.5 Amount of credit in plans using the modified presumptive method.

4206.6 Amount of credit in plans using the rolling-5 method.

4206.7 Amount of credit in plans using the direct attribution method.

4206.8 Reduction of credit for abatement or other reduction of prior partial withdrawal liability.

4206.9 Amount of credit in plans using alternative allocation methods.

4206.10 Special rule for 70-percent decline partial withdrawals.

Authority: 29 U.S.C. 1302(b)(3) and 1386(b).

§ 4206.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to prescribe rules, pursuant to section 4206(b) of ERISA, for adjusting the partial or complete withdrawal liability of an employer that previously partially withdrew from the same multiemployer plan. Section 4206(b)(1) provides that when an employer that has partially withdrawn from a plan subsequently incurs liability for another partial or a complete withdrawal from that plan, the employer's liability for the subsequent withdrawal is to be reduced by the amount of its liability for the prior partial withdrawal (less any waiver or reduction of that prior liability). Section 4206(b)(2) requires the PBGC to prescribe regulations adjusting the amount of this credit to ensure that the liability for the subsequent withdrawal properly reflects the employer's share of liability with respect to the plan. The purpose of the credit is to protect a withdrawing employer from being charged twice for the same unfunded vested benefits of the plan. The reduction in the credit protects the other employers in the plan from becoming responsible for unfunded vested benefits properly allocable to the withdrawing employer. In the interests of simplicity, the rules in this part provide for, generally, a one-step calculation of the adjusted credit under section 4206(b)(2) against the

subsequent liability, rather than for separate calculations first of the credit under section 4206(b)(1) and then of the reduction in the credit under paragraph (b)(2) of that section. In cases where the withdrawal liability for the prior partial withdrawal was reduced by an abatement or other reduction of that liability, the adjusted credit is further reduced in accordance with § 4206.8 of this part.

(b) *Scope.* This part applies to multiemployer plans covered under Title IV of ERISA, and to employers that have partially withdrawn from such plans after September 25, 1980 and subsequently completely or partially withdraw from the same plan.

§ 4206.2 Definitions.

The following are defined in § 4001.2 of this chapter: Code, employer, ERISA, multiemployer plan, PBGC, plan, and plan year.

In addition, for purposes of this part:

Complete withdrawal means a complete withdrawal as described in section 4203 of ERISA.

Partial withdrawal means a partial withdrawal as described in section 4205 of ERISA.

§ 4206.3 Credit against liability for a subsequent withdrawal.

Whenever an employer that was assessed withdrawal liability for a partial withdrawal from a plan partially or completely withdraws from that plan in a subsequent plan year, it shall receive a credit against the new withdrawal liability in an amount greater than or equal to zero, determined in accordance with this part. If the credit determined under §§ 4206.4 through 4206.9 is less than zero, the amount of the credit shall equal zero.

§ 4206.4 Amount of credit in plans using the presumptive method.

(a) *General.* In a plan that uses the presumptive allocation method described in section 4211(b) of ERISA, the credit shall equal the sum of the unamortized old liabilities determined under paragraph (b) of this section, multiplied by the fractions described or determined under paragraph (c) of this section. When an employer's prior partial withdrawal liability has been reduced or waived, this credit shall be adjusted in accordance with § 4206.8.

(b) *Unamortized old liabilities.* The amounts determined under this paragraph are the employer's proportional shares, if any, of the unamortized amounts as of the end of the plan year preceding the withdrawal for which the credit is being calculated, of—

(1) The plan's unfunded vested benefits as of the end of the last plan year ending before September 26, 1980;

(2) The annual changes in the plan's unfunded vested benefits for plan years ending after September 25, 1980, and before the year of the prior partial withdrawal; and

(3) The reallocated unfunded vested benefits (if any), as determined under section 4211(b)(4) of ERISA, for plan years ending before the year of the prior partial withdrawal.

(c) *Employer's allocable share of old liabilities.* The sum of the amounts determined under paragraph (b) are multiplied by the two fractions described in this paragraph in order to determine the amount of the old liabilities that was previously assessed against the employer.

(1) The first fraction is the fraction determined under section 4206(a)(2) of ERISA for the prior partial withdrawal.

(2) The second fraction is a fraction, the numerator of which is the amount of the liability assessed against the employer for the prior partial withdrawal, and the denominator of which is the product of—

(i) The amount of unfunded vested benefits allocable to the employer as if it had completely withdrawn as of the date of the prior partial withdrawal (determined without regard to any adjustments), multiplied by—

(ii) The fraction determined under section 4206(a)(2) of ERISA for the prior partial withdrawal.

§ 4206.5 Amount of credit in plans using the modified presumptive method.

(a) *General.* In a plan that uses the modified presumptive method described in section 4211(c)(2) of ERISA, the credit shall equal the sum of the unamortized old liabilities determined under paragraph (b) of this section, multiplied by the fractions described or determined under paragraph (c) of this section. When an employer's prior partial withdrawal liability has been reduced or waived, this credit shall be adjusted in accordance with § 4206.8.

(b) *Unamortized old liabilities.* The amounts described in this paragraph shall be determined as of the end of the plan year preceding the withdrawal for which the credit is being calculated, and are the employer's proportional shares, if any, of—

(1) The plan's unfunded vested benefits as of the end of the last plan year ending before September 26, 1980, reduced as if those obligations were being fully amortized in level annual installments over 15 years beginning

with the first plan year ending on or after such date; and

(2) The aggregate post-1980 change amount determined under section 4211(c)(2)(C) of ERISA as if the employer had completely withdrawn in the year of the prior partial withdrawal, reduced as if those obligations were being fully amortized in level annual installments over the 5-year period beginning with the plan year in which the prior partial withdrawal occurred.

(c) *Employer's allocable share of old liabilities.* The sum of the amounts determined under paragraph (b) are multiplied by the two fractions described in this paragraph in order to determine the amount of old liabilities that was previously assessed against the employer.

(1) The first fraction is the fraction determined under section 4206(a)(2) of ERISA for the prior partial withdrawal.

(2) The second fraction is a fraction, the numerator of which is the amount of the liability assessed against the employer for the prior partial withdrawal, and the denominator of which is the product of—

(i) The amount of unfunded vested benefits allocable to the employer as if it had completely withdrawn as of the date of the prior partial withdrawal (determined without regard to any adjustments), multiplied by—

(ii) The fraction determined under section 4206(a)(2) of ERISA for the prior partial withdrawal.

§ 4206.6 Amount of credit in plans using the rolling-5 method.

In a plan that uses the rolling-5 allocation method described in section 4211(c)(3) of ERISA, the credit shall equal the amount of the liability assessed for the prior partial withdrawal, reduced as if that amount was being fully amortized in level annual installments over the 5-year period beginning with the plan year in which the prior partial withdrawal occurred. When an employer's prior partial withdrawal liability has been reduced or waived, this credit shall be adjusted in accordance with § 4206.8.

§ 4206.7 Amount of credit in plans using the direct attribution method.

In a plan that uses the direct attribution allocation method described in section 4211(c)(4) of ERISA, the credit shall equal the amount of the liability assessed for the prior partial withdrawal, reduced as if that amount was being fully amortized in level annual installments beginning with the plan year in which the prior partial withdrawal occurred, over the greater of 10 years or the amortization period for

the resulting base when the combined charge base and the combined credit base are offset under section 412(b)(4) of the Code. When an employer's prior partial withdrawal liability has been reduced or waived, this credit shall be adjusted in accordance with § 4206.8.

§ 4206.8 Reduction of credit for abatement or other reduction of prior partial withdrawal liability.

(a) *General.* If an employer's withdrawal liability for a prior partial withdrawal has been reduced or waived, the credit determined pursuant to §§ 4206.4 through 4206.7 shall be adjusted in accordance with this section.

(b) *Computation.* The adjusted credit is calculated by multiplying the credit determined under the preceding sections of this part by a fraction—

(1) the numerator of which is the excess of the total partial withdrawal liability of the employer for all partial withdrawals in prior years (excluding those partial withdrawals for which the credit is zero) over the present value of each abatement or other reduction of that prior withdrawal liability calculated as of the date on which that prior partial withdrawal liability was determined; and

(2) the denominator of which is the total partial withdrawal liability of the employer for all partial withdrawals in prior years (excluding those partial withdrawals for which the credit is zero).

§ 4206.9 Amount of credit in plans using alternative allocation methods.

A plan that has adopted an alternative method of allocating unfunded vested benefits pursuant to section 4211(c)(5) of ERISA and part 4211 of this chapter shall adopt, by plan amendment, a method of calculating the credit provided by § 4206.3 that is consistent with the rules in §§ 4206.4 through 4206.8 for plans using the statutory allocation method most similar to the plan's alternative allocation method.

§ 4206.10 Special rule for 70-percent decline partial withdrawals.

For the purposes of applying the rules in §§ 4206.4 through 4206.9 in any case in which either the prior or subsequent partial withdrawal resulted from a 70-percent contribution decline (or a 35-percent decline in the case of certain retail food industry plans), the first year of the 3-year testing period shall be deemed to be the plan year in which the partial withdrawal occurred.

PART 4207—REDUCTION OR WAIVER OF COMPLETE WITHDRAWAL LIABILITY

Sec.

4207.1 Purpose and scope.

4207.2 Definitions.

4207.3 Abatement.

4207.4 Withdrawal liability payments during pendency of abatement determination.

4207.5 Requirements for abatement.

4207.6 Partial withdrawals after reentry.

4207.7 Liability for subsequent complete withdrawals and related adjustments for allocating unfunded vested benefits.

4207.8 Liability for subsequent partial withdrawals.

4207.9 Special rules.

4207.10 Plan rules for abatement.

Authority: 29 U.S.C. 1302(b)(3), 1387.

§ 4207.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to prescribe rules, pursuant to section 4207(a) of ERISA, for reducing or waiving the withdrawal liability of certain employers that have completely withdrawn from a multiemployer plan and subsequently resume covered operations under the plan. This part prescribes rules pursuant to which the plan must waive the employer's obligation to make future liability payments with respect to its complete withdrawal and must calculate the amount of the employer's liability for a partial or complete withdrawal from the plan after its reentry into the plan. This part also provides procedures, pursuant to section 4207(b) of ERISA, for plan sponsors of multiemployer plans to apply to PBGC for approval of plan amendments that provide for the reduction or waiver of complete withdrawal liability under conditions other than those specified in section 4207(a) of ERISA and this part.

(b) *Scope.* This part applies to multiemployer plans covered under title IV of ERISA, and to employers that have completely withdrawn from such plans after September 25, 1980, and that have not, as of the date of their reentry into the plan, fully satisfied their obligation to pay withdrawal liability arising from the complete withdrawal.

§ 4207.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: employer, ERISA, IRS, Multiemployer Act, multiemployer plan, nonforfeitable benefit, PBGC, plan, and plan year.

In addition, for purposes of this part:

Complete withdrawal means a complete withdrawal as described in section 4203 of ERISA.

Eligible employer means the employer, as defined in section 4001(b) of ERISA, as it existed on the date of its

initial partial or complete withdrawal, as applicable. An eligible employer shall continue to be an eligible employer notwithstanding the occurrence of any of the following events:

(1) A restoration involving a mere change in identity, form or place of organization, however effected;

(2) A reorganization involving a liquidation into a parent corporation;

(3) A merger, consolidation or division solely between (or among) trades or businesses (whether or not incorporated) of the employer; or

(4) An acquisition by or of, or a merger or combination with another trade or business.

Partial withdrawal means a partial withdrawal as described in section 4205 of ERISA.

Period of withdrawal means the plan year in which the employer completely withdrew from the plan, the plan year in which the employer reentered the plan and all intervening plan years.

§ 4207.3 Abatement.

(a) *General.* Whenever an eligible employer that has completely withdrawn from a multiemployer plan reenters the plan, it may apply to the plan for abatement of its complete withdrawal liability. Applications shall be filed by the date of the first scheduled withdrawal liability payment falling due after the employer resumes covered operations or, if later, the fifteenth calendar day after the employer resumes covered operations. Applications shall identify the eligible employer, the withdrawn employer, if different, the date of withdrawal, and the date of resumption of covered operations. Upon receiving an application for abatement, the plan sponsor shall determine, in accordance with paragraph (b) of this section, whether the employer satisfies the requirements for abatement of its complete withdrawal liability under § 4207.5, § 4207.9, or a plan amendment which has been approved by PBGC pursuant to § 4207.10. If the plan sponsor determines that the employer satisfies the requirements for abatement of its complete withdrawal liability, the provisions of paragraph (c) of this section shall apply. If the plan sponsor determines that the employer does not satisfy the requirements for abatement of its complete withdrawal liability, the provisions of paragraphs (d) and (e) of this section shall apply.

(b) *Determination of abatement.* As soon as practicable after an eligible employer that completely withdrew from a multiemployer plan applies for abatement, the plan sponsor shall

determine whether the employer satisfies the requirements for abatement of its complete withdrawal liability under this part and shall notify the employer in writing of its determination and of the consequences of its determination, as described in paragraphs (c) or (d) and (e) of this section, as appropriate. If a bond or escrow has been provided to the plan under § 4207.4, the plan sponsor shall send a copy of the notice to the bonding or escrow agent.

(c) *Effects of abatement.* If the plan sponsor determines that the employer satisfies the requirements for abatement of its complete withdrawal liability under this part, then—

(1) The employer shall have no obligation to make future withdrawal liability payments to the plan with respect to its complete withdrawal;

(2) The employer's liability for a subsequent withdrawal shall be determined in accordance with § 4207.7 or § 4207.8, as applicable;

(3) Any bonds furnished under § 4207.4 shall be cancelled and any amounts held in escrow under § 4207.4 shall be refunded to the employer; and

(4) Any withdrawal liability payments due after the reentry and made by the employer to the plan shall be refunded by the plan without interest.

(d) *Effects of non-abatement.* If the plan sponsor determines that the employer does not satisfy the requirements for abatement of its complete withdrawal liability under this part, then—

(1) The bond or escrow furnished under § 4207.4 shall be paid to the plan within 30 days after the date of the plan sponsor's notice under paragraph (b) of this section;

(2) The employer shall pay to the plan within 30 days after the date of the plan sponsor's notice under paragraph (b) of this section, the amount of its withdrawal liability payment or payments, with respect to which the bond or escrow was furnished, in excess of the bond or escrow;

(3) The employer shall resume making its withdrawal liability payments as they are due to the plan; and

(4) The employer shall be treated as a new employer for purposes of any future application of the withdrawal liability rules in sections 4201–4225 of title IV of ERISA with respect to its participation in the plan after its reentry into the plan, except that in plans using the “direct attribution” method (section 4211(c)(4) of ERISA), the nonforfeitable benefits attributable to service with the employer shall include nonforfeitable benefits attributable to service prior to

reentry that were not nonforfeitable at that time.

(e) *Collection of payments due and review of non-abatement determination.* The rules in part 4219, subpart C, of this chapter (relating to overdue, defaulted, and overpaid withdrawal liability) shall apply with respect to all payments required to be made under paragraphs (d)(2) and (d)(3) of this section. For this purpose, a payment required to be made under paragraph (d)(2) shall be treated as a withdrawal liability payment due on the 30th day after the date of the plan sponsor's notice under paragraph (b) of this section.

(1) *Review of non-abatement determination.* A plan sponsor's determination that the employer does not satisfy the requirements for abatement under this part shall be subject to plan review under section 4219(b)(2) of ERISA and to arbitration under section 4221 of ERISA, within the times prescribed by those sections. For this purpose, the plan sponsor's notice under paragraph (b) of this section shall be treated as a demand under section 4219(b)(1) of ERISA.

(2) *Determination of abatement.* If the plan sponsor or an arbitrator determines that the employer satisfies the requirements for abatement of its complete withdrawal liability under this part, the plan sponsor shall immediately refund the following payments (plus interest, except as indicated below, determined in accordance with § 4219.31(d) of this chapter as if the payments were overpayments of withdrawal liability) to the employer in a lump sum:

(i) The amount of the employer's withdrawal liability payment or payments, without interest, due after its reentry and made by the employer.

(ii) The bond or escrow paid to the plan under paragraph (d)(1) of this section.

(iii) The amount of the employer's withdrawal liability payment or payments in excess of the bond or escrow, paid to the plan under paragraph (d)(2) of this section.

(iv) Any withdrawal liability payment made by the employer to the plan pursuant to paragraph (d)(3) of this section after the plan sponsor's notice under paragraph (b) of this section.

§ 4207.4 Withdrawal liability payments during pendency of abatement determination.

(a) *General rule.* An eligible employer that completely withdraws from a multiemployer plan and subsequently reenters the plan may, in lieu of making withdrawal liability payments due after its reentry, provide a bond to, or

establish an escrow account for, the plan that satisfies the requirements of paragraph (b) of this section or any plan rules adopted under paragraph (d) of this section, pending a determination by the plan sponsor under § 4207.3(b) of whether the employer satisfies the requirements for abatement of its complete withdrawal liability. An employer that applies for abatement and neither provides a bond/escrow nor pays its withdrawal liability payments remains eligible for abatement.

(b) *Bond/escrow.* The bond or escrow allowed by this section shall be in an amount equal to 70 percent of the withdrawal liability payments that would otherwise be due. The bond or escrow relating to each payment shall be furnished before the due date of that payment. A single bond or escrow may be provided for more than one payment due during the pendency of the plan sponsor's determination. The bond or escrow agreement shall provide that if the plan sponsor determines that the employer does not satisfy the requirements for abatement of its complete withdrawal liability under this part, the bond or escrow shall be paid to the plan upon notice from the plan sponsor to the bonding or escrow agent. A bond provided under this paragraph shall be issued by a corporate surety company that is an acceptable surety for purposes of section 412 of ERISA.

(c) *Notice of bond/escrow.* Concurrently with posting a bond or establishing an escrow account under paragraph (b) of this section, the employer shall notify the plan sponsor. The notice shall include a statement of the amount of the bond or escrow, the scheduled payment or payments with respect to which the bond or escrow is being furnished, and the name and address of the bonding or escrow agent.

(d) *Plan amendments concerning bond/escrow.* A plan may, by amendment, adopt rules decreasing the amount specified in paragraph (b) of a bond or escrow allowed under this section. A plan amendment adopted under this paragraph may be applied only to the extent that it is consistent with the purposes of ERISA.

§ 4207.5 Requirements for abatement.

(a) *General rule.* Except as provided in § 4207.9 (d) and (e) (pertaining to acquisitions, mergers and other combinations), an eligible employer that completely withdraws from a multiemployer plan and subsequently reenters the plan shall have its liability for that withdrawal abated in accordance with § 4207.3(c) if the employer resumes covered operations under the plan, and the number of

contribution base units with respect to which the employer has an obligation to contribute under the plan for the measurement period (as defined in paragraph (b) of this section) after it resumes covered operations exceeds 30 percent of the number of contribution base units with respect to which the employer had an obligation to contribute under the plan for the base year (as defined in paragraph (c) of this section).

(b) *Measurement period.* If the employer resumes covered operations under the plan at least six full months prior to the end of a plan year and would satisfy the test in paragraph (a) based on its contribution base units for that plan year, then the measurement period shall be the period from the date it resumes covered operations until the end of that plan year. If the employer would not satisfy this test, or if the employer resumes covered operations under the plan less than six full months prior to the end of the plan year, the measurement period shall be the first twelve months after it resumes covered operations.

(c) *Base year.* For purposes of paragraph (a) of this section, the employer's number of contribution base units for the base year is the average number of contribution base units for the two plan years in which its contribution base units were the highest, within the five plan years immediately preceding the year of its complete withdrawal.

§ 4207.6 Partial withdrawals after reentry.

(a) *General rule.* For purposes of determining whether there is a partial withdrawal of an eligible employer whose liability is abated under this part upon the employer's reentry into the plan or at any time thereafter, the plan sponsor shall apply the rules in section 4205 of ERISA, as modified by the rules in this section, and section 108 of the Multiemployer Act. A partial withdrawal of an employer whose liability is abated under this part may occur under these rules upon the employer's reentry into the plan. However, a plan sponsor may not demand payment of withdrawal liability for a partial withdrawal occurring upon the employer's reentry before the plan sponsor has determined that the employer's liability for its complete withdrawal is abated under this part and has so notified the employer in accordance with § 4207.3(b).

(b) *Partial withdrawal—70-percent contribution decline.* The plan sponsor shall determine whether there is a partial withdrawal described in section 4205(a)(1) of ERISA (relating to a 70-

percent contribution decline) in accordance with the rules in section 4205 of ERISA and section 108 of the Multiemployer Act, as modified by the rules in this paragraph, and shall determine the amount of an employer's liability for that partial withdrawal in accordance with the rules in § 4207.8(b).

(1) *Definition of "3-year testing period."* For purposes of section 4205(b)(1) of ERISA, the term "3-year testing period" means the period consisting of the plan year for which the determination is made and the two immediately preceding plan years, excluding any plan year during the period of withdrawal.

(2) *Contribution base units for high base year.* For purposes of section 4205(b)(1) of ERISA and except as provided in section 108(d)(3) of the Multiemployer Act, in determining the number of contribution base units for the high base year, if the five plan years immediately preceding the beginning of the 3-year testing period include a plan year during the period of withdrawal, the number of contribution base units for each such year of withdrawal shall be deemed to be the greater of—

(i) The employer's contribution base units for that plan year; or

(ii) The average of the employer's contribution base units for the three plan years preceding the plan year in which the employer completely withdrew from the plan.

(c) *Partial withdrawal—partial cessation of contribution obligation.* The plan sponsor shall determine whether there is a partial withdrawal described in section 4205(a)(2) of ERISA (relating to a partial cessation of the employer's contribution obligation) in accordance with the rules in section 4205 of ERISA, as modified by the rules in this paragraph, and section 108 of the Multiemployer Act. In making this determination, the sponsor shall exclude all plan years during the period of withdrawal. A partial withdrawal under this paragraph can occur no earlier than the plan year of reentry. If the sponsor determines that there was a partial withdrawal, it shall determine the amount of an employer's liability for that partial withdrawal in accordance with the rules in § 4207.8(c).

§ 4207.7 Liability for subsequent complete withdrawals and related adjustments for allocating unfunded vested benefits.

(a) *General.* When an eligible employer that has had its liability for a complete withdrawal abated under this part completely withdraws from the plan, the employer's liability for that subsequent withdrawal shall be determined in accordance with the rules

in sections 4201–4225 of title IV, as modified by the rules in this section, and section 108 of the Multiemployer Act. In the case of a combination described in § 4207.9(d), the modifications described in this section shall be applied only with respect to that portion of the eligible employer that had previously withdrawn from the plan. In the case of a combination described in § 4207.9(e), the modifications shall be applied separately with respect to each previously withdrawn employer that comprises the eligible employer. In addition, when a plan has abated the liability of a reentered employer, if the plan uses either the "presumptive" or the "direct attribution" method (section 4211(b) or (c)(4), respectively) for allocating unfunded vested benefits, the plan shall modify those allocation methods as described in this section in allocating unfunded vested benefits to any employer that withdraws from the plan after the reentry.

(b) *Allocation of unfunded vested benefits for subsequent withdrawal in plans using "presumptive" method.* In a plan using the "presumptive" allocation method under section 4211(b) of ERISA, the amount of unfunded vested benefits allocable to a reentered employer for a subsequent withdrawal shall equal the sum of—

(1) The unamortized amount of the employer's allocable shares of the amounts described in section 4211(b)(1), for the plan years preceding the initial withdrawal, determined as if the employer had not previously withdrawn;

(2) The sum of the unamortized annual credits attributable to the year of the initial withdrawal and each succeeding year ending prior to reentry; and

(3) The unamortized amount of the employer's allocable shares of the amounts described in section 4211(b)(1) (A) and (C) for plan years ending after its reentry. For purposes of paragraph (b)(2), the annual credit for a plan year is the amount by which the employer's withdrawal liability payments for the year exceed the greater of the employer's imputed contributions or actual contributions for the year. The employer's imputed contributions for a year shall equal the average annual required contributions of the employer for the three plan years preceding the initial withdrawal. The amount of the credit for a plan year is reduced by 5 percent of the original amount for each succeeding plan year ending prior to the year of the subsequent withdrawal.

(c) *Allocation of unfunded vested benefits for subsequent withdrawal in*

plans using "modified presumptive" or "rolling-5" method. In a plan using either the "modified presumptive" allocation method under section 4211(c)(2) of ERISA or the "rolling-5" method under section 4211(c)(3), the amount of unfunded vested benefits allocable to a reentered employer for a subsequent withdrawal shall equal the sum of—

(1) The amount determined under section 4211 (c)(2) or (c)(3) of ERISA, as appropriate, as if the date of reentry were the employer's initial date of participation in the plan; and

(2) The outstanding balance, as of the date of reentry, of the unfunded vested benefits allocated to the employer for its previous withdrawal (as defined in paragraph (c)(2)(i) of this section) reduced as if that amount were being fully amortized in level annual installments, at the plan's funding rate as of the date of reentry, over the period described in paragraph (c)(2)(ii), beginning with the first plan year after reentry.

(i) The outstanding balance of the unfunded vested benefits allocated to an employer for its previous withdrawal is the excess of the amount determined under section 4211 (c)(2) or (c)(3) of ERISA as of the end of the plan year in which the employer initially withdrew, accumulated with interest at the plan's funding rate for that year, from that year to the date of reentry, over the withdrawal liability payments made by the employer, accumulated with interest from the date of payment to the date of reentry at the plan's funding rate for the year of entry.

(ii) The period referred to in paragraph (c)(2) for plans using the modified presumptive method is the greater of five years, or the number of full plan years remaining on the amortization schedule under section 4211(c)(2)(B)(i) of ERISA. For plans using the rolling-5 method, the period is five years.

(d) *Adjustments applicable to all employers in plans using "presumptive" method.* In a plan using the "presumptive" allocation method under section 4211(b) of ERISA, when the plan has abated the withdrawal liability of a reentered employer pursuant to this part, the following adjustments to the allocation method shall be made in computing the unfunded vested benefits allocable to any employer that withdraws from the plan in a plan year beginning after the reentry:

(1) The sum of the unamortized amounts of the annual credits of a reentered employer shall be treated as a

reallocated amount under section 4211(b)(4) of ERISA in the plan year in which the employer reenters.

(2) In the event that the 5-year period used to compute the denominator of the fraction described in section 4211(b)(2)(E) and (b)(4)(D) of ERISA includes a year during the period of withdrawal of a reentered employer, the contributions for a year during the period of withdrawal shall be adjusted to include any actual or imputed contributions of the employer, as determined under paragraph (b) of this section.

(e) *Adjustments applicable to all employers in plans using "direct attribution" method.* In a plan using the "direct attribution" method under section 4211(c)(4) of ERISA, when the plan has abated the withdrawal liability of a reentered employer pursuant to this part, the following adjustments to the allocation method shall be made in computing the unfunded vested benefits allocable to any employer that withdraws from the plan in a plan year beginning after the reentry:

(1) The nonforfeitable benefits attributable to service with a reentered employer prior to its initial withdrawal shall be treated as benefits that are attributable to service with that employer.

(2) For purposes of section 4211(c)(4)(D) (ii) and (iii) of ERISA, withdrawal liability payments made by a reentered employer shall be treated as contributions made by the reentered employer.

(f) *Plans using alternative allocation methods under section 4211(c)(5).* A plan that has adopted an alternative method of allocating unfunded vested benefits pursuant to section 4211(c)(5) of ERISA and part 4211 of this chapter shall adopt by plan amendment a method of determining a reentered employer's allocable share of the plan's unfunded vested benefits upon its subsequent withdrawal. The method shall treat the reentered employer and other withdrawing employers in a manner consistent with the treatment under the paragraph(s) of this section applicable to plans using the statutory allocation method most similar to the plan's alternative allocation method.

(g) *Adjustments to amount of annual withdrawal liability payments for subsequent withdrawal.* For purposes of section 4219(c)(1)(C) (i)(I) and (ii)(I) of ERISA, in determining the amount of the annual withdrawal liability payments for a subsequent complete withdrawal, if the period of ten consecutive plan years ending before the plan year in which the withdrawal occurs includes a plan year during the

period of withdrawal, the employer's number of contribution base units, used in section 4219(c)(1)(C)(i)(I), or the required employer contributions, used in section 4219(c)(1)(C)(ii)(I), for each such plan year during the period of withdrawal shall be deemed to be the greater of—

(1) The employer's contribution base units or the required employer contributions, as applicable, for that year; or

(2) The average of the employer's contribution base units or of the required employer contributions, as applicable, for those plan years not during the period of withdrawal, within the ten consecutive plan years ending before the plan year in which the employer's subsequent complete withdrawal occurred.

§ 4207.8 Liability for subsequent partial withdrawals.

(a) *General.* When an eligible employer that has had its liability for a complete withdrawal abated under this part partially withdraws from the plan, the employer's liability for that subsequent partial withdrawal shall be determined in accordance with the rules in sections 4201–4225 of ERISA, as modified by the rules in § 4207.7 (b) through (g) of this part and the rules in this section, and section 108 of the Multiemployer Act.

(b) *Liability for a 70-percent contribution decline.* The amount of an employer's liability under section 4206(a) (relating to the calculation of liability for a partial withdrawal), section 4208 (relating to the reduction of liability for a partial withdrawal) and section 4219(c)(1) (relating to the schedule of partial withdrawal liability payments) of ERISA, for a subsequent partial withdrawal described in section 4205(a)(1) of ERISA (relating to a 70-percent contribution decline) shall be modified in accordance with the rules in this paragraph.

(1) *Definition of "3-year testing period."* For purposes of sections 4206(a) and 4219(c)(1) of ERISA, and paragraphs (b)(2)–(b)(4) of this section, the term "3-year testing period" means the period consisting of the plan year for which the determination is made and the two immediately preceding plan years, excluding any plan year during the period of withdrawal.

(2) *Determination date of section 4211 allocable share.* For purposes of section 4206(a)(1)(B) of ERISA, the amount determined under section 4211 shall be determined as if the employer had withdrawn from the plan in a complete withdrawal on the last day of the first plan year in the 3-year testing period or

the last day of the plan year in which the employer reentered the plan, whichever is later.

(3) *Calculation of fractional share of section 4211 amount.* For purposes of sections 4206(a)(2)(B)(ii) and 4219(c)(1)(E)(ii) of ERISA, if the five plan years immediately preceding the beginning of the 3-year testing period include a plan year during the period of withdrawal, then, in determining the denominator of the fraction described in section 4206(a)(2), the employer's contribution base units for each such year of withdrawal shall be deemed to be the greater of—

(i) The employer's contribution base units for that plan year; or

(ii) The average of the employer's contribution base units for the three plan years preceding the plan year in which the employer completely withdrew from the plan.

(4) *Contribution base units for high base year.* If the five plan years immediately preceding the beginning of the 3-year testing period include a plan year during the period of withdrawal, then for purposes of section 4208 (a) and (b)(1) of ERISA, the number of contribution base units for the high base year shall be the number of contribution base units determined under paragraph (b)(3) of this section.

(c) *Liability for partial cessation of contribution obligation.* The amount of an employer's liability under section 4206(a) (relating to the calculation of liability for a partial withdrawal) and section 4219(c)(1) (relating to the amount of the annual partial withdrawal liability payments) of ERISA, for a subsequent partial withdrawal described in section 4205(a)(2) of ERISA (relating to a partial cessation of the contribution obligation) shall be modified in accordance with the rules in this paragraph. For purposes of sections 4206(a)(2)(B)(i) and 4219(c)(1)(E)(ii) of ERISA, if the five plan years immediately preceding the plan year in which the partial withdrawal occurs include a plan year during the period of withdrawal, the denominator of the fraction described in section 4206(a)(2) shall be determined in accordance with the rule set forth in paragraph (b)(3) of this section.

§ 4207.9 Special rules.

(a) *Employer that has withdrawn and reentered the plan before the effective date of this part.* This part shall apply, in accordance with the rules in this paragraph, with respect to an eligible employer that completely withdraws from a multiemployer plan after September 25, 1980, and is performing covered work under the plan on the

effective date of this part. Upon the application of an employer described in the preceding sentence, the plan sponsor of a multiemployer plan shall determine whether the employer satisfies the requirements for abatement of its complete withdrawal liability under this part. Pending the plan sponsor's determination, the employer may provide the plan with a bond or escrow that satisfies the requirements of § 4207.4, in lieu of making its withdrawal liability payments due after its application for an abatement determination. The plan sponsor shall notify the employer in writing of its determination and the consequences of its determination as described in § 4207.3 (c) or (d) and (e), as applicable. If the plan sponsor determines that the employer qualifies for abatement, only withdrawal liability payments made prior to the employer's reentry shall be retained by the plan; payments made by the employer after its reentry shall be refunded to the employer, with interest on those made prior to the application for abatement, in accordance with § 4207.3(e)(2). If a bond or escrow has been provided to the plan in accordance with § 4207.4, the plan sponsor shall send a copy of the notice to the bonding or escrow agent. Sections 4207.6 through 4207.8 shall apply with respect to the employer's subsequent complete withdrawal occurring on or after the effective date of this part, or partial withdrawal occurring either before or after that date. This paragraph shall not negate reasonable actions taken by plans prior to the effective date of this part under plan rules implementing section 4207(a) of ERISA that were validly adopted pursuant to section 405 of the Multiemployer Act.

(b) *Employer with multiple complete withdrawals that has reentered the plan before effective date of this part.* If an employer described in paragraph (a) of this section has completely withdrawn from a multiemployer plan on two or more occasions before the effective date of this part, the rules in paragraph (a) of this section shall be applied as modified by this paragraph.

(1) The plan sponsor shall determine whether the employer satisfies the requirements for abatement under § 4207.5 based on the most recent complete withdrawal.

(2) If the employer satisfies the requirements for abatement, the employer's liability with respect to all previous complete withdrawals shall be abated.

(3) If the liability is abated, §§ 4207.6 and 4207.7 shall be applied as if the employer's earliest complete

withdrawal were its initial complete withdrawal.

(c) *Employer with multiple complete withdrawals that has not reentered the plan as of the effective date of this part.* If an eligible employer has completely withdrawn from a multiemployer plan on two or more occasions between September 26, 1980 and the effective date of this part and is not performing covered work under the plan on the effective date of this regulation, the rules in this part shall apply, subject to the modifications specified in paragraphs (b)(1)–(b)(3) of this section, upon the employer's reentry into the plan.

(d) *Combination of withdrawn employer with contributing employer.* If a withdrawn employer merges or otherwise combines with an employer that has an obligation to contribute to the plan from which the first employer withdrew, the combined entity is the eligible employer, and the rules of § 4207.5 shall be applied—

(1) By subtracting from the measurement period contribution base units the contribution base units for which the non-withdrawn portion of the employer was obligated to contribute in the last plan year ending prior to the combination;

(2) By determining the base year contribution base units solely by reference to the contribution base units of the withdrawn portion of the employer; and

(3) By using the date of the combination, rather than the date of resumption of covered operations, to begin the measurement period.

(e) *Combination of two or more withdrawn employers.* If two or more withdrawn employers merge or otherwise combine, the combined entity is the eligible employer, and the rules of § 4207.5 shall be applied by combining the number of contribution base units with respect to which each portion of the employer had an obligation to contribute under the plan for its base year. However, the combined number of contribution base units shall not include contribution base units of a withdrawn portion of the employer that had fully paid its withdrawal liability as of the date of the resumption of covered operations.

§ 4207.10 Plan rules for abatement.

(a) *General rule.* Subject to the approval of the PBGC, a plan may, by amendment, adopt rules for the reduction or waiver of complete withdrawal liability under conditions other than those specified in §§ 4207.5 and 4207.9 (c) and (d), provided that such conditions relate to events

occurring or factors existing subsequent to a complete withdrawal year. The request for PBGC approval shall be filed after the amendment is adopted. A plan amendment under this section may not be put into effect until it is approved by the PBGC. However, an amendment that is approved by the PBGC may apply retroactively to the date of the adoption of the amendment. PBGC approval shall also be required for any subsequent modification of the amendment, other than repeal of the amendment. Sections 4207.6, 4207.7, and 4207.8 shall apply to all subsequent partial withdrawals after a reduction or waiver of complete withdrawal liability under a plan amendment approved by the PBGC pursuant to this section.

(b) *Who may request.* The plan sponsor, or a duly authorized representative acting on behalf of the plan sponsor, shall sign and submit the request.

(c) *Where to file.* The request shall be addressed to Reports Processing, Insurance Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026.

(d) *Information.* Each request shall contain the following information:

(1) The name and address of the plan for which the plan amendment is being submitted and the telephone number of the plan sponsor or its duly authorized representative.

(2) The nine-digit Employer Identification Number (EIN) assigned to the plan sponsor by the IRS and the three-digit Plan Identification Number (PN) assigned to the plan by the plan sponsor, and, if different, the EIN and PN last filed with the PBGC. If no EIN or PN has been assigned, that should be indicated.

(3) A copy of the executed amendment, including—

(i) The date on which the amendment was adopted;

(ii) The proposed effective date; and

(iii) The full text of the rules on the reduction or waiver of complete withdrawal liability.

(4) A copy of the most recent actuarial valuation report of the plan.

(5) A statement certifying that notice of the adoption of the amendment and of the request for approval filed under this section has been given to all employers that have an obligation to contribute under the plan and to all employee organizations representing employees covered under the plan.

(e) *Supplemental information.* In addition to the information described in paragraph (d) of this section, a plan may submit any other information that it believes is pertinent to its request. The

PBGC may require the plan sponsor to submit any other information that the PBGC determines it needs to review a request under this section.

(f) *Criteria for PBGC approval.* The PBGC shall approve a plan amendment authorized by paragraph (a) of this section if it determines that the rules therein are consistent with the purposes of ERISA. An abatement rule is not consistent with the purposes of ERISA if—

(1) Implementation of the rule would be adverse to the interest of plan participants and beneficiaries; or

(2) The rule would increase the PBGC's risk of loss with respect to the plan.

(Approved by the Office of Management and Budget under control number 1212-0044)

PART 4208—REDUCTION OR WAIVER OF PARTIAL WITHDRAWAL LIABILITY

Sec.

4208.1 Purpose and scope.

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4208.5 Withdrawal liability payments during pendency of abatement determination.

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4208.9 Plan adoption of additional abatement conditions.

Authority: 29 U.S.C. 1302(b)(3), 1388 (c) and (e).

§ 4208.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to establish rules for reducing or waiving the liability of certain employers that have partially withdrawn from a multiemployer pension plan.

(b) *Scope.* This part applies to multiemployer pension plans covered under title IV of ERISA and to employers that have partially withdrawn from such plans after September 25, 1980, and that have not, as of the date on which they satisfy the conditions for reducing or eliminating their partial withdrawal liability, fully satisfied their obligation to pay that partial withdrawal liability. This rule shall not negate reasonable actions taken by plans prior to the effective date of this part under plan rules implementing section 4208 of ERISA that were validly adopted pursuant to section 405 of the Multiemployer Act.

§ 4208.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: employer,

ERISA, IRS, Multiemployer Act, multiemployer plan, PBGC, plan, and plan year.

In addition, for purposes of this part: *Complete withdrawal* means a complete withdrawal as described in section 4203 of ERISA.

Eligible employer means the employer, as defined in section 4001(b) of ERISA, as it existed on the date of its initial partial or complete withdrawal, as applicable. An eligible employer shall continue to be an eligible employer notwithstanding the occurrence of any of the following events:

(1) A restoration involving a mere change in identity, form or place of organization, however effected;

(2) A reorganization involving a liquidation into a parent corporation;

(3) A merger, consolidation or division solely between (or among) trades or businesses (whether or not incorporated) of the employer; or

(4) An acquisition by or of, or a merger or combination with another trade or business.

Partial withdrawal means a partial withdrawal as described in section 4205 of ERISA.

Partial withdrawal year means the third year of the 3-year testing period in the case of a partial withdrawal caused by a 70-percent contribution decline, or the year of the partial cessation in the case of a partial withdrawal caused by a partial cessation of the employer's contribution obligation.

§ 4208.3 Abatement.

(a) *General.* Whenever an eligible employer that has partially withdrawn from a multiemployer plan satisfies the requirements in § 4208.4 for the reduction or waiver of its partial withdrawal liability, it may apply to the plan for abatement of its partial withdrawal liability. Applications shall identify the eligible employer, the withdrawn employer (if different), the date of withdrawal, and the basis for reduction or waiver of its withdrawal liability. Upon receiving a complete application for abatement, the plan sponsor shall determine, in accordance with paragraph (b) of this section, whether the employer satisfies the requirements for abatement of its partial withdrawal liability under § 4208.4. If the plan sponsor determines that the employer satisfies the requirements for abatement of its partial withdrawal liability, the provisions of paragraph (c) of this section shall apply. If the plan sponsor determines that the employer does not satisfy the requirements for abatement of its partial withdrawal

liability, the provisions of paragraphs (d) and (e) of this section shall apply.

(b) *Determination of abatement.*

Within 60 days after an eligible employer that partially withdrew from a multiemployer plan applies for abatement in accordance with paragraph (a) of this section, the plan sponsor shall determine whether the employer satisfies the requirements for abatement of its partial withdrawal liability under § 4208.4 and shall notify the employer in writing of its determination and of the consequences of its determination, as described in paragraphs (c) or (d) and (e) of this section, as appropriate. If a bond or escrow has been provided to the plan under § 4208.5 of this part, the plan sponsor shall send a copy of the notice to the bonding or escrow agent.

(c) *Effects of abatement.* If the plan sponsor determines that the employer satisfies the requirements for abatement of its partial withdrawal liability under § 4208.4, then—

(1) The employer's partial withdrawal liability shall be eliminated or its annual partial withdrawal liability payments shall be reduced in accordance with § 4208.6, as applicable;

(2) The employer's liability for a subsequent withdrawal shall be determined in accordance with § 4208.7;

(3) Any bonds furnished under § 4208.5 shall be canceled and any amounts held in escrow under § 4208.5 shall be refunded to the employer; and

(4) Any withdrawal liability payments originally due and paid after the end of the plan year in which the conditions for abatement were satisfied, in excess of the amount due under this part after that date shall be credited to the remaining withdrawal liability payments, if any, owed by the employer, beginning with the first payment due after the revised payment schedule is issued pursuant to this paragraph. If the credited amount is greater than the outstanding amount of the employer's partial withdrawal liability, the amount remaining after satisfaction of the liability shall be refunded to the employer. Interest on the credited amount at the rate prescribed in part 4219, subpart C, of this chapter (relating to overdue, defaulted, and overpaid withdrawal liability) shall be added if the plan sponsor does not issue a revised payment schedule reflecting the credit or make the required refund within 60 days after receipt by the plan sponsor of a complete abatement application. Interest shall accrue from the 61st day.

(d) *Effects of non-abatement.* If the plan sponsor determines that the employer does not satisfy the requirements for abatement of its partial

withdrawal liability under § 4208.4, then the employer shall take or cause to be taken the actions set forth in paragraphs (d)(1)–(d)(3) of this section. The rules in part 4219, subpart C, shall apply with respect to all payments required to be made under paragraphs (d)(2) and (d)(3). For this purpose, a payment required under paragraph (d)(2) shall be treated as a withdrawal liability payment due on the 30th day after the date of the plan sponsor's notice under paragraph (b) of this section.

(1) Any bond or escrow furnished under § 4208.5 shall be paid to the plan within 30 days after the date of the plan sponsor's notice under paragraph (b) of this section.

(2) The employer shall pay to the plan within 30 days after the date of the plan sponsor's notice under paragraph (b) of this section, the amount of its withdrawal liability payment or payments, with respect to which the bond or escrow was furnished, in excess of the bond or escrow.

(3) The employer shall resume or continue making its partial withdrawal liability payments as they are due to the plan.

(e) *Review of non-abatement determination.* A plan sponsor's determinations that the employer does not satisfy the requirements for abatement under § 4208.4 and of the amount of reduction determined under § 4208.6 shall be subject to plan review under section 4219(b)(2) of ERISA and to arbitration under section 4221 of ERISA and part 4221 of this chapter, within the times prescribed by those provisions. For this purpose, the plan sponsor's notice under paragraph (b) of this section shall be treated as a demand under section 4219(b)(1) of ERISA. If the plan sponsor upon review or an arbitrator determines that the employer satisfies the requirements for abatement of its partial withdrawal liability under § 4208.4, the plan sponsor shall immediately refund the amounts described in paragraph (e)(1) of this section if the liability is waived, or credit and refund the amounts described in paragraph (e)(2) if the annual payment is reduced.

(1) *Refund for waived liability.* If the employer's partial withdrawal liability is waived, the plan sponsor shall refund to the employer the payments made pursuant to paragraphs (d)(1)–(d)(3) of this section (plus interest determined in accordance with § 4219.31(d) of this chapter as if the payments were overpayments of withdrawal liability).

(2) *Credit for reduced annual payment.* If the employer's annual partial withdrawal liability payment is

reduced, the plan sponsor shall credit the payments made pursuant to paragraphs (d)(1)–(d)(3) of this section (plus interest determined in accordance with § 4219.31(d) of this chapter as if the payments were overpayments of withdrawal liability) to future withdrawal liability payments owed by the employer, beginning with the first payment that is due after the determination, and refund any credit (including interest) remaining after satisfaction of the outstanding amount of the employer's partial withdrawal liability.

§ 4208.4 Conditions for abatement.

(a) *Waiver of liability for a 70-percent contribution decline.* An employer that has incurred a partial withdrawal under section 4205(a)(1) of ERISA shall have no obligation to make payments with respect to that partial withdrawal (other than delinquent payments) for plan years beginning after the second consecutive plan year in which the conditions of either paragraph (a)(1) or (a)(2) are satisfied for each of the two years:

(1) The number of contribution base units with respect to which the employer has an obligation to contribute under the plan for each year is not less than 90 percent of the total number of contribution base units with respect to which the employer had an obligation to contribute to the plan for the high base year (as defined in paragraph (d) of this section).

(2) The conditions of this paragraph are satisfied if—

(i) The number of contribution base units with respect to which the employer has an obligation to contribute for each year exceeds 30 percent of the total number of contribution base units with respect to which the employer had an obligation to contribute to the plan for the high base year (as defined in paragraph (d) of this section); and

(ii) The total number of contribution base units with respect to which all employers under the plan have obligations to contribute in each of the two years is not less than 90 percent of the total number of contribution base units for which all employers had obligations to contribute in the partial withdrawal year.

(b) *Waiver of liability for a partial cessation of the employer's contribution obligation.* Except as provided in § 4208.8, an employer that has incurred partial withdrawal liability under section 4205(a)(2) of ERISA shall have no obligation to make payments with respect to that partial withdrawal (other than delinquent payments) for plan years beginning after the second

consecutive plan year in which the employer satisfies the conditions under either paragraph (b)(1) or (b)(2) of this section.

(1) *Partial restoration of withdrawn work.* The employer satisfies the conditions under this paragraph if, for each of two consecutive plan years—

(i) The employer makes contributions for the same facility or under the same collective bargaining agreement that gave rise to the partial withdrawal;

(ii) The employer's contribution base units for that facility or under that agreement exceed 30 percent of the contribution base units with respect to which the employer had an obligation to contribute for that facility or under that agreement for the high base year (as defined in paragraph (d) of this section); and

(iii) The total number of contribution base units with respect to which the employer has an obligation to contribute to the plan equals at least 90 percent of the total number of contribution base units with respect to which the employer had an obligation to contribute under the plan for the high base year (as defined in paragraph (d) of this section).

(2) *Substantial restoration of withdrawn work.* The employer satisfies the conditions under this paragraph if, for each of two consecutive plan years—

(i) The employer makes contributions for the same facility or under the same collective bargaining agreement that gave rise to the partial withdrawal;

(ii) The employer's contribution base units for that facility or under that agreement are not less than 90 percent of the contribution base units with respect to which the employer had an obligation to contribute for that facility or under that agreement for the high base year (as defined in paragraph (d) of this section); and

(iii) The total number of contribution base units with respect to which the employer has an obligation to contribute to the plan equals or exceeds the sum of—

(A) The number of contribution base units with respect to which the employer had an obligation to contribute in the year prior to the partial withdrawal year, determined without regard to the contribution base units for the facility or under the agreement that gave rise to the partial withdrawal; and

(B) 90 percent of the contribution base units with respect to which the employer had an obligation to contribute for that facility or under that agreement in either the year prior to the partial withdrawal year or the high base year (as defined in paragraph (d) of this section), whichever is less.

(c) *Reduction in annual partial withdrawal liability payment—*

(1) *Partial withdrawals under section 4205(a)(1).* An employer shall be entitled to a reduction of its annual partial withdrawal liability payment for a plan year if the number of contribution base units with respect to which the employer had an obligation to contribute during the plan year exceeds the greater of—

(i) 110 percent (or such lower number as the plan may, by amendment, adopt) of the number of contribution base units with respect to which the employer had an obligation to contribute in the partial withdrawal year; or

(ii) The total number of contribution base units with respect to which the employer had an obligation to contribute to the plan for the plan year following the partial withdrawal year.

(2) *Partial withdrawals under section 4205(a)(2).* An employer that resumes the obligation to contribute with respect to a facility or collective bargaining agreement that gave rise to a partial withdrawal, but does not qualify to have that liability waived under paragraph (b) of this section, shall have its annual partial withdrawal liability payment reduced for any plan year in which the total number of contribution base units with respect to which the employer has an obligation to contribute equals or exceeds the sum of—

(i) The number of contribution base units for the reentered facility or agreement during that year; and

(ii) The total number of contribution base units with respect to which the employer had an obligation to contribute to the plan for the year following the partial withdrawal year.

(d) *High base year.* For purposes of paragraphs (a) and (b)(1)(iii) of this section, the high base year contributions are the average of the total contribution base units for the two plan years for which the employer's total contribution base units were highest within the five plan years immediately preceding the beginning of the 3-year testing period defined in section 4205(b)(1)(B)(i) of ERISA, with respect to paragraph (a) of this section, or the partial withdrawal year, with respect to paragraph (b)(1)(iii) of this section. For purposes of paragraphs (b)(1)(ii) and (b)(2) of this section, the high base year contributions are the average number of contribution base units for the facility or under the agreement for the two plan years for which the employer's contribution base units for that facility or under that agreement were highest within the five plan years immediately preceding the partial withdrawal.

§ 4208.5 Withdrawal liability payments during pendency of abatement determination.

(a) *Bond/Escrow.* An employer that has satisfied the requirements of § 4208.4(a)(1) without regard to “90 percent of” or § 4208.4(b) for one year with respect to all partial withdrawals it incurred in a plan year may, in lieu of making scheduled withdrawal liability payments in the second year for those withdrawals, provide a bond to, or establish an escrow account for, the plan that satisfies the requirements of paragraph (b) of this section or any plan rules adopted under paragraph (d) of this section, pending a determination by the plan sponsor of whether the employer satisfies the requirements of § 4208.4 (a)(1) or (b) for the second consecutive plan year. An employer that applies for abatement and neither provides a bond/escrow nor makes its withdrawal liability payments remains eligible for abatement.

(b) *Amount of bond/escrow.* The bond or escrow allowed by this section shall be in an amount equal to 50 percent of the withdrawal liability payments that would otherwise be due. The bond or escrow relating to each payment shall be furnished before the due date of that payment. A single bond or escrow may be provided for more than one payment due during the pendency of the plan sponsor's determination. The bond or escrow agreement shall provide that if the plan sponsor determines that the employer does not satisfy the requirements for abatement of its partial withdrawal liability under § 4208.4 (a)(1) or (b), the bond or escrow shall be paid to the plan upon notice from the plan sponsor to the bonding or escrow agent. A bond provided under this paragraph shall be issued by a corporate surety company that is an acceptable surety for purposes of section 412 of ERISA.

(c) *Notice of bond/escrow.* Concurrently with posting a bond or establishing an escrow account under this section, the employer shall notify the plan sponsor. The notice shall include a statement of the amount of the bond or escrow, the scheduled payment or payments with respect to which the bond or escrow is being furnished, and the name and address of the bonding or escrow agent.

(d) *Plan amendments concerning bond/escrow.* A plan may, by amendment, adopt rules decreasing the amount of the bond or escrow specified in paragraph (b) of this section. A plan amendment adopted under this paragraph may be applied only to the extent that it is consistent with the purposes of ERISA. An amendment

satisfies this requirement only if it does not create an unreasonable risk of loss to the plan.

(e) *Plan sponsor determination.* Within 60 days after the end of the plan year in which the bond/escrow is furnished, the plan sponsor shall determine whether the employer satisfied the requirements of § 4208.4 (a)(1) or (b) for the second consecutive plan year. The plan sponsor shall notify the employer and the bonding or escrow agent in writing of its determination and of the consequences of its determination, as described in § 4208.3 (c) or (d) and (e), as appropriate.

§ 4208.6 Computation of reduced annual partial withdrawal liability payment.

(a) *Amount of reduced payment.* An employer that satisfies the requirements of § 4208.4 (c)(1) or (c)(2) shall have its annual partial withdrawal liability payment for that plan year reduced in accordance with paragraph (a)(1) or (a)(2) of this section, respectively.

(1) The reduced annual payment amount for an employer that satisfies § 4208.4(c)(1) shall be determined by substituting the number of contribution base units in the plan year in which the requirements are satisfied for the number of contribution base units in the year following the partial withdrawal year in the numerator of the fraction described in section 4206(a)(2)(A) of ERISA.

(2) The reduced annual payment for an employer that satisfies § 4208.4(c)(2) shall be determined by adding the contribution base units for which the employer is obligated to contribute with respect to the reentered facility or agreement in the year in which the requirements are satisfied to the numerator of the fraction described in section 4206(a)(2)(A) of ERISA.

(b) *Credit for reduction.* The plan sponsor shall credit the account of an employer that satisfies the requirements of § 4208.4(c)(1) or (c)(2) with the amount of annual withdrawal liability that it paid in excess of the amount described in paragraph (a)(1) or (a)(2) of this section, as appropriate. The credit shall be applied, a revised payment schedule issued, refund made and interest added, all in accordance with § 4208.3(c)(4).

§ 4208.7 Adjustment of withdrawal liability for subsequent withdrawals.

The liability of an employer for a partial or complete withdrawal from a plan subsequent to a partial withdrawal from that plan in a prior plan year shall be reduced in accordance with part 4206 of this chapter.

§ 4208.8 Multiple partial withdrawals in one plan year.

(a) *General rule.* If an employer partially withdraws from the same multiemployer plan on two or more occasions during the same plan year, the rules of § 4208.4 shall be applied as modified by this section.

(b) *Partial withdrawals under section 4205 (a)(1) and (a)(2) in the same plan year.* If an employer partially withdraws from the same multiemployer plan as a result of a 70-percent contribution decline and a partial cessation of the employer's contribution obligation in the same plan year, the employer shall not be eligible for abatement under § 4208.4 (b) or (c)(2) or under paragraph (c) of this section. The employer may qualify for abatement under § 4208.4(a) and (c)(1) and under any rules adopted by the plan pursuant to § 4208.9.

(c) *Multiple partial cessations of the employer's contribution obligation.* If an employer permanently ceases to have an obligation to contribute for more than one facility, under more than one collective bargaining agreement, or for one or more facilities and under one or more collective bargaining agreements, resulting in multiple partial withdrawals under section 4205(b)(2)(A) in the same plan year, the abatement rules in § 4208.4(b) shall be applied as modified by this paragraph. If an employer resumes work at all such facilities and under all such collective bargaining agreements, the determination of whether the employer qualifies for elimination of its liability under § 4208.4(b) shall be made by substituting the test set forth in paragraph (c)(1) of this section for that prescribed by § 4208.4 (b)(1)(ii) or (b)(2)(ii), as applicable. If the employer resumes work at or under fewer than all the facilities or collective bargaining agreements described in this paragraph, the employer cannot qualify for elimination of its liability under § 4208.4(b). However, the employer may qualify for a reduction in its partial withdrawal liability pursuant to paragraph (c)(2) of this section.

(1) *Resumption of work at all facilities and under all bargaining agreements.* The test under this paragraph is satisfied if for each of the two consecutive plan years referred to in § 4208.4(b), the employer's total contribution base units for the facilities and under the collective bargaining agreements with respect to which the employer incurred the multiple partial withdrawals exceed 30 percent of the total number of contribution base units with respect to which the employer had an obligation to contribute for those facilities and under those agreements for

the base year (as defined in paragraph (d) of this section).

(2) *Resumption at fewer than all facilities or under fewer than all bargaining agreements.* If the employer satisfies the conditions in § 4208.4 (b)(1)(i) and (b)(1)(iii) and paragraph (c)(2)(i) of this section, or the conditions in § 4208.4 (b)(2)(i) and (b)(2)(iii) and paragraph (c)(2)(ii) of this section, as applicable, the employer's withdrawal liability shall be partially waived as set forth in paragraph (c)(2)(iii) of this section.

(i) With respect to a resumption of work under § 4208.4(b)(1), the condition under this paragraph is satisfied if, for the two consecutive plan years referred to in § 4208.4(b)(1), the employer's contribution base units for any reentered facility or agreement exceed 30 percent of the number of contribution base units with respect to which the employer had an obligation to contribute for that facility or under that agreement for the base year (as defined in paragraph (d) of this section).

(ii) With respect to a resumption of work under § 4208.4(b)(2), the condition under this paragraph is satisfied if, for the two consecutive plan years referred to in § 4208.4(b)(2), the employer's contribution base units for any reentered facility or agreement exceed 90 percent of the number of contribution base units with respect to which the employer had an obligation to contribute for that facility or under that agreement for the base year (as defined in paragraph (d) of this section).

(iii) The employer's reduced withdrawal liability and, if any, the reduced annual payments of the liability shall be determined by adding the average number of contribution base units that the employer is required to contribute for those two consecutive years for that facility(ies) or agreement(s) to the numerator of the fraction described in section 4206(a)(2)(A) of ERISA. The amount of any remaining partial withdrawal liability shall be paid over the schedule originally established starting with the first payment due after the revised payment schedule is issued under § 4208.3(c)(4).

(d) *Base Year.* For purposes of this section, the base year contribution base units for a reentered facility(ies) or under a reentered agreement(s) are the average number of contribution base units for the facility(ies) or under the agreement(s) for the two plan years for which the employer's contribution base units for that facility(ies) or under that agreement(s) were highest within the five plan years immediately preceding the partial withdrawal.

§ 4208.9 Plan adoption of additional abatement conditions.

(a) *General rule.* A plan may by amendment, subject to the approval of the PBGC, adopt rules for the reduction or waiver of partial withdrawal liability under conditions other than those specified in § 4208.4, provided that such conditions relate to events occurring or factors existing subsequent to a partial withdrawal year. The request for PBGC approval shall be filed after the amendment is adopted. PBGC approval shall also be required for any subsequent modification of the amendment, other than repeal of the amendment. A plan amendment under this section may not be put into effect until it is approved by the PBGC. An amendment that is approved by the PBGC may apply retroactively.

(b) *Who may request.* The plan sponsor, or a duly authorized representative acting on behalf of the plan sponsor, shall sign and submit the request.

(c) *Where to file.* The request shall be addressed to Reports Processing, Insurance Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005-4026.

(d) *Information.* Each request shall contain the following information:

(1) The name and address of the plan for which the plan amendment is being submitted and the telephone number of the plan sponsor or its duly authorized representative.

(2) The nine-digit Employer Identification Number (EIN) assigned to the plan sponsor by the IRS and the three-digit Plan Identification Number (PIN) assigned to the plan by the plan sponsor, and, if different, also the EIN-PIN last filed with the PBGC. If an EIN-PIN has not been assigned, that should be indicated.

(3) A copy of the executed amendment, including—

(i) the date on which the amendment was adopted;

(ii) the proposed effective date;

(iii) the full text of the rules on the reduction or waiver of partial withdrawal liability; and

(iv) the full text of the rules adjusting the reduction in the employer's liability for a subsequent partial or complete withdrawal, as required by section 4206(b)(1) of ERISA.

(4) A copy of the most recent actuarial valuation report of the plan.

(5) A statement certifying that notice of the adoption of the amendment and of the request for approval filed under this section has been given to all employers that have an obligation to contribute under the plan and to all

employee organizations representing employees covered under the plan.

(e) *Supplemental information.* In addition to the information described in paragraph (d) of this section, a plan may submit any other information that it believes is pertinent to its request. The PBGC may require the plan sponsor to submit any other information that the PBGC determines that it needs to review a request under this section.

(f) *Criteria for PBGC approval.* The PBGC shall approve a plan amendment authorized by paragraph (a) of this section if it determines that the rules therein are consistent with the purposes of ERISA. An abatement amendment is not consistent with the purposes of ERISA unless the PBGC determines that—

(1) The amendment is not adverse to the interests of plan participants and beneficiaries in the aggregate; and

(2) The amendment would not significantly increase the PBGC's risk of loss with respect to the plan.

(Approved by the Office of Management and Budget under control no. 1212-0039)

PART 4211—ALLOCATING UNFUNDED VESTED BENEFITS TO WITHDRAWING EMPLOYERS

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Authority: 29 U.S.C. 1302(b)(3); 1391(c)(1), (c)(2)(D), (c)(5)(A), (c)(5)(B), (c)(5)(D), and (f).

Subpart A—General

§ 4211.1 Purpose and scope.

(a) *Purpose.* Section 4211 of ERISA provides four methods for allocating unfunded vested benefits to employers that withdraw from a multiemployer plan: the presumptive method (section 4211(b)); the modified presumptive method (section 4211(c)(2)); the rolling-5 method (section 4211(c)(3)); and the direct attribution method (section 4211(c)(4)). With the minor exceptions covered in § 4211.3, a plan determines the amount of unfunded vested benefits allocable to a withdrawing employer in accordance with the presumptive method, unless the plan is amended to adopt an alternative allocative method. Generally, the PBGC must approve the adoption of an alternative allocation method. On September 25, 1984, 49 FR 37686, the PBGC granted a class approval of all plan amendments adopting one of the statutory alternative allocation methods. Subpart C sets forth the criteria and procedures for PBGC approval of nonstatutory alternative allocation methods. Section 4211(c)(5) of ERISA also permits certain modifications to the statutory allocation methods. The PBGC is to prescribe these modifications in a regulation, and plans may adopt them without PBGC approval. Subpart B contains the permissible modifications to the statutory methods. Plans may adopt other modifications subject to PBGC approval under subpart C. Finally, under section 4211(f) of ERISA, the PBGC is required to prescribe rules governing the application of the statutory allocation methods or modified methods by plans following merger of multiemployer plans. Subpart D sets forth alternative allocative methods to be used by merged plans. In addition, such plans may adopt any of the allocation methods or modifications described under subparts B and C in accordance with the rules under subparts B and C.

(b) *Scope.* This part applies to all multiemployer plans covered by title IV of ERISA.

§ 4211.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: Code, employer, IRS, multiemployer plan,

nonforfeitable benefit, PBGC, plan, and plan year.

In addition, for purposes of this part:

Initial plan year means a merged plan's first complete plan year that begins after the establishment of the merged plan.

Initial plan year unfunded vested benefits means the unfunded vested benefits as of the close of the initial plan year, less the value as of the end of the initial plan year of all outstanding claims for withdrawal liability that can reasonably be expected to be collected from employers that had withdrawn as of the end of the initial plan year.

Merged plan means a plan that is the result of the merger of two or more multiemployer plans.

Merger means the combining of two or more multiemployer plans into one multiemployer plan.

Prior plan means the plan in which an employer participated immediately before that plan became a part of the merged plan.

Unfunded vested benefits means an amount by which the value of nonforfeitable benefits under the plan exceeds the value of the assets of the plan.

Withdrawing employer means the employer for whom withdrawal liability is being calculated under section 4201 of ERISA.

Withdrawn employer means an employer who, prior to the withdrawing employer, has discontinued contributions to the plan or covered operations under the plan and whose obligation to contribute has not been assumed by a successor employer within the meaning of section 4204 of ERISA. A temporary suspension of contributions, including a suspension described in section 4218(2) of ERISA, is not considered a discontinuance of contributions.

§ 4211.3 Special rules for construction industry and IRC section 404(c) plans.

(a) *Construction plans.* Except as provided in §§ 4211.11(b) and 4211.21(b), a plan that primarily covers employees in the building and construction industry shall use the presumptive method for allocating unfunded vested benefits.

(b) *Section 404(c) plans.* A plan described in section 404(c) of the Code or a continuation of such a plan shall allocate unfunded vested benefits under the rolling-5 method unless the plan, by amendment, adopts an alternative method or modification.

Subpart B—Changes Not Subject to PBGC Approval

§ 4211.11 Changes not subject to PBGC approval.

(a) *General rule.* A plan, other than a plan that primarily covers employees in the building and construction industry, may adopt, by amendment, any of the statutory allocation methods and any of the modifications set forth in §§ 4211.12 and 4211.13, without the approval of the PBGC.

(b) *Building and construction industry plans.* A plan that primarily covers employees in the building and construction industry may adopt, by amendment, any of the modifications to the presumptive rule set forth in § 4211.12 without the approval of the PBGC.

§ 4211.12 Modifications to the presumptive, modified presumptive and rolling-5 methods.

(a) *“Contributions made” and “total amount contributed”.* Each of the allocation fractions used in the presumptive, modified presumptive and rolling-5 methods is based on contributions that certain employers have made to the plan for a five-year period. For purposes of these methods, and except as provided in paragraph (b) of this section, “the sum of all contributions made” or “total amount contributed” by employers for a plan year means the amounts (other than withdrawal liability payments) considered contributed to the plan for the plan year for purposes of section 412(b)(3)(A) of the Code. For plan years before section 412 applies to the plan, “the sum of all contributions made” or “total amount contributed” means the amount reported to the IRS or the Department of Labor as total contributions for the plan year; for example, for plan years in which the plan filed the Form 5500, the amount reported as total contributions on that form. Employee contributions, if any, shall be excluded from the totals.

(b) *Changing the period for counting contributions.* A plan sponsor may amend a plan to modify the denominators in the presumptive, modified presumptive and rolling-5 methods in accordance with one of the alternatives described in this paragraph. Except as provided in paragraph (b)(4) of this section, any amendment adopted under this paragraph shall be applied consistently to all plan years. Contributions counted for one plan year may be not counted for any other plan year. If a contribution is counted as part of the “total amount contributed” for any plan year used to determine a

denominator, that contribution may not also be counted as a contribution owed with respect to an earlier year used to determine the same denominator, regardless of when the plan collected that contribution.

(1) A plan sponsor may amend a plan to provide that “the sum of all contributions made” or “total amount contributed” for a plan year means the amount of contributions that the plan actually received during the plan year, without regard to whether the contributions are treated as made for that plan year under section 412(b)(3)(A) of the Code.

(2) A plan sponsor may amend a plan to provide that “the sum of all contributions made” or “total amount contributed” for a plan year means the amount of contributions actually received during the plan year, increased by the amount of contributions received during a specified period of time after the close of the plan year not to exceed the period described in section 412(c)(10) of the Code and regulations thereunder.

(3) A plan sponsor may amend a plan to provide that “the sum of all contributions made” or “total amount contributed” for a plan year means the amount of contributions actually received during the plan year, increased by the amount of contributions accrued during the plan year and received during a specified period of time after the close of the plan year not to exceed the period described in section 412(c)(10) of the Code and regulations thereunder.

(4) A plan sponsor may amend a plan to provide that—

(i) For plan years ending before September 26, 1980, “the sum of all contributions made” or “total amount contributed” means the amount of total contributions reported on Form 5500 and, for years before the plan was required to file Form 5500, the amount of total contributions reported on any predecessor reporting form required by the Department of Labor or the IRS; and

(ii) For subsequent plan years, “the sum of all contributions made” or “total amount contributed” means the amount described in paragraph (a) of this section, or the amount described in paragraph (b)(1), (b)(2) or (b)(3) of this section.

(c) *Excluding contributions of significant withdrawn employers.* Contributions of certain withdrawn employers are excluded from the denominator in each of the fractions used to determine a withdrawing employer's share of unfunded vested benefits under the presumptive, modified presumptive and rolling-5

methods. Except as provided in paragraph (c)(1) of this section, contributions of all employers that permanently cease to have an obligation to contribute to the plan or permanently cease covered operations before the end of the period of plan years used to determine the fractions for allocating unfunded vested benefits under each of those methods (and contributions of all employers that withdrew before September 26, 1980) are excluded from the denominators of the fractions.

(1) The plan sponsor of a plan using the presumptive, modified presumptive or rolling-5 method may amend the plan to provide that only the contributions of significant withdrawn employers shall be excluded from the denominators of the fractions used in those methods.

(2) For purposes of this paragraph (c), “significant withdrawn employer” means—

(i) An employer to which the plan has sent a notice of withdrawal liability under section 4219 of ERISA; or

(ii) A withdrawn employer that in any plan year used to determine the denominator of a fraction contributed at least \$250,000 or, if less, 1% of all contributions made by employers for that year.

(3) If a group of employers withdraw in a concerted withdrawal, the plan shall treat the group as a single employer in determining whether the members are significant withdrawn employers under paragraph (c)(2) of this section. A “concerted withdrawal” means a cessation of contributions to the plan during a single plan year—

(i) By an employer association;

(ii) By all or substantially all of the employers covered by a single collective bargaining agreement; or

(iii) By all or substantially all of the employers covered by agreements with a single labor organization.

§ 4211.13 Modifications to the direct attribution method.

(a) *Error in direct attribution method.* The unfunded vested benefits allocated to a withdrawing employer under the direct attribution method are the sum of the employer's attributable liability, determined under section 4211(c)(4)(A)(i) and (B) of ERISA, and the employer's share of the plan's unattributable liability, determined under section 4211(c)(4)(E) and allocated to the employer under section 4211(c)(4)(F). Plan sponsors should allocate unattributable liabilities on the basis of the employer's share of the attributable liabilities. However, section 4211(c)(4)(F) of ERISA, which describes the allocation of unattributable liabilities, contains a typographical

error. Therefore, plans adopting the direct attribution method shall modify the phrase “as the amount determined under subparagraph (C) for the employer bears to the sum of the amounts determined under subparagraph (C) for all employers under the plan” in section 4211(c)(4)(F) by substituting “subparagraph (B)” for “subparagraph (C)” in both places it appears.

(b) *Allocating unattributable liability based on contributions in period before withdrawal.* A plan that is amended to adopt the direct attribution method may provide that instead of allocating the unattributable liability in accordance with section 4211(c)(4)(F) of ERISA, the employer's share of the plan's unattributable liability shall be determined by multiplying the plan's unattributable liability determined under section 4211(c)(4)(E) by a fraction—

(1) The numerator of which is the total amount of contributions required to be made by the withdrawing employer over a period of consecutive plan years (not fewer than five) ending before the withdrawal; and

(2) The denominator of which is the total amount contributed under the plan by all employers for the same period of years used in paragraph (b)(1) of this section, decreased by any amount contributed by an employer that withdrew from the plan during those plan years.

Subpart C—Changes Subject to PBGC Approval

§ 4211.21 Changes subject to PBGC approval.

(a) *General rule.* Subject to the approval of the PBGC pursuant to this subpart, a plan, other than a plan that primarily covers employees in the building and construction industry, may adopt, by amendment, any allocation method or modification to an allocation method that is not permitted under subpart B of this part.

(b) *Building and construction industry plans.* Subject to the approval of the PBGC pursuant to this subpart, a plan that primarily covers employees in the building and construction industry may adopt, by amendment, any allocation method or modification to an allocation method that is not permitted under § 4211.12 if the method or modification is applicable only to its employers that are not construction industry employers within the meaning of section 4203(b)(1)(A) of ERISA.

(c) *Substantial overallocation not allowed.* No plan may adopt an allocation method or modification to an

allocation method that results in a systematic and substantial overallocation of the plan's unfunded vested benefits.

(d) *Use of method prior to approval.* A plan may implement an alternative allocation method or modification to an allocation method that requires PBGC approval before that approval is given. However, the plan sponsor shall assess liability in accordance with this paragraph.

(1) *Demand for payment.* Until the PBGC approves the allocation method or modification, a plan may not demand withdrawal liability under section 4219 of ERISA in an amount that exceeds the lesser of the amount calculated under the amendment or the amount calculated under the allocation method that the plan would be required to use if the PBGC did not approve the amendment. The plan must inform each withdrawing employer of both amounts and explain that the higher amount may become payable depending on the PBGC's decision on the amendment.

(2) *Adjustment of liability.* When necessary because of the PBGC decision on the amendment, the plan shall adjust the amount demanded from each employer under paragraph (c)(1) of this section and the employer's withdrawal liability payment schedule. The length of the payment schedule shall be increased, as necessary. The plan shall notify each affected employer of the adjusted liability and payment schedule and shall collect the adjusted amount in accordance with the adjusted schedule.

§ 4211.22 Requests for PBGC approval.

(a) *General.* A plan shall submit a request for approval of an alternative allocation method or modification to an allocation method to the PBGC in accordance with the requirements of this section as soon as practicable after the adoption of the amendment.

(b) *Who shall submit.* The plan sponsor, or a duly authorized representative acting on behalf of the plan sponsor, shall sign the request.

(c) *Where to submit.* The plan shall submit the request by first class mail or courier service to Reports Processing, Insurance Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026, or by hand to the above address.

(d) *Content.* Each request shall contain the following information:

(1) The name, address and telephone number of the plan sponsor, and of the duly authorized representative, if any, of the plan sponsor.

(2) The name of the plan.

(3) The nine-digit Employer Identification Number (EIN) that the Internal Revenue Service assigned to the plan sponsor and the three-digit Plan Identification Number (PIN) that the plan sponsor assigned to the plan, and, if different, also the EIN-PIN that the plan last filed with the PBGC. If the plan has no EIN-PIN, the request shall so indicate.

(4) The date the amendment was adopted.

(5) A copy of the amendment, setting forth the full text of the alternative allocation method or modification.

(6) The allocation method that the plan currently uses and a copy of the plan amendment (if any) that adopted the method.

(7) A statement certifying that notice of the adoption of the amendment has been given to all employers that have an obligation to contribute under the plan and to all employee organizations that represent employees covered by the plan.

(e) *Additional information.* In addition to the information listed in paragraph (d) of this section, the PBGC may require the plan sponsor to submit any other information that the PBGC determines is necessary for the review of an alternative allocation method or modification to an allocation method.

(Approved by the Office of Management and Budget under control number 1212-0035)

§ 4211.23 Approval of alternative method.

(a) *General.* The PBGC shall approve an alternative allocation method or modification to an allocation method if the PBGC determines that adoption of the method or modification would not significantly increase the risk of loss to plan participants and beneficiaries or to the PBGC.

(b) *Criteria.* An alternative allocation method or modification to an allocation method satisfies the requirements of paragraph (a) of this section if it meets the following three conditions:

(1) The method or modification allocates a plan's unfunded vested benefits, both for the adoption year and for the five subsequent plan years, to the same extent as any of the statutory allocation methods, or any modification to a statutory allocation method permitted under subpart B.

(2) The method or modification allocates unfunded vested benefits to each employer on the basis of either the employer's share of contributions to the plan or the unfunded vested benefits attributable to each employer. The method or modification may take into account differences in contribution rates paid by different employers and

differences in benefits of different employers' employees.

(3) The method or modification fully reallocates among employers that have not withdrawn from the plan all unfunded vested benefits that the plan sponsor has determined cannot be collected from withdrawn employers, or that are not assessed against withdrawn employers because of sections 4209, 4219(c)(1)(B) or 4225 of ERISA.

(c) *PBGC action on request.* The PBGC's decision on a request for approval shall be in writing. If the PBGC disapproves the request, the decision shall state the reasons for the disapproval and shall include a statement of the sponsor's right to request a reconsideration of the decision pursuant to part 4003 of this chapter.

§ 4211.24 Special rule for certain alternative methods previously approved.

A plan may not apply to any employer withdrawing on or after November 25, 1987, an allocation method approved by the PBGC before that date that allocates to the employer the greater of the amounts of unfunded vested benefits determined under two different allocation rules. Until a plan that has been using such a method is amended to adopt a valid allocation method, its allocation method shall be deemed to be the statutory allocation method that would apply if it had never been amended.

Subpart D—Allocation Methods for Merged Multiemployer Plans

§ 4211.31 Allocation of unfunded vested benefits following the merger of plans.

(a) *General Rule.* Except as provided in paragraphs (b) through (d) of this section, when two or more multiemployer plans merge, the merged plan shall adopt one of the statutory allocation methods, in accordance with subpart B of this part, or one of the allocation methods prescribed in §§ 4211.32 through 4211.35, and the method adopted shall apply to all employer withdrawals occurring after the initial plan year. Alternatively, a merged plan may adopt its own allocation method in accordance with subpart C of this part. If a merged plan fails to adopt an allocation method pursuant to this subpart or subpart B or C, it shall use the presumptive allocation method prescribed in § 4211.32. In addition, a merged plan may adopt any of the modifications prescribed in § 4211.36 or in subpart B of this part.

(b) *Construction plans.* Except as provided in the next sentence, a merged plan that primarily covers employees in

the building and construction industry shall use the presumptive allocation method prescribed in § 4211.32. However, the plan may, with respect to employers that are not construction industry employers within the meaning of section 4203(b)(1)(A) of ERISA, adopt, by amendment, one of the alternative methods prescribed in §§ 4211.33 through 4211.35 or any other allocation method. Any such amendment shall be adopted in accordance with subpart C of this part. A construction plan may, without the PBGC's approval, adopt by amendment any of the modifications set forth in § 4211.36 or any of the modifications to the statutory presumptive method set forth in § 4211.12.

(c) *Section 404(c) plans.* A merged plan that is a continuation of a plan described in section 404(c) of the Code shall use the rolling-5 allocation method prescribed in § 4211.34, unless the plan, by amendment, adopts an alternative method. The plan may adopt one of the statutory allocation methods or one of the allocation methods set forth in §§ 4211.32 through 4211.35 without PBGC approval; adoption of any other allocation method is subject to PBGC approval under subpart B of this plan. The plan may, without the PBGC's approval, adopt by amendment any of the modifications set forth in § 4211.36 or in subpart B of this part.

(d) *Withdrawals before the end of the initial plan year.* For employer withdrawals after the effective date of a merger and prior to the end of the initial plan year, the amount of unfunded vested benefits allocable to a withdrawing employer shall be determined in accordance with § 4211.37.

§ 4211.32 Presumptive method for withdrawals after the initial plan year.

(a) *General rule.* Under this section, the amount of unfunded vested benefits allocable to an employer that withdraws from a merged plan after the initial plan year is the sum (but not less than zero) of—

(1) The employer's proportional share, if any, of the unamortized amount of the plan's initial plan year unfunded vested benefits, as determined under paragraph (b) of this section;

(2) The employer's proportional share of the unamortized amount of the change in the plan's unfunded vested benefits for plan years ending after the initial plan year, as determined under paragraph (c) of this section; and

(3) The employer's proportional share of the unamortized amounts of the reallocated unfunded vested benefits (if

any) as determined under paragraph (d) of this section.

(b) *Share of initial plan year unfunded vested benefits.* An employer's proportional share, if any, of the unamortized amount of the plan's initial plan year unfunded vested benefits is the sum of the employer's share of its prior plan's liabilities (determined under paragraph (b)(1) of this section) and the employer's share of the adjusted initial plan year unfunded vested benefits (determined under paragraph (b)(2) of this section), with such sum reduced by five percent of the original amount for each plan year subsequent to the initial year.

(1) *Share of prior plan liabilities.* An employer's share of its prior plan's liabilities is the amount of unfunded vested benefits that would have been allocable to the employer if it had withdrawn on the first day of the initial plan year, determined as if each plan had remained a separate plan.

(2) *Share of adjusted initial plan year unfunded vested benefits.* An employer's share of the adjusted initial plan year unfunded vested benefits equals the plan's initial plan year unfunded vested benefits, less the amount that would be determined under paragraph (b)(1) of this section for each employer that had not withdrawn as of the end of the initial plan year, multiplied by a fraction—

(i) The numerator of which is the amount determined under paragraph (b)(1) of this section; and

(ii) The denominator of which is the sum of the amounts that would be determined under paragraph (b)(1) of this section for each employer that had not withdrawn as of the end of the initial plan year.

(c) *Share of annual changes.* An employer's proportional share of the unamortized amount of the change in the plan's unfunded vested for the plan years ending after the end of the initial plan year is the sum of the employer's proportional shares (determined under paragraph (c)(2) of this section) of the unamortized amount of the change in unfunded vested benefits (determined under paragraph (c)(1) of this section) for each plan year in which the employer has an obligation to contribute under the plan ending after the initial plan year and before the plan year in which the employer withdraws.

(1) *Change in plan's unfunded vested benefits.* The change in a plan's unfunded vested benefits for a plan year is the amount by which the unfunded vested benefits at the end of a plan year, less the value as of the end of such year of all outstanding claims for withdrawal liability that can reasonably be expected

to be collected from employers that had withdrawn as of the end of the initial plan year, exceed the sum of the unamortized amount of the initial plan year unfunded vested benefits (determined under paragraph (c)(1)(i) of this section) and the unamortized amounts of the change in unfunded vested benefits for each plan year ending after the initial plan year and preceding the plan year for which the change is determined (determined under paragraph (c)(1)(ii) of this section).

(i) *Unamortized amount of initial plan year unfunded vested benefits.* The unamortized amount of the initial plan year unfunded vested benefits is the amount of those benefits reduced by five percent of the original amount for each succeeding plan year.

(ii) *Unamortized amount of the change.* The unamortized amount of the change in a plan's unfunded vested benefits with respect to a plan year is the change in unfunded vested benefits for the plan year, reduced by five percent of such change for each succeeding plan year.

(2) *Employer's proportional share.* An employer's proportional share of the amount determined under paragraph (c)(1) of this section is computed by multiplying that amount by a fraction—

(i) The numerator of which is the total amount required to be contributed under the plan (or under the employer's prior plan) by the employer for the plan year in which the change arose and the four preceding full plan years; and

(ii) The denominator of which is the total amount contributed under the plan (or under employer's prior plan) for the plan year in which the change arose and the four preceding full plan years by all employers that had an obligation to contribute under the plan for the plan year in which such change arose, reduced by any amount contributed by an employer that withdrew from the plan in the year in which the change arose.

(d) *Share of reallocated amounts.* An employer's proportional share of the unamortized amounts of the reallocated unfunded vested benefits, if any, is the sum of the employer's proportional shares (determined under paragraph (d)(2) of this section) of the unamortized amount of the reallocated unfunded vested benefits (determined under paragraph (d)(1) of this section) for each plan year ending before the plan year in which the employer withdrew from the plan.

(1) *Unamortized amount of reallocated unfunded vested benefits.* The unamortized amount of the reallocated unfunded vested benefits

with respect to a plan year is the sum of the amounts described in paragraphs (d)(1)(i), (d)(1)(ii), and (d)(1)(iii) of this section for the plan year, reduced by five percent of such sum for each succeeding plan year.

(i) *Uncollectible amounts.* Amounts included as reallocable under this paragraph are those that the plan sponsor determines in that plan year to be uncollectible for reasons arising out of cases or proceedings under Title 11, United States Code, or similar proceedings, with respect to an employer that withdrew after the close of the initial plan year.

(ii) *Relief amounts.* Amounts included as reallocable under this paragraph are those that the plan sponsor determines in that plan year will not be assessed as a result of the operation of sections 4209, 4219(c)(1)(B), or 4225 of ERISA with respect to an employer that withdrew after the close of the initial plan year.

(iii) *Other amounts.* Amounts included as reallocable under this paragraph are those that the plan sponsor determines in that plan year to be uncollectible or unassessable for other reasons under standards not inconsistent with regulations prescribed by the PBGC.

(2) *Employer's proportional share.* An employer's proportional share of the amount of the reallocated unfunded vested benefits with respect to a plan year is computed by multiplying the unamortized amount of the reallocated unfunded vested benefits (as of the end of the year preceding the plan year in which the employer withdraws) by the allocation fraction described in paragraph (c)(2) of this section for the same plan year.

§ 4211.33 Modified presumptive method for withdrawals after the initial plan year.

(a) *General rule.* Under this section, the amount of unfunded vested benefits allocable to an employer that withdraws from a merged plan after the initial plan year is the sum of the employer's proportional share, if any, of the unamortized amount of the plan's initial plan year unfunded vested benefits (determined under paragraph (b) of this section) and the employer's proportional share of the unamortized amount of the unfunded vested benefits arising after the initial plan year (determined under paragraph (c) of this section).

(b) *Share of initial plan year unfunded vested benefits.* An employer's proportional share, if any, of the unamortized amount of the plan's initial plan year unfunded vested benefits is the sum of the employer's

share of its prior plan's liabilities, as determined under § 4211.32(b)(1), and the employer's share of the adjusted initial plan year unfunded vested benefits, as determined under § 4211.32(b)(2), with such sum reduced as if it were being fully amortized in level annual installments over fifteen years beginning with the first plan year after the initial plan year.

(c) *Share of unfunded vested benefits arising after the initial plan year.* An employer's proportional share of the amount of the plan's unfunded vested benefits arising after the initial plan year is the employer's proportional share (determined under paragraph (c)(2) of this section) of the plan's unfunded vested benefits as of the end of the plan year preceding the plan year in which the employer withdraws, reduced by the amount of the plan's unfunded vested benefits as of the close of the initial plan year (determined under paragraph (c)(1) of this section).

(1) *Amount of unfunded vested benefits.* The plan's unfunded vested benefits as of the end of the plan year preceding the plan year in which the employer withdraws shall be reduced by the sum of—

(i) The value as of that date of all outstanding claims for withdrawal liability that can reasonably be expected to be collected, with respect to employers that withdrew before that plan year; and

(ii) The sum of the amounts that would be allocable under paragraph (b) of this section to all employers that have an obligation to contribute in the plan year preceding the plan year in which the employer withdraws and that also had an obligation to contribute in the first plan year ending after the initial plan year.

(2) *Employer's proportional share.* An employer's proportional share of the amount determined under paragraph (c)(1) of this section is computed by multiplying that amount by a fraction—

(i) The numerator of which is the total amount required to be contributed under the plan (or under the employer's prior plan) by the employer for the last five full plan years ending before the date on which the employer withdraws; and

(ii) The denominator of which is the total amount contributed under the plan (or under each employer's prior plan) by all employers for the last five full plan years ending before the date on which the employer withdraws, increased by the amount of any employer contributions owed with respect to earlier periods that were collected in those plan years, and decreased by any amount contributed by an employer that

withdrew from the plan (or prior plan) during those plan years.

§ 4211.34 Rolling-5 method for withdrawals after the initial plan year.

(a) *General rule.* Under this section, the amount of unfunded vested benefits allocable to an employer that withdraws from a merged plan after the initial plan year is the sum of the employer's proportional share, if any, of the unamortized amount of the plan's initial plan year unfunded vested benefits (determined under paragraph (b) of this section) and the employer's proportional share of the unamortized amount of the unfunded vested benefits arising after the initial plan year (determined under paragraph (c) of this section).

(b) *Share of initial plan year unfunded vested benefits.* An employer's proportional share, if any, of the unamortized amount of the plan's initial plan year unfunded vested benefits is the sum of the employer's share of its prior plan's liabilities, as determined under § 4211.32(b)(1), and the employer's share of the adjusted initial plan year unfunded vested benefits, as determined under § 4211.32(b)(2), with such sum reduced as if it were being fully amortized in level annual installments over five years beginning with the first plan year after the initial plan year.

(c) *Share of unfunded vested benefits arising after the initial plan year.* An employer's proportional share of the amount of the plan's unfunded vested benefits arising after the initial plan year is the employer's proportional share determined under § 4211.33(c).

§ 4211.35 Direct attribution method for withdrawals after the initial plan year.

The allocation method under this section is the allocation method described in section 4211(c)(4) of ERISA.

§ 4211.36 Modifications to the determination of initial liabilities, the amortization of initial liabilities, and the allocation fraction.

(a) *General rule.* A plan using any of the allocation methods described in §§ 4211.32 through 4211.34 may, by plan amendment and without PBGC approval, adopt any of the modifications described in this section.

(b) *Restarting initial liabilities.* A plan may be amended to allocate the initial plan year unfunded vested benefits under § 4211.32(b), § 4211.33(b), or § 4211.34(b) without separately allocating to employers the liabilities attributable to their participation under their prior plans. An amendment under this paragraph must include an

allocation fraction under paragraph (d) of this section for determining the employer's proportional share of the total unfunded benefits as of the close of the initial plan year.

(c) *Amortizing initial liabilities.* A plan may by amendment modify the amortization of initial liabilities in either of the following ways:

(1) If two or more plans that use the presumptive allocation method of section 4211(b) of ERISA merge, the merged plan may adjust the amortization of initial liabilities under § 4211.32(b) to amortize those unfunded vested benefits over the remaining length of the prior plans' amortization schedules.

(2) A plan that has adopted the allocation method under § 4211.33 or § 4211.34 may adjust the amortization of initial liabilities under § 4211.33(b) or § 4211.34(b) to amortize those unfunded vested benefits in level annual installments over any period of at least five and not more than fifteen years.

(d) *Changing the allocation fraction.* A plan may by amendment replace the allocation fraction under § 4211.32(b), § 4211.33(b), or § 4211.34(b) with any of the following contribution-based fractions—

(1) A fraction, the numerator of which is the total amount required to be contributed under the merged and prior plans by the withdrawing employer in the 60-month period ending on the last day of the initial plan year, and the denominator of which is the sum for that period of the contributions made by all employers that had not withdrawn as of the end of the initial plan year;

(2) A fraction, the numerator of which is the total amount required to be contributed by the withdrawing employer for the initial plan year and the four preceding full plan years of its prior plan, and the denominator of which is the sum of all contributions made over that period by employers that had not withdrawn as of the end of the initial plan year; or

(3) A fraction, the numerator of which is the total amount required to be contributed to the plan by the withdrawing employer since the effective date of the merger, and the denominator of which is the sum of all contributions made over that period by employers that had not withdrawn as of the end of the initial plan year.

§ 4211.37 Allocating unfunded vested benefits for withdrawals before the end of the initial plan year.

If an employer withdraws after the effective date of a merger and before the end of the initial plan year, the amount of unfunded vested benefits allocable to

the employer shall be determined as if each plan had remained a separate plan. In making this determination, the plan sponsor shall use the allocation method of the withdrawing employer's prior plan and shall compute the employer's allocable share of the plan's unfunded vested benefits as if the day before the effective date of the merger were the end of the last plan year prior to the withdrawal.

PART 4219—NOTICE, COLLECTION, AND REDETERMINATION OF WITHDRAWAL LIABILITY

Subpart A—General

Sec.

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4219.31 Overdue and defaulted withdrawal liability; overpayment.

4219.32 Interest on overdue, defaulted and overpaid withdrawal liability.

4219.33 Plan rules concerning overdue and defaulted withdrawal liability.

Authority: 29 U.S.C. 1302(b)(3) and 1399(c)(6).

Subpart A—General

§ 4219.1 Purpose and scope.

(a) *Subpart A.* Subpart A of this part describes the purpose and scope of the provisions in this part and defined terms used in this part.

(b) *Subpart B.*

(1) *Purpose.* When a multiemployer plan terminates by the withdrawal of every employer from the plan, or when substantially all employers withdraw from a multiemployer plan pursuant to an agreement or arrangement to withdraw from the plan, section 4219(c)(1)(D)(i) of ERISA requires that the liability of such withdrawing employers be determined (or redetermined) without regard to the 20-year limitation on annual payments established in section 4219(c)(1)(B) of ERISA. In addition, section 4219(c)(1)(D)(ii) requires that, upon the

occurrence of a withdrawal described above, the total unfunded vested benefits of the plan be fully allocated among such withdrawing employers in a manner that is not inconsistent with PBGC regulations. Section 4209(c) of ERISA provides that the *de minimis* reduction established in sections 4209 (a) and (b) of ERISA shall not apply to an employer that withdraws in a plan year in which substantially all employers withdraw from the plan, or to an employer that withdraws pursuant to an agreement to withdraw during a period of one or more plan years during which substantially all employers withdraw pursuant to an agreement or arrangement to withdraw. The purpose of subpart B of this part is to prescribe rules, pursuant to sections 4219(c)(1)(D) and 4209(c) of ERISA, for redetermining an employer's withdrawal liability and fully allocating the unfunded vested benefits of a multiemployer plan in either of two mass-withdrawal situations: the termination of a plan by the withdrawal of every employer and the withdrawal of substantially all employers pursuant to an agreement or arrangement to withdraw. Subpart B also prescribes rules for redetermining the liability of an employer without regard to section 4209 (a) or (b) when the employer withdraws in a plan year in which substantially all employers withdraw, regardless of the occurrence of a mass withdrawal. (See part 4281 regarding the valuation of unfunded vested benefits to be fully allocated under subpart B, and parts 4041A and 4281 regarding the powers and duties of the plan sponsor of a plan terminated by mass withdrawal.)

(2) *Scope.* Subpart B applies to multiemployer plans covered by title IV of ERISA, with respect to which there is a termination by the withdrawal of every employer (including a plan created by a partition pursuant to section 4233 of ERISA) or a withdrawal of substantially all employers in the plan pursuant to an agreement or arrangement to withdraw from the plan, and to employers that withdraw from such multiemployer plans. The obligations of a plan sponsor of a mass-withdrawal-terminated plan under subpart B shall cease to apply when the plan assets are distributed in full satisfaction of all nonforfeitable benefits under the plan. Subpart B also applies, to the extent appropriate, to multiemployer plans with respect to which there is a withdrawal of substantially all employers in a single plan year and to employers that withdraw from such plans in that plan year.

(c) *Subpart C.* Subpart C establishes the interest rate to be charged on overdue, defaulted and overpaid withdrawal liability under section 4219(c)(6) of ERISA, and authorizes multiemployer plans to adopt alternative rules concerning assessment of interest and related matters. Subpart C applies to multiemployer plans covered under title IV of ERISA, and to employers that have withdrawn from such plans after April 28, 1980 (May 2, 1979, for certain employers in the seagoing industry).

§ 4219.2 Definitions.

(a) The following terms are defined in section 4001.2 of this chapter: employer, ERISA, IRS, mass withdrawal, multiemployer plan, nonforfeitable benefit, PBGC, plan, and plan year.

(b) For purposes of this part:

Initial withdrawal liability means the amount of withdrawal liability determined in accordance with sections 4201 through 4225 of title IV without regard to the occurrence of a mass withdrawal.

Mass withdrawal liability means the sum of an employer's liability for *de minimis* amounts, liability for 20-year-limitation amounts, and reallocation liability.

Mass withdrawal valuation date means—

(1) In the case of a termination by mass withdrawal, the last day of the plan year in which the plan terminates; or

(2) In the case of a withdrawal of substantially all employers pursuant to an agreement or arrangement to withdraw, the last day of the plan year as of which substantially all employers have withdrawn.

Reallocation liability means the amount of unfunded vested benefits allocated to an employer in the event of a mass withdrawal.

Reallocation record date means a date selected by the plan sponsor, which shall be not earlier than the date of the plan's actuarial report for the year of the mass withdrawal and not later than one year after the mass withdrawal valuation date.

Redetermination liability means the sum of an employer's liability for *de minimis* amounts and the employer's liability for 20-year-limitation amounts.

Unfunded vested benefits means the amount by which the present value of a plan's vested benefits exceeds the value of plan assets (including claims of the plan for unpaid initial withdrawal liability and redetermination liability), determined in accordance with section 4281 of ERISA and part 4281, subpart B.

(c) For purposes of subpart B—

Withdrawal means a complete withdrawal as defined in section 4203 of ERISA.

Subpart B—Redetermination of Withdrawal Liability Upon Mass Withdrawal

§ 4219.11 Withdrawal liability upon mass withdrawal.

(a) *Initial withdrawal liability.* The plan sponsor of a multiemployer plan that experiences a mass withdrawal shall determine initial withdrawal liability pursuant to section 4201 of ERISA of every employer that has completely or partially withdrawn from the plan and for whom the liability has not previously been determined and, in accordance with section 4202 of ERISA, notify each employer of the amount of the initial withdrawal liability and collect the amount of the initial withdrawal liability from each employer.

(b) *Mass withdrawal liability.* The plan sponsor of a multiemployer plan that experiences a mass withdrawal shall also—

(1) Notify withdrawing employers, in accordance with § 4219.16(a), that a mass withdrawal has occurred;

(2) Within 150 days after the mass withdrawal valuation date, determine the liability of withdrawn employers for *de minimis* amounts and for 20-year-limitation amounts in accordance with §§ 4219.13 and 4219.14;

(3) Within one year after the reallocation record date, determine the reallocation liability of withdrawn employers in accordance with § 4219.15;

(4) Notify each withdrawing employer of the amount of mass withdrawal liability determined pursuant to this subpart and the schedule for payment of such liability, and demand payment of and collect that liability, in accordance with § 4219.16; and

(5) Notify the PBGC of the occurrence of a mass withdrawal and certify, in accordance with § 4219.17, that determinations of mass withdrawal liability have been completed.

(c) *Extensions of time.* The plan sponsor of a multiemployer plan that experiences a mass withdrawal may apply to the PBGC for an extension of the deadlines contained in paragraph (b) of this section. The PBGC shall approve such a request only if it finds that failure to grant the extension will create an unreasonable risk of loss to plan participants or the PBGC.

§ 4219.12 Employers liable upon mass withdrawal.

(a) *Liability for de minimis amounts.* An employer shall be liable for *de*

minimis amounts to the extent provided in section 4219(c)(1)(D) of ERISA if the employer's initial withdrawal liability was reduced pursuant to section 4209 (a) or (b) of ERISA.

(b) *Liability for 20-year-limitation amounts.* An employer shall be liable for 20-year-limitation amounts to the extent provided in section 4219(c)(1)(D) of ERISA.

(c) *Liability for reallocation liability.* An employer shall be liable for reallocation liability if the employer withdrew pursuant to an agreement or arrangement to withdraw from a multiemployer plan from which substantially all employers withdrew pursuant to an agreement or arrangement to withdraw, or if the employer withdrew after the beginning of the second full plan year preceding the termination date from a plan that terminated by the withdrawal of every employer, and, as of the reallocation record date—

(1) The employer has not been completely liquidated or dissolved;

(2) The employer is not the subject of a case or proceeding under title 11, United States Code, or any case or proceeding under similar provisions of state insolvency laws, except that a plan sponsor may determine that such an employer is liable for reallocation liability if the plan sponsor determines that the employer is reasonably expected to be able to pay its initial withdrawal liability and its redetermination liability in full and on time to the plan; and

(3) The plan sponsor has not determined that the employer's initial withdrawal liability or its redetermination liability is limited by section 4225 of ERISA.

(d) *General exclusion.* In the event that a plan experiences successive mass withdrawals, an employer that has been determined to be liable under this subpart for any component of mass withdrawal liability shall not be liable as a result of the same withdrawal for that component of mass withdrawal liability with respect to a subsequent mass withdrawal.

(e) *Free-look rule.* An employer that is not liable for initial withdrawal liability pursuant to a plan amendment adopting section 4210(a) of ERISA shall not be liable for *de minimis* amounts or for 20-year-limitation amounts, but shall be liable for reallocation liability in accordance with paragraph (c) of this section.

(f) *Payment of initial withdrawal liability.* An employer's payment of its total initial withdrawal liability, whether by prepayment or otherwise, for a withdrawal which is later

determined to be part of a mass withdrawal shall not exclude the employer from or otherwise limit the employer's mass withdrawal liability under this subpart.

(g) *Agreement presumed.* Withdrawal by an employer during a period of three consecutive plan years within which substantially all employers withdraw from a plan shall be presumed to be a withdrawal pursuant to an agreement or arrangement to withdraw unless the employer proves otherwise by a preponderance of the evidence.

§ 4219.13 Amount of liability for *de minimis* amounts.

An employer that is liable for *de minimis* amounts shall be liable to the plan for the amount by which the employer's allocable share of unfunded vested benefits for the purpose of determining its initial withdrawal liability was reduced pursuant to section 4209 (a) or (b) of ERISA. Any liability for *de minimis* amounts determined under this section shall be limited by section 4225 of ERISA to the extent that section would have been limiting had the employer's initial withdrawal liability been determined without regard to the *de minimis* reduction.

§ 4219.14 Amount of liability for 20-year-limitation amounts.

An employer that is liable for 20-year-limitation amounts shall be liable to the plan for an amount equal to the present value of all initial withdrawal liability payments for which the employer was not liable pursuant to section 4219(c)(1)(B) of ERISA. The present value of such payments shall be determined as of the end of the plan year preceding the plan year in which the employer withdrew, using the assumptions that were used to determine the employer's payment schedule for initial withdrawal liability pursuant to section 4219(c)(1)(A)(ii) of ERISA. Any liability for 20-year-limitation amounts determined under this section shall be limited by section 4225 of ERISA to the extent that section would have been limiting had the employer's initial withdrawal liability been determined without regard to the 20-year limitation.

§ 4219.15 Determination of reallocation liability.

(a) *General rule.* In accordance with the rules in this section, the plan sponsor shall determine the amount of unfunded vested benefits to be reallocated and shall fully allocate those unfunded vested benefits among all employers liable for reallocation liability.

(b) *Amount of unfunded vested benefits to be reallocated.* For purposes of this section, the amount of a plan's unfunded vested benefits to be reallocated shall be the amount of the plan's unfunded vested benefits, determined as of the mass withdrawal valuation date, adjusted to exclude from plan assets the value of the plan's claims for unpaid initial withdrawal liability and unpaid redetermination liability that are deemed to be uncollectible under § 4219.12(c)(1) or (c)(2).

(c) *Amount of reallocation liability.* An employer's reallocation liability shall be equal to the sum of the employer's initial allocable share of the plan's unfunded vested benefits, as determined under paragraph (c)(1) of this section, plus any unassessable amounts allocated to the employer under paragraph (c)(2), limited by section 4225 of ERISA to the extent that section would have been limiting had the employer's reallocation liability been included in the employer's initial withdrawal liability. If a plan is determined to have no unfunded vested benefits to be reallocated, the reallocation liability of each liable employer shall be zero.

(1) *Initial allocable share.* Except as otherwise provided in rules adopted by the plan pursuant to paragraph (d) of this section, and in accordance with paragraph (c)(3) of this section, an employer's initial allocable share shall be equal to the product of the plan's unfunded vested benefits to be reallocated, multiplied by a fraction—

(i) The numerator of which is the sum of the employer's initial withdrawal liability and the employer's redetermination liability, if any; and

(ii) The denominator of which is the sum of all initial withdrawal liabilities and all the redetermination liabilities of all employers liable for reallocation liability.

(2) *Allocation of unassessable amounts.* If after computing each employer's initial allocable share of unfunded vested benefits, the plan sponsor knows that any portion of an employer's initial allocable share is unassessable as withdrawal liability because of the limitations in section 4225 of ERISA, the plan sponsor shall allocate any such unassessable amounts among all other liable employers. This allocation shall be done by prorating the unassessable amounts on the basis of each such employer's initial allocable share. No employer shall be liable for unfunded vested benefits allocated under paragraph (c)(1) or this paragraph to another employer that are determined to be unassessable or uncollectible

subsequent to the plan sponsor's demand for payment of reallocation liability.

(3) *Special rule for certain employers with no or reduced initial withdrawal liability.* If an employer has no initial withdrawal liability because of the application of the free-look rule in section 4210 of ERISA, then, in computing the fraction prescribed in paragraph (c)(1), the plan sponsor shall use the employer's allocable share of unfunded vested benefits, determined under section 4211 of ERISA at the time of the employer's withdrawal and adjusted in accordance with section 4225 of ERISA, if applicable. If an employer's initial withdrawal liability was reduced pursuant to section 4209(a) or (b) of ERISA and the employer is not liable for *de minimis* amounts pursuant to § 4219.13, then, in computing the fraction prescribed in paragraph (c)(1) of this section, the plan sponsor shall use the employer's allocable share of unfunded vested benefits, determined under section 4211 of ERISA at the time of the employer's withdrawal and adjusted in accordance with section 4225 of ERISA, if applicable.

(d) *Plan rules.* Plans may adopt rules for calculating an employer's initial allocable share of the plan's unfunded vested benefits in a manner other than that prescribed in paragraph (c)(1) of this section, provided that those rules allocate the plan's unfunded vested benefits to substantially the same extent the prescribed rules would. Plan rules adopted under this paragraph shall operate and be applied uniformly with respect to each employer. If such rules would increase the reallocation liability of any employer, they may be effective with respect to that employer earlier than three full plan years after their adoption only if the employer consents to the application of the rules to itself. The plan sponsor shall give a written notice to each contributing employer and each employee organization that represents employees covered by the plan of the adoption of plan rules under this paragraph.

§ 4219.16 Imposition of liability.

(a) *Notice of mass withdrawal.* Within 30 days after the mass withdrawal valuation date, the plan sponsor shall give written notice of the occurrence of a mass withdrawal to each employer that the plan sponsor reasonably expects may be a liable employer under § 4219.12. The notice shall include—

- (1) The mass withdrawal valuation date;
- (2) A description of the consequences of a mass withdrawal under this subpart; and

(3) A statement that each employer obligated to make initial withdrawal liability payments shall continue to make those payments in accordance with its schedule. Failure of the plan sponsor to notify an employer of a mass withdrawal as required by this paragraph shall not cancel the employer's mass withdrawal liability or waive the plan's claim for such liability.

(b) *Notice of redetermination liability.* Within 30 days after the date as of which the plan sponsor is required under § 4219.11(b)(2) to have determined the redetermination liability of employers, the plan sponsor shall issue a notice of redetermination liability in writing to each employer liable under § 4219.12 for *de minimis* amounts or 20-year-limitation amounts, or both. The notice shall include—

- (1) The amount of the employer's liability, if any, for *de minimis* amounts determined pursuant to § 4219.13;
- (2) The amount of the employer's liability, if any, for 20-year-limitation amounts determined pursuant to § 4219.14;

(3) The schedule for payment of the liability determined under paragraph (f) of this section;

(4) A demand for payment of the liability in accordance with the schedule; and

(5) A statement of when the plan sponsor expects to issue notices of reallocation liability to liable employers.

(c) *Notice of reallocation liability.* Within 30 days after the date as of which the plan sponsor is required under § 4219.11(b)(3) to have determined the reallocation liability of employers, the plan sponsor shall issue a notice of reallocation liability in writing to each employer liable for reallocation liability. The notice shall include—

- (1) The amount of the employer's reallocation liability determined pursuant to § 4219.15;
- (2) The schedule for payment of the liability determined under paragraph (f) of this section; and

(3) A demand for payment of the liability in accordance with the schedule.

(d) *Notice to employers not liable.* The plan sponsor shall notify in writing any employer that receives a notice of mass withdrawal under paragraph (a) of this section and subsequently is determined not to be liable for mass withdrawal liability or any component thereof. The notice shall specify the liability from which the employer is excluded and shall be provided to the employer not later than the date by which liable employers are to be provided notices of reallocation liability pursuant to

paragraph (c) of this section. If the employer is not liable for mass withdrawal liability, the notice shall also include a statement, if applicable, that the employer is obligated to continue to make initial withdrawal liability payments in accordance with its existing schedule for payment of such liability.

(e) *Combined notices.* A plan sponsor may combine a notice of redetermination liability with the notice of and demand for payment of initial withdrawal liability. If a mass withdrawal and a withdrawal described in § 4219.18 occur concurrently, a plan sponsor may combine—

(1) A notice of mass withdrawal with a notice of withdrawal issued pursuant to § 4219.18(d); and

(2) A notice of redetermination liability with a notice of liability issued pursuant to § 4219.18(e).

(f) *Payment schedules.* The plan sponsor shall establish payment schedules for payment of an employer's mass withdrawal liability in accordance with the rules in section 4219(c) of ERISA, as modified by this paragraph. For an employer that owes initial withdrawal liability as of the mass withdrawal valuation date, the plan sponsor shall establish new payment schedules for each element of mass withdrawal liability by amending the initial withdrawal liability payment schedule in accordance with the paragraph (f)(1) of this section. For all other employers, the payment schedules shall be established in accordance with paragraph (f)(2).

(1) *Employers owing initial withdrawal liability as of mass withdrawal valuation date.* For an employer that owes initial withdrawal liability as of the mass withdrawal valuation date, the plan sponsor shall amend the existing schedule of payments in order to amortize the new amounts of liability being assessed, *i.e.*, redetermination liability and reallocation liability. With respect to redetermination liability, the plan sponsor shall add that liability to the total initial withdrawal liability and determine a new payment schedule, in accordance with section 4219(c)(1) of ERISA, using the interest assumptions that were used to determine the original payment schedule. For reallocation liability, the plan sponsor shall add that liability to the present value, as of the date following the mass withdrawal valuation date, of the unpaid portion of the amended payment schedule described in the preceding sentence and determine a new payment schedule of level annual payments, calculated as if the first payment were made on the day

following the mass withdrawal valuation date using the interest assumptions used for determining the amount of unfunded vested benefits to be reallocated.

(2) *Other employers.* For an employer that had no initial withdrawal liability, or had fully paid its liability prior to the mass withdrawal valuation date, the plan sponsor shall determine the payment schedule for redetermination liability, in accordance with section 4219(c)(1) of ERISA, in the same manner and using the same interest assumptions as were used or would have been used in determining the payment schedule for the employer's initial withdrawal liability. With respect to reallocation liability, the plan sponsor shall follow the rules prescribed in paragraph (f)(1) of this section.

(g) *Review of mass withdrawal liability determinations.* Determinations of mass withdrawal liability made pursuant to this subpart shall be subject to plan review under section 4219(b)(2) of ERISA and to arbitration under section 4221 of ERISA within the times prescribed by those sections. Matters that relate solely to the amount of, and schedule of payments for, an employer's initial withdrawal liability are not matters relating to the employer's liability under this subpart and are not subject to review pursuant to this paragraph.

(h) *Cessation of withdrawal liability obligations.* If the plan sponsor of a terminated plan distributes plan assets in full satisfaction of all nonforfeitable benefits under the plan, the plan sponsor's obligation to impose and collect liability, and each employer's obligation to pay liability, in accordance with this subpart ceases on the date of such distribution.

(i) *Determination that a mass withdrawal has not occurred.* If a plan sponsor determines, after imposing mass withdrawal liability pursuant to this subpart, that a mass withdrawal has not occurred, the plan sponsor shall refund to employers all payments of mass withdrawal liability with interest, except that a plan sponsor shall not refund payments of liability for *de minimis* amounts to an employer that remains liable for such amounts under § 4219.18. Interest shall be credited at the interest rate prescribed in subpart C and shall accrue from the date the payment was received by the plan until the date of the refund.

§ 4219.17 Filings with PBGC.

(a) *Filing requirements.* The plan sponsor shall file with PBGC a notice that a mass withdrawal has occurred and separate certifications that

determinations of redetermination liability and reallocation liability have been made and notices provided to employers in accordance with this subpart.

(b) *Who shall file.* The plan sponsor or a duly authorized representative acting on behalf of the plan sponsor shall sign and file the notice and the certifications.

(c) *When to file.* A notice of mass withdrawal for a plan from which substantially all employers withdraw pursuant to an agreement or arrangement to withdraw shall be filed with the PBGC no later than 30 days after the mass withdrawal valuation date. A notice of mass withdrawal termination shall be filed within the time prescribed for the filing of that notice in part 4041A, subparts A and B, of this chapter. Certifications of liability determinations shall be filed with the PBGC no later than 30 days after the date on which the plan sponsor is required to have provided employers with notices pursuant to § 4219.16.

(d) *Where to file.* The notice and certifications may be sent by mail or submitted by hand during normal working hours to Reports Processing, Insurance Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005-4026.

(e) *Filing date.* For purposes of paragraph (c)—

(1) The notice is considered filed on the date of the postmark stamped on the cover in which the notice is mailed if—

(i) The postmark was made by the United States Postal Service; and

(ii) The notice was mailed postage prepaid, properly packaged and addressed to the PBGC.

(2) If both conditions described in paragraph (e)(1) are not met, the notice is considered filed on the date it is received by the PBGC, except that notices received after regular business hours are considered filed on the next regular business day.

(f) *Contents of notice of mass withdrawal.* If a plan terminates by the withdrawal of every employer, a notice of termination filed in accordance with part 4041A, subparts A and B, of this chapter shall satisfy the requirements for a notice of mass withdrawal under this subpart. If substantially all employers withdraw from a plan pursuant to an agreement or arrangement to withdraw, the notice of mass withdrawal shall contain the following information:

(1) The name of the plan.

(2) The name, address and telephone number of the plan sponsor and of the

duly authorized representative, if any, of the plan sponsor.

(3) The nine-digit Employer Identification Number (EIN) assigned by the IRS to the plan sponsor and the three-digit Plan Identification Number (PIN) assigned by the plan sponsor to the plan, and, if different, the EIN or PIN last filed with the PBGC. If no EIN or PIN has been assigned, the notice shall so indicate.

(4) The mass withdrawal valuation date.

(5) A description of the facts on which the plan sponsor has based its determination that a mass withdrawal has occurred, including the number of contributing employers withdrawn and the number remaining in the plan, and a description of the effect of the mass withdrawal on the plan's contribution base.

(g) *Contents of certifications.* Each certification shall contain the following information:

(1) The name of the plan.

(2) The name, address and telephone number of the plan sponsor and of the duly authorized representative, if any, of the plan sponsor.

(3) The nine-digit Employer Identification Number (EIN) assigned by the IRS to the plan sponsor and the three-digit Plan Identification Number (PIN) last assigned by the plan sponsor to the plan, and, if different, the EIN or PIN filed with the PBGC. If no EIN or PIN has been assigned, the notice shall so indicate.

(4) Identification of the liability determination to which the certification relates.

(5) A certification, signed by the plan sponsor or a duly authorized representative, that the determinations have been made and the notices given in accordance with this subpart.

(6) For reallocation liability certifications—

(i) A certification, signed by the plan's actuary, that the determination of unfunded vested benefits has been done in accordance with part 4281, subpart B; and

(ii) A copy of plan rules, if any, adopted pursuant to § 4219.15(d).

(h) *Additional information.* In addition to the information described in paragraph (g) of this section, the PBGC may require the plan sponsor to submit any other information the PBGC determines it needs in order to monitor compliance with this subpart.

§ 4219.18 Withdrawal in a plan year in which substantially all employers withdraw.

(a) *General rule.* An employer that withdraws in a plan year in which substantially all employers withdraw

from the plan shall be liable to the plan for *de minimis* amounts if the employer's initial withdrawal liability was reduced pursuant to section 4209(a) or (b) of ERISA.

(b) *Amount of liability.* An employer's liability for *de minimis* amounts under this section shall be determined pursuant to § 4219.13.

(c) *Plan sponsor's obligations.* The plan sponsor of a plan that experiences a withdrawal described in paragraph (a) shall—

(1) Determine and collect initial withdrawal liability of every employer that has completely or partially withdrawn, in accordance with sections 4201 and 4202 of ERISA;

(2) Notify each employer that is or may be liable under this section, in accordance with paragraph (d) of this section;

(3) Within 90 days after the end of the plan year in which the withdrawal occurred, determine, in accordance with paragraph (b) of this section, the liability of each withdrawing employer that is liable under this section;

(4) Notify each liable employer, in accordance with paragraph (e) of this section, of the amount of its liability under this section, demand payment of and collect that liability; and

(5) Certify to the PBGC that determinations of liability have been completed, in accordance with paragraph (g) of this section.

(d) *Notice of withdrawal.* Within 30 days after the end of a plan year in which a plan experiences a withdrawal described in paragraph (a), the plan sponsor shall notify in writing each employer that is or may be liable under this section. The notice shall specify the plan year in which substantially all employers have withdrawn, describe the consequences of such withdrawal under this section, and state that an employer obligated to make initial withdrawal liability payments shall continue to make those payments in accordance with its schedule.

(e) *Notice of liability.* Within 30 days after the determination of liability, the plan sponsor shall issue a notice of liability in writing to each liable employer. The notice shall include—

(1) The amount of the employer's liability for *de minimis* amounts;

(2) A schedule for payment of the liability, determined under § 4219.16(f); and

(3) A demand for payment of the liability in accordance with the schedule.

(f) *Review of liability determinations.* Determinations of liability made pursuant to this section shall be subject to plan review under section 4219(b)(2)

of ERISA and to arbitration under section 4221 of ERISA, subject to the limitations contained in § 4219.16(g).

(g) *Notice to the PBGC.* No later than 30 days after the notices of liability under this section are required to be provided to liable employers, the plan sponsor shall file with the PBGC a notice. The notice shall include the items described in § 4219.17 (g)(1) through (g)(3), as well as the information listed below. In addition, the PBGC may require the plan sponsor to submit any further information that the PBGC determines it needs in order to monitor compliance with this section.

(1) The plan year in which the withdrawal occurred.

(2) A description of the effect of the withdrawal, including the number of contributing employers that withdrew in the plan year in which substantially all employers withdrew, the number of employers remaining in the plan, and a description of the effect of the withdrawal on the plan's contribution base.

(3) A certification, signed by the plan sponsor or duly authorized representative, that determinations have been made and notices given in accordance with this section.

§ 4219.19 Information collection.

The information collection requirements contained in §§ 4219.16, 4219.17, and 4219.18 have been approved by the Office of Management and Budget under control number 1212-0034.

Subpart C—Overdue, Defaulted, and Overpaid Withdrawal Liability

§ 4219.31 Overdue and defaulted withdrawal liability; overpayment.

(a) *Overdue withdrawal liability payment.* Except as otherwise provided in rules adopted by the plan in accordance with § 4219.33, a withdrawal liability payment is overdue if it is not paid on the date set forth in the schedule of payments established by the plan sponsor.

(b) *Default.*

(1) Except as provided in paragraph (c)(1), “default” means—

(i) The failure of an employer to pay any overdue withdrawal liability payment within 60 days after the employer receives written notification from the plan sponsor that the payment is overdue; and

(ii) Any other event described in rules adopted by the plan which indicates a substantial likelihood that an employer will be unable to pay its withdrawal liability.

(2) In the event of a default, a plan sponsor may require immediate

payment of all or a portion of the outstanding amount of an employer's withdrawal liability, plus interest. In the event that the plan sponsor accelerates only a portion of the outstanding amount of an employer's withdrawal liability, the plan sponsor shall establish a new schedule of payments for the remaining amount of the employer's withdrawal liability.

(c) *Plan review or arbitration of liability determination.* The following rules shall apply with respect to the obligation to make withdrawal liability payments during the period for plan review and arbitration and with respect to the failure to make such payments:

(1) A default as a result of failure to make any payments shall not occur until the 61st day after the last of—

(i) Expiration of the period described in section 4219(b)(2)(A) of ERISA;

(ii) If the employer requests review under section 4219(b)(2)(A) of ERISA of the plan's withdrawal liability determination or the schedule of payments established by the plan, expiration of the period described in section 4221(a)(1) of ERISA for initiation of arbitration; or

(iii) If arbitration is timely initiated either by the plan, the employer or both, issuance of the arbitrator's decision.

(2) Any amounts due before the expiration of the period described in paragraph (c)(1) shall be paid in accordance with the schedule established by the plan sponsor. If a payment is not made when due under the schedule, the payment is overdue and interest shall accrue in accordance with the rules and at the same rate set forth in § 4219.32.

(d) *Overpayments.* If the plan sponsor or an arbitrator determines that payments made in accordance with the schedule of payments established by the plan sponsor have resulted in an overpayment of withdrawal liability, the plan sponsor shall refund the overpayment, with interest, in a lump sum. The plan sponsor shall credit interest on the overpayment from the date of the overpayment to the date on which the overpayment is refunded to the employer at the same rate as the rate for overdue withdrawal liability payments, as established under § 4219.32 or by the plan pursuant to § 4219.33.

§ 4219.32 Interest on overdue, defaulted and overpaid withdrawal liability.

(a) *Interest assessed.* The plan sponsor of a multiemployer plan—

(1) Shall assess interest on overdue withdrawal liability payments from the due date, as defined in paragraph (d) of

this section, until the date paid, as defined in paragraph (e); and

(2) In the event of a default, may assess interest on any accelerated portion of the outstanding withdrawal liability from the due date, as defined in paragraph (d) of this section, until the date paid, as defined in paragraph (e).

(b) *Interest rate.* Except as otherwise provided in rules adopted by the plan pursuant to § 4219.33, interest under this section shall be charged or credited for each calendar quarter at an annual rate equal to the average quoted prime rate on short-term commercial loans for the fifteenth day (or next business day if the fifteenth day is not a business day) of the month preceding the beginning of each calendar quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates").

(c) *Calculation of interest.* The interest rate under paragraph (b) of this section is the nominal rate for any calendar quarter or portion thereof. The amount of interest due the plan for overdue or defaulted withdrawal liability, or due the employer for overpayment, is equal to the overdue, defaulted, or overpaid amount multiplied by:

(1) For each full calendar quarter in the period from the due date (or date of overpayment) to the date paid (or date of refund), one-fourth of the annual rate in effect for that quarter;

(2) For each full calendar month in a partial quarter in that period, one-twelfth of the annual rate in effect for that quarter; and

(3) For each day in a partial month in that period, one-three-hundred-sixtieth of the annual rate in effect for that month.

(d) *Due date.* Except as otherwise provided in rules adopted by the plan, the due date from which interest accrues shall be, for an overdue withdrawal liability payment and for an amount of withdrawal liability in default, the date of the missed payment that gave rise to the delinquency or the default.

(e) *Date paid.* Any payment of withdrawal liability shall be deemed to have been paid on the date on which it is received.

§ 4219.33 Plan rules concerning overdue and defaulted withdrawal liability.

Plans may adopt rules relating to overdue and defaulted withdrawal liability, provided that those rules are consistent with ERISA. These rules may include, but are not limited to, rules for determining the rate of interest to be charged on overdue, defaulted and overpaid withdrawal liability (provided

that the rate reflects prevailing market rates for comparable obligations); rules providing reasonable grace periods during which late payments may be made without interest; additional definitions of default which indicate a substantial likelihood that an employer will be unable to pay its withdrawal liability; and rules pertaining to acceleration of the outstanding balance on default. Plan rules adopted under this section shall be reasonable. Plan rules shall operate and be applied uniformly with respect to each employer, except that the rules may take into account the creditworthiness of an employer. Rules which take into account the creditworthiness of an employer shall state with particularity the categories of creditworthiness the plan will use, the specific differences in treatment accorded employers in different categories, and the standards and procedures for assigning an employer to a category.

PART 4220—PROCEDURES FOR PBGC APPROVAL OF PLAN AMENDMENTS

Sec.

4220.1 Purpose and scope.

4220.2 Definitions.

4220.3 Requests for PBGC approval.

4220.4 PBGC action on requests.

Authority: 29 U.S.C. 1302(b)(3), 1400.

§ 4220.1 Purpose and scope.

(a) *General.* This part establishes procedures under which a plan sponsor shall request the PBGC to approve a plan amendment under section 4220 of ERISA. This part applies to all multiemployer plans covered by title IV of ERISA that adopt amendments pursuant to the authorization of sections 4201–4219 of ERISA (except for amendments adopted pursuant to section 4211(c)(5)). (The covered amendments are set forth in paragraph (b) of this section.) The subsequent modification of a plan amendment adopted by authorization of those sections is also covered by this part. This part does not, however, cover a plan amendment that merely repeals a previously adopted amendment, returning the plan to the statutorily prescribed rule.

(b) *Covered amendments.*

Amendments made pursuant to the following sections of ERISA are covered by this part:

- (1) Section 4203 (b)(1)(B)(ii).
- (2) Section 4203(c)(4).
- (3) Section 4205(c)(1).
- (4) Section 4205(d).
- (5) Section 4209(b).
- (6) Section 4210(b)(2).
- (7) Section 4211(c)(1).

(8) Section 4211(c)(4)(D).

(9) Section 4211(d)(1).

(10) Section 4211(d)(2).

(11) Section 4219(c)(1)(C)(ii)(I).

(12) Section 4219(c)(1)(C)(iii).

(c) *Exception.* Submission of a request for approval under this part is not required for a plan amendment for which the PBGC has published a notice in the Federal Register granting class approval.

§ 4220.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: employer, ERISA, IRS, multiemployer plan, PBGC, plan, and plan sponsor.

§ 4220.3 Requests for PBGC approval.

(a) *Filing of request.* A request for approval of an amendment filed with the PBGC in accordance with this section shall constitute notice to the PBGC for purposes of the 90-day period specified in section 4220 of ERISA. A request is deemed filed on the date on which a request containing all information required by paragraph (d) of this section is received by the PBGC.

(b) *Who may request.* The plan sponsor, or a duly authorized representative acting on behalf of a plan sponsor, shall sign and submit the request.

(c) *Where to file.* The request shall be delivered by hand or by mail to Reports Processing, Insurance Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026.

(d) *Information.* Each request filed shall contain the following information:

(1) The name of the plan for which the amendment is being submitted, and the name, address and the telephone number of the plan sponsor or its duly authorized representative.

(2) The nine-digit Employer Identification Number (EIN) assigned by the IRS to the plan sponsor and the three-digit Plan Identification Number (PIN) assigned by the plan sponsor to the plan, and, if different, the EIN or PIN last filed with PBGC. If no EIN or PIN has been assigned, that fact must be indicated.

(3) A copy of the amendment as adopted, including its proposed effective date.

(4) A copy of the most recent actuarial valuation of the plan.

(5) A statement containing a certification that notice of the adoption of the amendment has been given to all employers who have an obligation to contribute under the plan and to all employee organizations representing employees covered by the plan.

(6) Any other information that the plan sponsor believes to be pertinent to its request.

(e) *Supplemental information.* The PBGC may require a plan sponsor to submit any other information that the PBGC determines to be necessary to review a request under this part. The PBGC may suspend the running of the 90-day period pursuant to § 4220.4(c), pending the submission of the supplemental information.

(Approved by the Office of Management and Budget under control number 1212-0031)

§ 4220.4 PBGC action on requests.

(a) *General.* Upon receipt of a complete request, the PBGC shall notify the plan sponsor in writing of the date of commencement of the 90-day period specified in section 4220 of ERISA. Except as provided in paragraph (c) of this section, the PBGC shall approve or disapprove a plan amendment submitted to it under this part within 90 days after receipt of a complete request for approval. If the PBGC fails to act within the 90-day period, or within that period notifies the plan sponsor that it will not disapprove the amendment, the amendment may be made effective without the approval of the PBGC.

(b) *Decision on request.* The PBGC's decision on a request for approval shall be in writing. If the PBGC disapproves the plan amendment, the decision shall state the reasons for the disapproval. An approval by the PBGC constitutes its finding only with respect to the issue of risk as set forth in section 4220(c) of ERISA, and not with respect to whether the amendment is otherwise properly adopted in accordance with the terms of ERISA and the plan in question.

(c) *Suspension of the 90-day period.* The PBGC may suspend the running of the 90-day period referred to in paragraph (a) of this section if it determines that additional information is required under § 4220.3(e). When it does so, PBGC's request for additional information will advise the plan sponsor that the running of 90-day period has been suspended. The 90-day period will resume running on the date on which the additional information is received by the PBGC, and the PBGC will notify the plan sponsor of that date upon receipt of the information.

PART 4221—ARBITRATION OF DISPUTES IN MULTIEMPLOYER PLANS

Sec.

- 4221.1 Purpose and scope.
- 4221.2 Definitions.
- 4221.3 Initiation of arbitration.
- 4221.4 Appointment of the arbitrator.

- 4221.5 Powers and duties of the arbitrator.
- 4221.6 Hearing.
- 4221.7 Reopening of proceedings.
- 4221.8 Award.
- 4221.9 Reconsideration of award.
- 4221.10 Costs.
- 4221.11 Waiver of rules.
- 4221.12 Calculation of periods of time.
- 4221.13 Filing or service of documents.
- 4221.14 PBGC-approved arbitration procedures.

Authority: 29 U.S.C. 1302(b)(3), 1401.

§ 4221.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to establish procedures for the arbitration, pursuant to section 4221 of ERISA, of withdrawal liability disputes arising under sections 4201 through 4219 and 4225 of ERISA.

(b) *Scope.* This part applies to arbitration proceedings initiated pursuant to section 4221 of ERISA and this part on or after September 26, 1985. On and after the effective date, any plan rules governing arbitration procedures (other than a plan rule adopting a PBGC-approved arbitration procedure in accordance with § 4221.14) are effective only to the extent that they are consistent with this part and adopted by the arbitrator in a particular proceeding.

§ 4221.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: ERISA, IRS, multiemployer plan, PBGC, plan, and plan sponsor.

In addition, for purposes of this part:

Arbitrator means an individual or panel of individuals selected according to this part to decide a dispute concerning withdrawal liability.

Employer means an individual, partnership, corporation or other entity against which a plan sponsor has made a demand for payment of withdrawal liability pursuant to section 4219(b)(1) of ERISA.

Party or parties means the employer and the plan sponsor involved in a withdrawal liability dispute.

Withdrawal liability dispute means a dispute described in § 4221.1(a) of this chapter.

§ 4221.3 Initiation of arbitration.

(a) *Time limits—in general.* Arbitration of a withdrawal liability dispute may be initiated within the time limits described in section 4221(a)(1) of ERISA.

(b) *Waiver or extension of time limits.* Arbitration shall be initiated in accordance with this section, notwithstanding any inconsistent provision of any agreement entered into by the parties before the date on which the employer received notice of the

plan's assessment of withdrawal liability. The parties may, however, agree at any time to waive or extend the time limits for initiating arbitration.

(c) *Establishment of timeliness of initiation.* A party that unilaterally initiates arbitration is responsible for establishing that the notice of initiation of arbitration was timely received by the other party. If arbitration is initiated by agreement of the parties, the date on which the agreement to arbitrate was executed establishes whether the arbitration was timely initiated.

(d) *Contents of agreement or notice.* If the employer initiates arbitration, it shall include in the notice of initiation a statement that it disputes the plan sponsor's determination of its withdrawal liability and is initiating arbitration. A copy of the demand for withdrawal liability and any request for reconsideration, and the response thereto, shall be attached to the notice. If a party other than an employer initiates arbitration, it shall include in the notice a statement that it is initiating arbitration and a brief description of the questions on which arbitration is sought. If arbitration is initiated by agreement, the agreement shall include a brief description of the questions submitted to arbitration. In no case is compliance with formal rules of pleading required.

(e) *Effect of deficient agreement or notice.* If a party fails to object promptly in writing to deficiencies in an initiation agreement or a notice of initiation of arbitration, it waives its right to object.

§ 4221.4 Appointment of the arbitrator.

(a) *Appointment of and acceptance by arbitrator.* The parties shall select the arbitrator within 45 days after the arbitration is initiated, or within such other period as is mutually agreed after the initiation of arbitration, and shall mail to the designated arbitrator a notice of his or her appointment. The notice of appointment shall include a copy of the notice or agreement initiating arbitration, a statement that the arbitration is to be conducted in accordance with this part, and a request for a written acceptance by the arbitrator. The arbitrator's appointment becomes effective upon his or her written acceptance, stating his or her availability to serve and making any disclosures required by paragraph (b) of this section. If the arbitrator does not accept in writing within 15 days after the notice of appointment is mailed or delivered to him or her, he or she is deemed to have declined to act, and the parties shall select a new arbitrator in accordance with paragraph (d) of this section.

(b) *Disclosure by arbitrator and disqualification.* Upon accepting the appointment, the arbitrator shall disclose to the parties any circumstances likely to affect his or her impartiality, including any bias or any financial or personal interest in the result of the arbitration and any past or present relationship with the parties or their counsel. If any party determines that the arbitrator should be disqualified because of the information disclosed, that party shall notify all other parties and the arbitrator no later than 10 days after the arbitrator makes the disclosure required by this paragraph (but in no event later than the commencement of the hearing under § 4221.6). The arbitrator shall then withdraw, and the parties shall select another arbitrator in accordance with paragraph (d) of this section.

(c) *Challenge and withdrawal.* After the arbitrator has been selected, a party may request that he or she withdraw from the proceedings at any point before a final award is rendered on the ground that he or she is unable to render an award impartially. The request for withdrawal shall be served on all other parties and the arbitrator by hand or by certified or registered mail and shall include a statement of the circumstances that, in the requesting party's view, affect the arbitrator's impartiality and a statement that the requesting party has brought these circumstances to the attention of the arbitrator and the other parties at the earliest practicable point in the proceedings. If the arbitrator determines that the circumstances adduced are likely to affect his or her impartiality and have been presented in a timely fashion, he or she shall withdraw from the proceedings and notify the parties of the reasons for his or her withdrawal. The parties shall then select a new arbitrator in accordance with paragraph (d) of this section.

(d) *Filling vacancies.* If the designated arbitrator declines his or her appointment or, after accepting his or her appointment, is disqualified, resigns, dies, withdraws, or is unable to perform his or her duties at any time before a final award is rendered, the parties shall select another arbitrator to fill the vacancy. The selection shall be made, in accordance with the procedure used in the initial selection, within 20 days after the parties receive notice of the vacancy. The matter shall then be reheard by the newly chosen arbitrator, who may, in his or her discretion, rely on all or any portion of the record already established.

(e) *Failure to select arbitrator.* If the parties fail to select an arbitrator within

the time prescribed by this section, either party or both may seek the designation and appointment of an arbitrator in a United States district court pursuant to the provisions of title 9 of the United States Code.

§ 4221.5 Powers and duties of the arbitrator.

(a) *Arbitration hearing.* Except as otherwise provided in this part, the arbitrator shall conduct the arbitration hearing under § 4221.6 in the same manner, and shall possess the same powers, as an arbitrator conducting a proceeding under title 9 of the United States Code.

(1) *Application of the law.* In reaching his or her decision, the arbitrator shall follow applicable law, as embodied in statutes, regulations, court decisions, interpretations of the agencies charged with the enforcement of ERISA, and other pertinent authorities.

(2) *Prehearing discovery.* The arbitrator may allow any party to conduct prehearing discovery by interrogatories, depositions, requests for the production of documents, or other means, upon a showing that the discovery sought is likely to lead to the production of relevant evidence and will not be disproportionately burdensome to the other parties. The arbitrator may impose appropriate sanctions if he or she determines that a party has failed to respond to discovery in good faith or has conducted discovery proceedings in bad faith or for the purpose of harassment. The arbitrator may, at the request of any party or on his or her own motion, require parties to give advance notice of expert or other witnesses that they intend to introduce.

(3) *Admissibility of evidence.* The arbitrator determines the relevance and materiality of the evidence offered during the course of the hearing and is the judge of the admissibility of evidence offered. Conformity to legal rules of evidence is not necessary. To the extent reasonably practicable, all evidence shall be taken in the presence of the arbitrator and the parties. The arbitrator may, however, consider affidavits, transcripts of depositions, and similar documents.

(4) *Production of documents or other evidence.* The arbitrator may subpoena witnesses or documents upon his or her own initiative or upon request by any party after determining that the evidence is likely to be relevant to the dispute.

(b) *Prehearing conference.* If it appears that a prehearing conference will expedite the proceedings, the arbitrator may, at any time before the

commencement of the arbitration hearing under § 4221.6, direct the parties to appear at a conference to consider settlement of the case, clarification of issues and stipulation of facts not in dispute, admission of documents to avoid unnecessary proof, limitations on the number of expert or other witnesses, and any other matters that could expedite the disposition of the proceedings.

(c) *Proceeding without hearing.* The arbitrator may render an award without a hearing if the parties agree and file with the arbitrator such evidence as the arbitrator deems necessary to enable him or her to render an award under § 4221.8.

§ 4221.6 Hearing.

(a) *Time and place of hearing established.* Unless the parties agree to proceed without a hearing as provided in § 4221.5(c), the parties and the arbitrator shall, no later than 15 days after the written acceptance by the arbitrator is mailed to the parties, establish a date and place for the hearing. If agreement is not reached within the 15-day period, the arbitrator shall, within 10 additional days, choose a location and set a hearing date. The date set for the hearing may be no later than 50 days after the mailing date of the arbitrator's written acceptance.

(b) *Notice.* After the time and place for the hearing have been established, the arbitrator shall serve a written notice of the hearing on the parties by hand or by certified or registered mail.

(c) *Appearances.* The parties may appear in person or by counsel or other representatives. Any party that, after being duly notified and without good cause shown, fails to appear in person or by representative at a hearing or conference, or fails to file documents in a timely manner, is deemed to have waived all rights with respect thereto and is subject to whatever orders or determinations the arbitrator may make.

(d) *Record and transcript of hearing.* Upon the request of either party, the arbitrator shall arrange for a record of the arbitration hearing to be made by stenographic means or by tape recording. The cost of making the record and the costs of transcription and copying are costs of the arbitration proceedings payable as provided in § 4221.10(b) except that, if only one party requests that a transcript of the record be made, that party shall pay the cost of the transcript.

(e) *Order of hearing.* The arbitrator shall conduct the hearing in accordance with the following rules:

(1) *Opening.* The arbitrator shall open the hearing and place in the record the

notice of initiation of arbitration or the initiation agreement. The arbitrator may ask for statements clarifying the issues involved.

(2) *Presentation of claim and response.* The arbitrator shall establish the procedure for presentation of claim and response in such a manner as to afford full and equal opportunity to all parties for the presentation of their cases.

(3) *Witnesses.* All witnesses shall testify under oath or affirmation and are subject to cross-examination by opposing parties. If testimony of an expert witness is offered by a party without prior notice to the other party, the arbitrator shall grant the other party a reasonable time to prepare for cross-examination and to produce expert witnesses on its own behalf. The arbitrator may on his or her own initiative call expert witnesses on any issue raised in the arbitration. The cost of any expert called by the arbitrator is a cost of the proceedings payable as provided in § 4221.10(b).

(f) *Continuance of hearing.* The arbitrator may, for good cause shown, grant a continuance for a reasonable period. When granting a continuance, the arbitrator shall set a date for resumption of the hearing.

(g) *Filing of briefs.* Each party may file a written statement of facts and argument supporting the party's position. The parties' briefs are due no later than 30 days after the close of the hearing. Within 15 days thereafter, each party may file a reply brief concerning matters contained in the opposing brief. The arbitrator may establish a briefing schedule and may reduce or extend these time limits. Each party shall deliver copies of all of its briefs to the arbitrator and to all opposing parties.

§ 4221.7 Reopening of proceedings.

(a) *Grounds for reopening.* At any time before a final award is rendered, the proceedings may be reopened, on the motion of the arbitrator or at the request of any party, for the purpose of taking further evidence or rehearing or rearguing any matter, if the arbitrator determines that—

(1) The reopening is likely to result in new information that will have a material effect on the outcome of the arbitration;

(2) Good cause exists for the failure of the party that requested reopening to present such information at the hearing; and

(3) The delay caused by the reopening will not be unfairly injurious to any party.

(b) *Comments on and notice of reopening.* The arbitrator shall allow all

affected parties the opportunity to comment on any motion or request to reopen the proceedings. If he or she determines that the proceedings should be reopened, he or she shall give all parties written notice of the reasons for reopening and of the schedule of the reopened proceedings.

§ 4221.8 Award.

(a) *Form.* The arbitrator shall render a written award that—

(1) States the basis for the award, including such findings of fact and conclusions of law (which need not be explicitly designated as such) as are necessary to resolve the dispute;

(2) Adjusts (or provides a method for adjusting) the amount or schedule of payments to be made after the award to reflect overpayments or underpayments made before the award was rendered or requires the plan sponsor to refund overpayments in accordance with § 4219.31(d); and

(3) Provides for an allocation of costs in accordance with § 4221.10.

(b) *Time of award.* Except as provided in paragraphs (c), (d), and (e) of this section, the arbitrator shall render the award no later than 30 days after the proceedings close. The award is rendered when filed or served on the parties as provided in § 4221.13. The award is final when the period for seeking modification or reconsideration in accordance with § 4221.9(a) has expired or the arbitrator has rendered a revised award in accordance with § 4221.9(c).

(c) *Reopened proceedings.* If the proceedings are reopened in accordance with § 4221.7 after the close of the hearing, the arbitrator shall render the award no later than 30 days after the date on which the reopened proceedings are closed.

(d) *Absence of hearing.* If the parties have chosen to proceed without a hearing, the arbitrator shall render the award no later than 30 days after the date on which final statements and proofs are filed with him or her.

(e) *Agreement for extension of time.* Notwithstanding paragraphs (b), (c), and (d), the parties may agree to an extension of time for the arbitrator's award in light of the particular facts and circumstances of their dispute.

(f) *Close of proceedings.* For purposes of paragraphs (b) and (c) of this section, the proceedings are closed on the date on which the last brief or reply brief is due or, if no briefs are to be filed, on the date on which the hearing or rehearing closes.

(g) *Publication of award.* After a final award has been rendered, the plan sponsor shall make copies available

upon request to the PBGC and to all companies that contribute to the plan. The plan sponsor may impose reasonable charges for copying and postage.

§ 4221.9 Reconsideration of award.

(a) *Motion for reconsideration and objections.* A party may seek modification or reconsideration of the arbitrator's award by filing a written motion with the arbitrator and all opposing parties within 20 days after the award is rendered. Opposing parties may file objections to modification or reconsideration within 10 days after the motion is filed. The filing of a written motion for modification or reconsideration suspends the 30-day period under section 4221(b)(2) of ERISA for requesting court review of the award. The 30-day statutory period again begins to run when the arbitrator denies the motion pursuant to paragraph (c) of this section or renders a revised award.

(b) *Grounds for modification or reconsideration.* The arbitrator may grant a motion for modification or reconsideration of the award only if—

(1) There is a numerical error or a mistake in the description of any person, thing, or property referred to in the award; or

(2) The arbitrator has rendered an award upon a matter not submitted to the arbitrator and the matter affects the merits of the decision; or

(3) The award is imperfect in a matter of form not affecting the merits of the dispute.

(c) *Decision of arbitrator.* The arbitrator shall grant or deny the motion for modification or reconsideration, and may render an opinion to support his or her decision within 20 days after the motion is filed with the arbitrator, or within 30 days after the motion is filed if an objection is also filed.

§ 4221.10 Costs.

The costs of arbitration under this part shall be borne by the parties as follows:

(a) *Witnesses.* Each party to the dispute shall bear the costs of its own witnesses.

(b) *Other costs of arbitration.* Except as provided in § 4221.6(d) with respect to a transcript of the hearing, the parties shall bear the other costs of the arbitration proceedings equally unless the arbitrator determines otherwise. The parties may, however, agree to a different allocation of costs if their agreement is entered into after the employer has received notice of the plan's assessment of withdrawal liability.

(c) *Attorneys' fees.* The arbitrator may require a party that initiates or contests an arbitration in bad faith or engages in dilatory, harassing, or other improper conduct during the course of the arbitration to pay reasonable attorneys' fees of other parties.

§ 4221.11 Waiver of rules.

Any party that fails to object in writing in a timely manner to any deviation from any provision of this part is deemed to have waived the right to interpose that objection thereafter.

§ 4221.12 Calculation of periods of time.

For purposes of calculating any period of time under this part, the period begins to run on the day following the day that a communication is received or an act is completed. If the last day of the period is a Federal, State, or local holiday or a non-business day for one of the parties or the arbitrator, the period runs until the end of the first business day that follows. Holidays or non-business days occurring during the running of the period of time are included in calculating the period.

§ 4221.13 Filing or service of documents.

(a) *By mail.* A document that is to be filed or served under this part is considered filed or served on—

(1) The date of the receipt provided to the sender by the United States Postal Service, if the document was sent by certified or registered mail, postage prepaid, properly packaged, and properly addressed; or

(2) The date of the United States Postal Service postmark stamped on the cover in which the document is mailed, if paragraph (a)(1) is not applicable, a legible postmark was made, and the document was sent postage prepaid, properly packaged, and properly addressed.

(b) *By means other than mail.* A document required to be delivered under this part that is not mailed in accordance with paragraph (a) of this section is considered filed or served on the date on which it is received.

§ 4221.14 PBGC-approved arbitration procedures.

(a) *Use of PBGC-approved arbitration procedures.* In lieu of the procedures prescribed by this part, an arbitration may be conducted in accordance with an alternative arbitration procedure approved by the PBGC in accordance with paragraph (c) of this section. A plan may by plan amendment require the use of a PBGC-approved procedure for all arbitrations of withdrawal liability disputes, or the parties may agree to the use of a PBGC-approved procedure in a particular case.

(b) *Scope of alternative procedures.* If an arbitration is conducted in accordance with a PBGC-approved arbitration procedure, the alternative procedure shall govern all aspects of the arbitration, with the following exceptions:

(1) The time limits for the initiation of arbitration may not differ from those provided for by § 4221.3.

(2) The arbitrator shall be selected after the initiation of the arbitration.

(3) The arbitrator shall give the parties opportunity for prehearing discovery substantially equivalent to that provided by § 4221.5(a)(2).

(4) The award shall be made available to the public to at least the extent provided by § 4221.8(g).

(5) The costs of arbitration shall be allocated in accordance with § 4221.10.

(c) *Procedure for approval of alternative procedures.* The PBGC may approve arbitration procedures on its own initiative by publishing an appropriate notice in the Federal Register. The sponsor of an arbitration procedure may request PBGC approval of its procedures by submitting an application to the PBGC. The application shall be submitted to Reports Processing, Insurance Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026, and shall include:

(1) A copy of the procedures for which approval is sought;

(2) A description of the history, structure and membership of the organization that sponsors the procedures; and

(3) A discussion of the reasons why, in the sponsoring organization's opinion, the procedures satisfy the criteria for approval set forth in this section.

(d) *Criteria for approval of alternative procedures.* The PBGC shall approve an application if it determines that the proposed procedures will be substantially fair to all parties involved in the arbitration of a withdrawal liability dispute and that the sponsoring organization is neutral and able to carry out its role under the procedures. The PBGC may request comments on the application by publishing an appropriate notice in the Federal Register. Notice of the PBGC's decision on the application shall be published in the Federal Register. Unless the notice of approval specifies otherwise, approval will remain effective until revoked by the PBGC through a Federal Register notice.

PART 4231—MERGERS AND TRANSFERS BETWEEN MULTIEmployer PLANS

Sec.

4231.1 Purpose and scope.

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4231.9 Request for compliance determination.

4231.10 Actuarial calculations and assumptions.

Authority: 29 U.S.C. 1302(b)(3), 1411.

§ 4231.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to prescribe notice requirements under section 4231 of ERISA for mergers and transfers of assets or liabilities among multiemployer pension plans. This part also interprets the other requirements of section 4231 and prescribes special rules for *de minimis* mergers and transfers.

(b) *Scope.* This part applies to mergers and transfers among multiemployer plans where all of the plans immediately before and immediately after the transaction are multiemployer plans covered by title IV of ERISA.

§ 4231.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: ERISA, fair market value, IRS, multiemployer plan, PBGC, plan, and plan year.

In addition, for purposes of this part: *Actuarial valuation* means a valuation of assets and liabilities performed by an enrolled actuary using the actuarial assumptions used for purposes of determining the charges and credits to the funding standard account under section 302 of ERISA and section 412 of the Code.

Certified change of collective bargaining representative means a change of collective bargaining representative certified under the Labor-Management Relations Act of 1947, as amended, or the Railway Labor Act, as amended.

Fair market value of assets has the same meaning as the term has for minimum funding purposes under section 302 of ERISA and section 412 of the Code.

Merger means the combining of two or more plans into a single plan. For example, a consolidation of two plans into a new plan is a merger.

Significant transfer means the transfer of assets that equal or exceed 15% of the assets of the transferor plan before the transfer or the transfer of unfunded

accrued benefits that equal or exceed 15% of the assets of the transferee plan (including a plan that did not exist prior to the transfer) before the transfer.

Transfer and transfer of assets or liabilities mean a diminution of assets or liabilities with respect to one plan and the acquisition of these assets or the assumption of these liabilities by another plan or plans (including a plan that did not exist prior to the transfer). However, the shifting of assets or liabilities pursuant to a written reciprocity agreement between two multiemployer plans in which one plan assumes liabilities of another plan is not a transfer of assets or liabilities. In addition, the shifting of assets between several funding media used for a single plan (such as between trusts, between annuity contracts, or between trusts and annuity contracts) is not a transfer of assets or liabilities.

§ 4231.3 Requirements for mergers and transfers.

(a) *General requirements.* A plan sponsor may not cause a multiemployer plan to merge with one or more multiemployer plans or transfer assets or liabilities to or from another multiemployer plan unless the merger or transfer satisfies all of the following requirements:

(1) No participant's or beneficiary's accrued benefit may be lower immediately after the effective date of the merger or transfer than the benefit immediately before the merger or transfer.

(2) Actuarial valuations of the plans involved in the merger or transfer shall have been performed in accordance with § 4231.5.

(3) For each plan involved in the transaction, an enrolled actuary shall—

(i) Determine that the plan meets the applicable plan solvency requirement set forth in § 4231.6; or

(ii) Otherwise demonstrate that benefits under the plan are not reasonably expected to be subject to suspension under section 4245 of ERISA.

(4) The plan sponsor shall notify the PBGC of the merger or transfer in accordance with § 4231.8.

(b) *Compliance determination.* If a plan sponsor requests a determination that a merger or transfer that may otherwise be prohibited by section 406(a) or (b)(2) of ERISA satisfies the requirements of section 4231 of ERISA, the plan sponsor shall submit the information described in § 4231.9 in addition to the information required by § 4231.8. PBGC may request additional information if necessary to determine whether a merger or transfer complies

with the requirements of section 4231 and this part. Plan sponsors are not required to request a compliance determination. Under section 4231(c) of ERISA, if the PBGC determines that the merger or transfer complies with section 4231 of ERISA and this part, the merger or transfer will not constitute a violation of the prohibited transaction provisions of section 406(a) and (b)(2) of ERISA.

(c) *Certified change in bargaining representative.* Transfers of assets and liabilities pursuant to a certified change in bargaining representative are governed by section 4235 of ERISA. Plan sponsors involved in such transfers are not required to comply with this part. However, under section 4235(f)(1) of ERISA, the plan sponsors of the plans involved in the transfer may agree to a transfer that complies with sections 4231 and 4234 of ERISA. Plan sponsors that elect to comply with sections 4231 and 4234 must comply with the rules in this part.

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§ 4231.4 Preservation of accrued benefits.

Section 4231(b)(2) of ERISA and § 4231.3(a)(1) require that no participant's or beneficiary's accrued benefit may be lower immediately after the effective date of the merger or transfer than the benefit immediately before the merger or transfer. A plan that assumes an obligation to pay benefits for a group of participants satisfies this requirement only if the plan contains a provision preserving all accrued benefits. The determination of what is an accrued benefit shall be made in accordance with section 411 of the Code and the regulations thereunder.

§ 4231.5 Valuation requirement.

(a) *Mergers and non-significant transfers.* A merger or a transfer that is not significant ("non-significant transfer") satisfies section 4231(b)(4) of ERISA and § 4231.3(a)(2) (requiring an actuarial valuation) if an actuarial valuation has been performed for each plan involved in the merger or transfer, based on the assets and liabilities of the plan as of a date not more than three years before the date on which the notice of the merger or transfer is filed.

(b) *Significant transfers.* A significant transfer satisfies section 4231(b)(4) of ERISA and § 4231.3(a)(2) if an actuarial valuation has been performed for each plan involved in the transfer, based on the assets and liabilities of the plan as of a date not earlier than the first day of the last plan year ending before the proposed effective date of the transfer. The valuation shall separately identify assets, contributions and liabilities

being transferred, and shall be based on the actuarial assumptions and methods that are expected to be used for the first plan year beginning after the transfer.

§ 4231.6 Plan solvency tests.

(a) *Significant transfers.* A significant transfer satisfies the plan solvency requirement of section 4231(b)(3) of ERISA and § 4231.3(a)(3)(i) if all of the following requirements are met by each plan involved in the transfer:

(1) Expected contributions shall equal or exceed the estimated amount necessary to satisfy the minimum funding requirement of section 412(a) of the Code (including reorganization funding, if applicable) for the five plan years beginning on or after the proposed effective date of the transfer.

(2) The fair market value of plan assets immediately after the transfer shall equal or exceed the total amount of expected benefit payments during the first five plan years beginning on or after the proposed effective date of the transfer.

(3) Expected contributions for the first plan year beginning on or after the proposed effective date of the transfer shall equal or exceed expected benefit payments for that plan year.

(4) Contributions for the amortization period shall equal or exceed unfunded accrued benefits plus expected normal costs.

(i) Notwithstanding paragraph (c)(4) of this section, "unfunded accrued benefits" means the excess of the present value of accrued benefits over the fair market value of the assets, determined on the basis of the actuarial valuation required under § 4231.5(b).

(ii) "Amortization period" means either 25 plan years or the amortization period for the resulting base when the combined charge base and the combined credit base are offset under section 412(b)(4) of the Code. The actuary may select either period.

(b) *Mergers and non-significant transfers.* A merger or non-significant transfer satisfies the plan solvency requirement of section 4231(b)(3) of ERISA and § 4231.3(a)(3)(i) if, for the merged plan or for each plan that continues after the transfer—

(1) The fair market value of plan assets immediately after the merger or transfer equals or exceeds five times the benefit payments in the last plan year ending before the proposed effective date of the merger or transfer; or

(2) In each of the first five plan years beginning after the proposed effective date of the merger or transfer, expected plan assets plus expected contributions and investment earnings equal or

exceed expected expenses and benefit payments for the plan year.

(c) *Rules for determinations.* In determining whether a transaction satisfies the plan solvency requirements set forth in this section, the following rules apply:

(1) Expected contributions after a merger or transfer shall be determined by assuming that contributions will equal contributions received in or accrued for the last full plan year ending before the date on which the notice of merger or transfer is filed with the PBGC. Contributions shall be adjusted, however, to reflect any change in the rate of employer contributions that has been negotiated (whether or not in effect), or a trend of changing contribution base units over the preceding five plan years or other period of time that can be demonstrated to be more appropriate.

(2) Expected normal costs shall be determined under the funding method and assumptions used by the plan actuary for purposes of determining the minimum funding requirement under section 412 of the Code (which requires that such assumptions be reasonable in the aggregate). If the plan is using an aggregate funding method, normal costs shall be determined under the entry age normal method.

(3) Expected benefit payments shall be determined by assuming that current benefits remain in effect and that all scheduled increases in benefits occur.

(4) The fair market value of plan assets immediately after the merger or transfer shall be based on the most recent data available to the plan sponsor immediately before the date on which the notice is filed.

(5) Expected investment earnings shall be determined using the same interest assumption used for determining the minimum funding requirement under section 412 of the Code.

(6) Expected expenses shall be determined using expenses in the last plan year ending before the notice is filed, adjusted to reflect any anticipated changes.

(7) Expected plan assets for a plan year shall be determined by adjusting the most current data on fair market value of plan assets to reflect expected contributions, investment earnings, benefit payments and expenses for each plan year between the date of the most current data and the beginning of the plan year for which expected assets are being determined.

§ 4231.7 De minimis mergers and transfers.

(a) *Special plan solvency rule.* In order to determine whether a *de minimis* merger or transfer satisfies the plan solvency requirement in § 4231.6(b), the plan assets, expected contributions and expected benefits may be determined without regard to any *de minimis* mergers or transfers that have occurred since the last valuation performed to establish charges and credits to the minimum funding standard account under section 412(b) of the Code.

(b) *De minimis merger defined.* A merger is *de minimis* if the present value of accrued benefits (whether or not vested) of one plan is less than 3 percent of the fair market value of the other plan's assets.

(c) *De minimis transfer defined.* A transfer of assets or liabilities is *de minimis* if—

(1) The fair market value of the assets transferred, if any, is less than 3 percent of the fair market value of all the assets of the transferor plan; and

(2) The present value of the accrued benefits transferred (whether or not vested) is less than 3 percent of the fair market value of all the assets of the transferee plan.

(d) *Value of assets and benefits.* For purposes of paragraphs (b) and (c) of this section, the value of plan assets and accrued benefits may be determined as of any date prior to the proposed effective date of the merger or transfer, but not earlier than the date of the most recent valuation performed for purposes of section 412(b) of the Code.

(e) *Aggregation required.* In determining whether a merger or transfer is *de minimis*, the assets and accrued benefits transferred in previous *de minimis* mergers and transfers within the same plan year shall be aggregated as described in paragraphs (e)(1) and (e)(2) of this section. For the purposes of those paragraphs, the value of plan assets may be determined as of the date during the plan year on which the total value of the plan's assets is the highest.

(1) A merger is not *de minimis* if the total present value of accrued benefits merged into a plan, when aggregated with all prior *de minimis* mergers of and transfers to that plan effective within the same plan year, equals or exceeds 3 percent of the value of the plan's assets.

(2) A transfer is not *de minimis* if, when aggregated with all previous mergers and transfers effective within the same plan year—

(i) The value of all assets transferred from the plan equals or exceeds 3 percent of the value of the plan's assets; or

(ii) The present value of all accrued benefits transferred to the plan equals or exceeds 3 percent of the plan's assets.

§ 4231.8 Notice of merger or transfer.

(a) *When to file.* Except as provided in paragraph (f) of this section, a notice of a proposed merger or transfer shall be filed not less than 120 days before the effective date of the transaction. For purposes of this part, the effective date of a merger or transfer is the earlier of—

(1) The date on which one plan assumes liability for benefits accrued under another plan involved in the transaction; or

(2) The date on which one plan transfers assets to another plan involved in the transaction.

(b) *Who shall file.* The plan sponsors of all plans involved in a merger or transfer, or the duly authorized representative(s) acting on behalf of the plan sponsors, shall jointly file the notice required by this section.

(c) *Where to file.* The notice shall be delivered by mail or submitted by hand to Reports Processing, Insurance Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005-4026.

(d) *Filing date.* For purposes of paragraph (a) of this section, the notice is not considered filed until all of the information required by paragraph (e) of this section has been submitted. Except as provided in the next sentence, the notice is considered filed on the date it is received by the PBGC, unless it is received after regular business hours, in which event it is considered filed on the next regular business day. The notice is considered filed on the date of the postmark stamped on the cover in which the notice is mailed if—

(1) The postmark was made by the United States Postal Service; and

(2) The notice was mailed postage prepaid, properly packaged and addressed to the PBGC.

(e) *Information required.* Each notice shall contain the following information:

(1) For each plan involved in the merger or transfer—

(i) The name of the plan;

(ii) The name, address and telephone number of the plan sponsor and of the plan sponsor's duly authorized representative, if any; and

(iii) The nine-digit employer Identification Number (EIN) assigned by the IRS to the plan sponsor and the three-digit Plan Identification Number (PIN) assigned by the plan sponsor to the plan, and, if different, the EIN or PIN last filed with the PBGC. If no EIN or PIN has been assigned, the notice shall so indicate.

(2) The kind of transaction being reported (merger, significant transfer or non-significant transfer).

(3) The proposed effective date of the merger or transfer.

(4) A copy of the plan provision stating that no participant's or beneficiary's accrued benefit will be lower immediately after the merger or transfer than the benefit immediately before the transaction.

(5) One of the following statements, certified by an enrolled actuary:

(i) A statement that the merger or transfer is *de minimis* as defined in § 4231.7. A notice of a *de minimis* merger or transfer is not required to include the information described in paragraph (e)(6) or (e)(7) of this section.

(ii) A statement that the merger or transfer satisfies the applicable plan solvency test set forth in § 4231.6, indicating which is the applicable test.

(iii) A statement of the basis on which the actuary has determined that benefits under the plan are not reasonably expected to be subject to suspension under section 4245 of ERISA, including the supporting data or calculations, assumptions and methods.

(6) For mergers or transfers (other than *de minimis* mergers or transfers), a copy of the most recent actuarial valuation report that satisfies the requirements of § 4231.5.

(7) For a significant transfer, the following information used in making the plan solvency determination under § 4231.6(a):

(i) The present value of the accrued benefits and fair market value of plan assets under the valuation required by § 4231.5(b), allocable to each plan after the transfer.

(ii) The fair market value of assets in each plan after the transfer (determined in accordance with § 4231.6(c)(4)).

(iii) The expected benefit payments for each plan in the first plan year beginning on or after the proposed effective date of the transfer (determined in accordance with § 4231.6(c)(3)).

(iv) The contribution rates in effect for each plan for the first plan year beginning on or after the proposed effective date of the transfer.

(v) The expected contributions for each plan in the first plan year beginning on or after the proposed effective date of the transfer (determined in accordance with § 4231.6(c)(1)).

(f) *Waiver of notice.* PBGC may waive the notice requirements of this section and section 4231(b)(1) of ERISA if the plan sponsor demonstrates to the satisfaction of the PBGC that failure to complete the merger or transfer in less than 120 days after filing the notice will cause harm to participants or

beneficiaries of the plans involved in the transaction.

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§ 4231.9 Request for compliance determination.

(a) *General.* A request for a determination that a merger or transfer complies with the requirements of section 4231 of ERISA may be filed by the plan sponsor or sponsors of one or more plans involved in a merger or transfer. The request shall contain the information described in paragraph (b) or (c) of this section, as applicable.

(1) *The place of filing.* The request shall be delivered to the address set forth in § 4231.8(c).

(2) *Single request permitted for all de minimis transactions.* Because the plan solvency test for *de minimis* mergers and transfers is based on the most recent valuation (without adjustment for intervening *de minimis* transactions), a plan sponsor may submit a single request for a compliance determination covering all *de minimis* mergers or transfers that occur between one plan valuation and the next. However, the plan sponsor must still notify PBGC of each *de minimis* merger or transfer separately, in accordance with § 4231.8. The single request for a compliance determination may be filed concurrently with any one of the notices of a *de minimis* merger or transfer.

(b) *Contents of request: merger or transfer that is not de minimis.* A request for a compliance determination concerning a merger or transfer that is not *de minimis* shall contain—

(1) A copy of the merger or transfer agreement;

(2) A summary of the required calculations, including a complete description of assumptions and methods, on which the enrolled actuary based the certification that the merger or transfer satisfied a plan solvency test described in § 4231.6; and

(3) For a significant transfer, copies of all actuarial valuations performed within the 5 years preceding the proposed effective date of the transfer.

(c) *Contents of request: De minimis merger or transfer.* A request for a compliance determination concerning a *de minimis* merger or transfer shall contain one of the following statements, certified by an enrolled actuary:

(1) A statement that the merger or transfer satisfies one of the plan solvency tests set forth in § 4231.6(b), indicating which test is satisfied.

(2) A statement of the basis on which the actuary has determined that benefits under the plan are not reasonably expected to be subject to suspension

under section 4245 of ERISA, including supporting data or calculations, assumptions and methods.

(Approved by the Office of Management and Budget under control number 1212-0022)

§ 4231.10 Actuarial calculations and assumptions.

(a) *Most recent valuation.* All calculations required by this part shall be based on the most recent actuarial valuation as of the date of filing the notice, updated to show any material changes.

(b) *Assumptions.* All calculations required by this part shall be based on methods and assumptions that are reasonable in the aggregate, based on generally accepted actuarial principles.

(c) *Updated calculations.* If the actual date of the merger or transfer is more than one year after the date the notice is filed with the PBGC, PBGC may require the plans involved to provide updated calculations and representations based on the actual effective date of the transaction.

(Approved by the Office of Management and Budget under control number 1212-0022)

PART 4245—NOTICE OF INSOLVENCY

Sec.

4245.1 Purpose and scope.

4245.2 Definitions.

4245.3 Notice of insolvency.

4245.4 Contents of notice of insolvency.

4245.5 Notice of insolvency benefit level.

4245.6 Contents of notice of insolvency benefit level.

4245.7 PBGC address.

Authority: 29 U.S.C. 1302(b)(3), 1426(e).

§ 4245.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to prescribe notice requirements pertaining to insolvent multiemployer plans that are in reorganization.

(b) *Scope.* This part applies to multiemployer plans in reorganization covered by title IV of ERISA, other than plans that have terminated by mass withdrawal under section 4041A(a)(2) of ERISA.

§ 4245.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: employer, ERISA, IRS, multiemployer plan, nonforfeitable benefit, PBGC, person, plan, and plan year.

In addition, for purposes of this part:

Actuarial valuation means a report submitted to the plan in connection with a valuation of plan assets and liabilities, which, in the case of a plan covered by subparts C and D of part 4281, shall be performed in accordance with subpart B of part 4281.

Available resources means, for a plan year, available resources as described in section 4245(b)(3) of ERISA.

Benefits subject to reduction means those benefits accrued under plan amendments (or plans) adopted after March 26, 1980, or under collective bargaining agreements entered into after March 26, 1980, that are not eligible for the PBGC's guarantee under section 4022A(b) of ERISA.

Financial assistance means financial assistance from the PBGC under section 4261 of ERISA.

Insolvency benefit level means the greater of the resource benefit level or the benefit level guaranteed by the PBGC for each participant and beneficiary in pay status.

Insolvency year means insolvency year as described in section 4245(b)(4) of ERISA.

Insolvent means that a plan is unable to pay benefits when due during the plan year. A plan terminated by mass withdrawal is not insolvent unless it has been amended to eliminate all benefits that are subject to reduction under section 4281(c) of ERISA, or, in the absence of an amendment, no benefits under the plan are subject to reduction under section 4281(c) of ERISA.

Reasonably expected to enter pay status means, with respect to plan participants and beneficiaries, persons (other than those in pay status) who, according to plan records, are disabled, have applied for benefits, or have reached or will reach during the applicable period the normal retirement age under the plan, and any others whom it is reasonable for the plan sponsor to expect to enter pay status during the applicable period.

Reorganization means reorganization under section 4241(a) of ERISA.

Resource benefit level means resource benefit level as described in section 4245(b)(2) of ERISA.

§ 4245.3 Notice of insolvency.

(a) *Requirement of notice.* A plan sponsor of a multiemployer plan in reorganization that determines under section 4245 (b)(1), (d)(1) or (d)(2) of ERISA that the plan's available resources are or may be insufficient to pay benefits when due for a plan year shall so notify the PBGC and the interested parties, as defined in paragraph (d) of this section. A single notice may cover more than one plan year. The notices shall be delivered in the manner and within the time prescribed in this section and shall contain the information described in § 4245.4.

(b) *When delivered.* A plan sponsor shall mail or otherwise deliver the

notices of insolvency no later than 30 days after it determines that the plan is or may become insolvent, as described in paragraph (a) of this section.

However, the notice to participants and beneficiaries in pay status may be delivered concurrently with the first benefit payment made more than 30 days after the determination of insolvency.

(c) *Methods of delivery.* The notice of insolvency shall be delivered by mail or by hand to the PBGC and the interested parties described in paragraph (d) of this section, other than participants and beneficiaries who are not in pay status when the notice is required to be delivered. The notice to participants and beneficiaries who are not in pay status shall be provided in any manner reasonably calculated to reach those participants and beneficiaries. Reasonable methods of notification include, but are not limited to, posting the notice at participants' worksites or publishing the notice in a union newsletter or in a newspaper of general circulation in the area or areas where participants reside. Notice to a participant shall be deemed notice to that participant's beneficiary or beneficiaries.

(d) *Interested parties.* For purposes of this part, the term "interested parties" means—

- (1) Employers required to contribute to the plan;
- (2) Employee organizations that, for collective bargaining purposes, represent plan participants employed by such employers; and
- (3) Plan participants and beneficiaries.

§ 4245.4 Contents of notice of insolvency.

(a) *Notice to the PBGC.* A notice of insolvency required to be filed with the PBGC pursuant to § 4245.3 shall contain the information set forth below:

- (1) The name of the plan.
- (2) The name, address and telephone number of the plan sponsor and of the plan sponsor's duly authorized representative, if any.
- (3) The nine-digit Employer Identification Number (EIN) assigned by the IRS to the plan sponsor and the three-digit Plan Identification Number (PIN) assigned by the plan sponsor to the plan, and, if different, the EIN or PIN last filed with the PBGC. If no EIN or PIN has been assigned, the notice shall so indicate.
- (4) The IRS key district that has jurisdiction over determination letters with respect to the plan.
- (5) The case number assigned to the plan by the PBGC. If the plan has no case number, the notice shall state

whether the plan has previously filed a notice of insolvency with the PBGC and, if so, the date on which the notice was filed.

(6) The plan year or years for which the plan sponsor has determined that the plan is or may become insolvent.

(7) A copy of the plan document, including the last restatement of the plan and all subsequent amendments in effect, or to become effective, during the insolvency year or years. However, if a copy of the plan document was submitted to the PBGC with a previous notice of insolvency or notice of insolvency benefit level, only subsequent plan amendments need be submitted, and the notice shall state when the copy of the plan document was filed.

(8) A copy of the most recent actuarial valuation for the plan and a copy of the most recent Schedule B (Form 5500) filed for the plan, if the Schedule B contains more recent information than the actuarial valuation. If the actuarial valuation or Schedule B was previously submitted to the PBGC, it may be omitted, and the notice shall state the date on which the document was filed and that the information is still accurate and complete.

(9) The estimated amount of annual benefit payments under the plan (determined without regard to the insolvency) for each insolvency year.

(10) The estimated amount of the plan's available resources for each insolvency year.

(11) A certification, signed by the plan sponsor (or a duly authorized representative), that notices of insolvency have been given to all interested parties in accordance with the requirements of this part.

(b) *Notices to interested parties.* A notice of insolvency required under § 4245.3 to be given to an interested party, as defined in § 4245.3(d), shall contain the information set forth below:

- (1) The name of the plan.
- (2) The plan year or years for which the plan sponsor has determined that the plan is or may become insolvent.
- (3) The estimated amount of annual benefit payment under the plan (determined without regard to the insolvency) for each insolvency year.
- (4) The estimated amount of the plan's available resources for each insolvency year.
- (5) A statement that, during the insolvency year, benefits above the amount that can be paid from available resources or the level guaranteed by the PBGC, whichever is greater, will be suspended, with a brief explanation of which benefits are guaranteed by the PBGC. The following statement may be

included as an explanation of PBGC-guaranteed benefits:

Should the plan become insolvent, each participant's benefit guaranteed by the Pension Benefit Guaranty Corporation (PBGC) is determined as follows. Each participant's nonforfeitable monthly benefit payable under the plan at retirement is computed. This benefit is then divided by the participant's years of credited service under the plan. Of the resulting figure (the accrual rate), the first \$5 is guaranteed at 100%. Any additional amount (up to \$15) is either 75% or 65% guaranteed, depending on the past funding practices of the plan. Any remaining amount that exceeds \$20 is not guaranteed. The PBGC guarantees the payment of a monthly benefit equal to this adjusted accrual rate times years of credited service. The PBGC does not guarantee benefits or benefit increases that have been in effect for fewer than 60 months before the plan becomes insolvent or is amended to reduce accrued benefits.

(6) The name, address, and telephone number of the plan administrator or other person designated by the plan sponsor to answer inquiries concerning benefits during the plan's insolvency.

§ 4245.5 Notice of insolvency benefit level.

(a) *Requirement of notice.* Except as provided in paragraph (b) of this section, for each insolvency year the plan sponsor shall notify the PBGC and the interested parties, as defined in § 4245.3(d), of the level of benefits expected to be paid during the year (the "insolvency benefit level"). These notices shall be delivered in the manner and within the time prescribed in this section and shall contain the information described in § 4245.6.

(b) *Waiver of notice to certain interested parties.* The notice of insolvency benefit level required under this section need not be given to interested parties, other than participants and beneficiaries who are in pay status or are reasonably expected to enter pay status during the insolvency year, for an insolvency year immediately following the plan year in which a notice of insolvency was required to be delivered pursuant to § 4245.3, provided that the notice of insolvency was in fact delivered.

(c) *When delivered.* The plan sponsor shall mail or otherwise deliver the required notices of insolvency benefit level no later than 60 days before the beginning of the insolvency year, except that if the determination of insolvency is made fewer than 120 days before the beginning of the insolvency year, the notices shall be delivered within 60

days after the date of the plan sponsor's determination.

(d) *Methods of delivery.* The notice of insolvency benefit level shall be delivered by mail or by hand to the PBGC and to the interested parties described in § 4245.3(d), other than participants and beneficiaries who are neither in pay status nor reasonably expected to enter pay status during the insolvency year for which the notice is given. The notice to participants and beneficiaries not in pay status, nor reasonably expected to enter pay status during the insolvency year, shall be provided in any manner reasonably calculated to reach those participants and beneficiaries. Reasonable methods of notification include, but are not limited to, posting the notice at participants' worksites or publishing the notice in a union newsletter or in a newspaper of general circulation in the area or areas where participants reside. Notice to a participant shall be deemed notice to that participant's beneficiary or beneficiaries.

§ 4245.6 Contents of notice of insolvency benefit level.

(a) *Notice to the PBGC.* A notice of insolvency benefit level required to be filed with the PBGC pursuant to § 4245.5(a) shall contain the information set forth below, except as provided in the next sentence. The information required in paragraphs (a)(7) to (a)(10) need be submitted only if it is different from the information submitted to the PBGC with the notice of insolvency filed for that insolvency year (see § 4245.4 (a)(7) to (a)(10)) or the notice of insolvency benefit level filed for a prior year. When any information is omitted under this exception, the notice shall so state and indicate when the notice of insolvency or prior notice of insolvency benefit level was filed.

(1) The name of the plan.

(2) The name, address and telephone number of the plan sponsor and of the plan sponsor's authorized representative, if any.

(3) The nine-digit Employer Identification Number (EIN) assigned by the IRS to the plan sponsor and the three-digit Plan Identification Number (PIN) assigned by the plan sponsor to the plan, and, if different, the EIN or PIN last filed with the PBGC. If no EIN or PIN has been assigned, the notice shall so indicate.

(4) The IRS key district that has jurisdiction over determination letters with respect to the plan.

(5) The case number assigned to the plan by the PBGC.

(6) The plan year for which the notice is filed.

(7) A copy of the plan document, including any amendments, in effect during the insolvency year.

(8) A copy of the most recent actuarial valuation for the plan and a copy of the most recent Schedule B (Form 5500) filed for the plan, if the Schedule B contains more recent information than the actuarial valuation.

(9) The estimated amount of annual benefit payments under the plan (determined without regard to the insolvency) for the insolvency year.

(10) The estimated amount of the plan's available resources for the insolvency year.

(11) The estimated amount of the annual benefit payments guaranteed by the PBGC for the insolvency year.

(12) The amount of financial assistance, if any, requested from the PBGC.

(13) A certification, signed by the plan sponsor (or a duly authorized representative), that notices of insolvency benefit level have been given to all interested parties in accordance with the requirements of this part.

When financial assistance is requested, the PBGC may require the plan sponsor to submit additional information necessary to process the request.

(b) *Notices to interested parties other than participants in or entering pay status.* A notice of insolvency benefit level required by § 4245.5(a) to be delivered to interested parties, as defined in § 4245.3(d), other than a notice to a participant or beneficiary who is in pay status or is reasonably expected to enter pay status during the insolvency year, shall include the information set forth below:

(1) The name of the plan.

(2) The plan year for which the notice is issued.

(3) The estimated amount of annual benefit payments under the plan (determined without regard to the insolvency) for the insolvency year.

(4) The estimated amount of the plan's available resources for the insolvency year.

(5) The amount of financial assistance, if any, requested from the PBGC.

(c) *Notices to participants and beneficiaries in or entering pay status.* A notice of insolvency benefit level required by § 4245.5(a) to be delivered to participants and beneficiaries who are in pay status or are reasonably expected to enter pay status during the insolvency year for which the notice is given, shall include the following information:

(1) The name of the plan.

(2) The plan year for which the notice is issued.

(3) A statement of the monthly benefit expected to be paid to the participant or beneficiary during the insolvency year.

(4) A statement that in subsequent plan years, depending on the plan's available resources, this benefit level may be increased or decreased but will not fall below the level guaranteed by the PBGC, and that the participant or beneficiary will be notified in advance of the new benefit level if it is less than his full nonforfeitable benefit under the plan.

(5) The name, address, and telephone number of the plan administrator or other person designated by the plan sponsor to answer inquiries concerning benefits during the plan's insolvency.

§ 4245.7 PBGC address.

All notices required to be filed with the PBGC under this part shall be addressed to Reports Processing, Insurance Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005-4026.

(Approved by the Office of Management and Budget under control number 1212-0033)

PART 4261—FINANCIAL ASSISTANCE TO MULTIEMPLOYER PLANS

§ 4261.1 Cross-reference.

See § 4281.47 for procedures for applying to the PBGC for financial assistance under section 4261 of ERISA.

PART 4281—DUTIES OF PLAN SPONSOR FOLLOWING MASS WITHDRAWAL

Subpart A—General

Sec.

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4281.44 Contents of notices of insolvency and annual updates.

4281.45 Notices of insolvency benefit level.

4281.46 Contents of notices of insolvency benefit level.

4281.47 Application for financial assistance.

Authority: 29 U.S.C. 1302(b)(3), 1341a, 1399(c)(1)(D), and 1441.

Subpart A—General Provisions

§ 4281.1 Purpose and scope.

(a) *General.*

(1) *Purpose.* When a multiemployer plan terminates by mass withdrawal under section 4041A(a)(2) of ERISA, the plan's assets and benefits must be valued annually under section 4281(b) of ERISA, and plan benefits may have to be reduced or suspended to the extent provided in section 4281 (c) or (d). This part implements the provisions of section 4281 and provides rules for applying for financial assistance from the PBGC under section 4261 of ERISA. The plan valuation rules in this part also apply to the determination of reallocation liability under section 4219(c)(1)(D) of ERISA and subpart B of part 4219 of this chapter for multiemployer plans that undergo mass withdrawal (with or without termination).

(2) *Scope.* This part applies to multiemployer plans covered by Title IV of ERISA that have terminated by mass withdrawal under section 4041A(a)(2) of ERISA (including plans created by partition pursuant to section 4233 of ERISA). Subpart B of this part also applies to covered multiemployer plans that have undergone mass withdrawal without terminating.

(b) *Subpart B.* Subpart B establishes rules for determining the value of multiemployer plan benefits and assets, including outstanding claims for withdrawal liability, for plans required to perform annual valuations under section 4281(b) of ERISA or allocate unfunded vested benefits under section 4219(c)(1)(D) of ERISA.

(c) *Subpart C.* Subpart C sets forth procedures under which the plan sponsor of a terminated plan shall amend the plan to reduce benefits subject to reduction in accordance with section 4281(c) of ERISA and § 4041A.24(b) of this chapter. Subpart C applies to a plan for which the annual valuation required by § 4041A.24(a) indicates that the value of nonforfeitable benefits under the plan exceeds the value of the plan's assets (including claims for withdrawal liability) if, at the end of the plan year for which that valuation was done, the plan provided

any benefits subject to reduction.

Benefit reductions required to be made under subpart C shall not apply to accrued benefits under plans or plan amendments adopted on or before March 26, 1980, or under collective bargaining agreements entered into on or before March 26, 1980.

(d) *Subpart D.* Subpart D sets forth the procedures under which the plan sponsor of an insolvent plan must suspend benefit payments and issue insolvency notices in accordance with section 4281(d) of ERISA and § 4041A.25 (c) and (d) of this chapter. Subpart D applies to a plan that has been amended under section 4281(c) of ERISA and subpart C of this part to eliminate all benefits subject to reduction and to a plan that provided no benefits subject to reduction as of the date on which the plan terminated.

§ 4281.2 Definitions.

The following terms are defined in section 4001.2 of this chapter: annuity, employer, ERISA, fair market value, IRS, insurer, irrevocable commitment, mass withdrawal, multiemployer plan, nonforfeitable benefit, normal retirement age, PBGC, person, plan, plan administrator, and plan year.

In addition, for purposes of this part:

Available resources means, for a plan year, available resources as described in section 4245(b)(3) of ERISA.

Benefits subject to reduction means those benefits accrued under plan amendments (or plans) adopted after March 26, 1980, or under collective bargaining agreements entered into after March 26, 1980, that are not eligible for the PBGC's guarantee under section 4022A(b) of ERISA.

Financial assistance means financial assistance from the PBGC under section 4261 of ERISA.

Insolvency benefit level means the greater of the resource benefit level or the benefit level guaranteed by the PBGC for each participant and beneficiary in pay status.

Insolvency year means insolvency year as described in section 4245(b)(4) of ERISA.

Insolvent means that a plan is unable to pay benefits when due during the plan year. A plan terminated by mass withdrawal is not insolvent unless it has been amended to eliminate all benefits that are subject to reduction under section 4281(c), or, in the absence of an amendment, no benefits under the plan are subject to reduction under section 4281(c) of ERISA.

Pro rata means that the required benefit reduction or payment shall be allocated among affected participants in the same proportion that each such

participant's nonforfeitable benefits under the plan bear to all nonforfeitable benefits of those participants under the plan.

Reasonably expected to enter pay status means, with respect to plan participants and beneficiaries, persons (other than those in pay status) who, according to plan records, are disabled, have applied for benefits, or have reached or will reach during the applicable period the normal retirement age under the plan, and any others whom it is reasonable for the plan sponsor to expect to enter pay status during the applicable period.

Resource benefit level means resource benefit level as described in section 4245(b)(2) of ERISA.

Valuation date means the last day of the plan year in which the plan terminates and the last day of each plan year thereafter.

§ 4281.3 Submission of documents.

(a) *Filing date.* Any notice, document or information required to be filed with the PBGC under this part shall be considered filed on the date of the United States postmark stamped on the cover in which the document or information is mailed, provided that the postmark was made by the United States Postal Service and the document was mailed postage prepaid, properly packaged and addressed to the PBGC. If these conditions are not met, the document shall be considered filed on the date on which it was received by the PBGC.

(b) *Address.* All notices, documents and information required to be filed with the PBGC under this part shall be addressed to Reports Processing, Insurance Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005-4026.

§ 4281.4 Collection of information.

The collection of information requirements contained in this part have been approved by the Office of Management and Budget under control number 1212-0032.

Subpart B—Valuation of Plan Benefits and Plan Assets

§ 4281.11 Valuation dates.

(a) *Annual valuations of mass-withdrawal-terminated plans.* The valuation dates for the annual valuation required under section 4281(b) of ERISA shall be the last day of the plan year in which the plan terminates and the last day of each plan year thereafter.

(b) *Valuations related to mass withdrawal reallocation liability.* The

valuation date for determining the value of unfunded vested benefits (for purposes of allocation) under section 4219(c)(1)(D) of ERISA shall be—

(1) If the plan terminates by mass withdrawal, the last day of the plan year in which the plan terminates; or

(2) If substantially all the employers withdraw from the plan pursuant to an agreement or arrangement to withdraw from the plan, the last day of the plan year as of which substantially all employers have withdrawn from the plan pursuant to the agreement or arrangement.

§ 4281.12 Benefits to be valued.

(a) *Form of benefit.* The plan sponsor shall determine the form of each benefit to be valued, without regard to the form of benefit valued in any prior year, in accordance with the following rules:

(1) If a benefit is in pay status as of the valuation date, the plan sponsor shall value the form of benefit being paid.

(2) If a benefit is not in pay status as of the valuation date but a valid election with respect to the form of benefit has been made on or before the valuation date, the plan sponsor shall value the form of benefit so elected.

(3) If a benefit is not in pay status as of the valuation date and no valid election with respect to the form of benefit has been made on or before the valuation date, the plan sponsor shall value the form of benefit that, under the terms of the plan or applicable law, is payable in the absence of a valid election.

(b) *Timing of benefit.* The plan sponsor shall value benefits whose starting date is subject to election—

(1) By assuming that the starting date of each benefit is the earliest date, not preceding the valuation date, that could be elected; or

(2) By using any other assumption that the plan sponsor demonstrates to the satisfaction of the PBGC is more reasonable under the circumstances.

§ 4281.13 Benefit valuation methods—in general.

(a) *General rule.* Except as otherwise provided in paragraph (b) of this section (regarding the valuation of benefits payable as lump sums under trustee plans) and § 4281.16 (regarding plans that are closing out), the plan sponsor shall value benefits as of the valuation date by—

(1) Using the interest assumptions described in Table I of appendix B to part 4044 of this chapter;

(2) Using the mortality assumptions described in § 4281.14;

(3) Using interpolation methods, where necessary, at least as accurate as linear interpolation;

(4) Applying valuation formulas that accord with generally accepted actuarial principles and practices; and

(5) Adjusting the values to reflect the loading for expenses in accordance with appendix C to part 4044 of this chapter (substituting the term “benefits” for the term “benefit liabilities (as defined in 29 U.S.C. § 1301(a)(16))”).

(b) *Benefits payable as lump sums under trustee plans.* If the PBGC is trustee of a multiemployer plan, for determining whether the value of a benefit is \$3,500 or less under § 4022.7(b)(1) and for calculating the amount of a lump sum benefit, the PBGC shall value benefits to be paid as lump sums in the same manner as benefits to be paid as annuities except that the interest assumptions prescribed by Table II of appendix B to part 4044 of this chapter and the mortality assumptions prescribed by § 4281.15 shall apply, and there shall be no adjustment to reflect the loading for expenses.

§ 4281.14 Mortality assumptions—in general.

(a) *General rule.* Except as otherwise provided in § 4281.15 (regarding the valuation of benefits payable as lump sums under trustee plans), and subject to paragraph (b) of this section (regarding certain death benefits), the plan administrator shall use the mortality factors prescribed in paragraphs (c), (d), and (e) of this section to value benefits under § 4281.13.

(b) *Certain death benefits.* If an annuity for one person is in pay status on the valuation date, and if the payment of a death benefit after the valuation date to another person, who need not be identifiable on the valuation date, depends in whole or in part on the death of the pay status annuitant, then the plan administrator shall value the death benefit using—

(1) the mortality rates that are applicable to the annuity in pay status under this section to represent the mortality of the pay status annuitant; and

(2) the mortality rates applicable to annuities not in pay status and to deferred benefits other than annuities, under paragraph (c) of this section, to represent the mortality of the death beneficiary.

(c) *Mortality rates for healthy lives.* The mortality rates applicable to annuities in pay status on the valuation date that are not being received as disability benefits, to annuities not in

pay status on the valuation date, and to deferred benefits other than annuities, are,—

(1) For male participants, the rates in Table 1 of appendix A to part 4044 of this chapter, and

(2) For female participants, the rates in Table 1 of appendix A to part 4044 of this chapter, set back 6 years.

(d) *Mortality rates for disabled lives (other than Social Security disability).* The mortality rates applicable to annuities in pay status on the valuation date that are being received as disability benefits and for which neither eligibility for, nor receipt of, Social Security disability benefits is a prerequisite, are,—

(1) For male participants, the rates in Table 1 of appendix A to part 4044 of this chapter, set forward 3 years, and

(2) For female participants, the rates in Table 1 of appendix A to part 4044 of this chapter, set back 3 years.

(e) *Mortality rates for disabled lives (Social Security disability).* The mortality rates applicable to annuities in pay status on the valuation date that are being received as disability benefits and for which either eligibility for, or receipt of, Social Security disability benefits is a prerequisite, are the rates in Tables 2–M and 2–F of appendix A to part 4044 of this chapter.

§ 4281.15 Mortality assumptions—lump sums under trustee plans.

(a) *General rule.* If the PBGC is trustee of a multiemployer plan, for determining whether the value of a benefit is \$3,500 or less under § 4022.7(b)(1) and for calculating the amount of a lump sum benefit, the PBGC will use the mortality rates in Table 3 of appendix A to part 4044 of this chapter.

§ 4281.16 Benefit valuation methods—plans closing out.

(a) *Applicability.* For purposes of the annual valuation required by section 4281(b) of ERISA, the plan sponsor shall value the plan's benefits in accordance with paragraph (b) of this section if,—

(1) *Plans closed out before valuation.* Before the time when the valuation is performed, the plan has satisfied in full all liabilities for payment of nonforfeitable benefits, in a manner consistent with the terms of the plan and applicable law, by the purchase of one or more nonparticipating irrevocable commitments from one or more insurers, with respect to all benefits payable as annuities, and by the payment of single-sum cash distributions, with respect to benefits not payable as annuities; or

(2) *Plans to be closed out after valuation.* As of the time when the

valuation is performed, the plan sponsor reasonably expects that the plan will close out before the next annual valuation date and the plan sponsor has a currently exercisable bid or bids to provide the irrevocable commitment(s) described in paragraph (a)(1) of this section and the total cost of the irrevocable commitment(s) under the bid, plus the total amount of the single-sum cash distributions described in paragraph (a)(1), does not exceed the value of the plan's assets, exclusive of outstanding claims for withdrawal liability, as determined under this subpart.

(b) *Valuation rule.* The present value of nonforfeitable benefits under this section is the total amount of single-sum cash distributions made or to be made plus the cost of the irrevocable commitment(s) purchased or to be purchased in order to satisfy in full all liabilities of the plan for nonforfeitable benefits.

§ 4281.17 Asset valuation methods—in general.

(a) *General rule.* The plan sponsor shall value plan assets as of the valuation date, using the valuation methods prescribed by this section and § 4281.18 (regarding outstanding claims for withdrawal liability), and deducting administrative liabilities in accordance with paragraph (c) of this section.

(b) *Assets other than withdrawal liability claims.* The plan sponsor shall value any plan asset (other than an outstanding claim for withdrawal liability) by such method or methods as the plan sponsor reasonably believes most accurately determine fair market value.

(c) *Adjustment for administrative liabilities.* In determining the total value of plan assets, the plan sponsor shall subtract all plan liabilities, other than liabilities to pay benefits. For this purpose, any obligation to repay financial assistance received from the PBGC under section 4261 of ERISA is a plan liability other than a liability to pay benefits. The obligation to repay financial assistance shall be valued by determining the value of the scheduled payments in the same manner as prescribed in § 4281.18(a) for valuing claims for withdrawal liability.

§ 4281.18 Outstanding claims for withdrawal liability.

(a) *Value of claim.* The plan sponsor shall value an outstanding claim for withdrawal liability owed by an employer described in paragraph (b) of this section in accordance with paragraphs (a)(1) and (a)(2) of this section:

(1) If the schedule of withdrawal liability payments provides for one or more series of equal payments, the plan sponsor shall value each series of payments as an annuity certain in accordance with the provisions of § 4281.13.

(2) If the schedule of withdrawal liability payments provides for one or more payments that are not part of a series of equal payments as described in paragraph (a)(1) of this section, the plan sponsor shall value each such unequal payment as a lump-sum payment in accordance with the provisions of § 4281.13.

(b) *Employers neither liquidated nor in insolvency proceedings.* The plan sponsor shall value an outstanding claim for withdrawal liability under paragraph (a) of this section if, as of the valuation date—

(1) The employer has not been completely liquidated or dissolved; and

(2) The employer is not the subject of any case or proceeding under title 11, United States Code, or any case or proceeding under similar provisions of state insolvency laws; except that the claim for withdrawal liability of an employer that is the subject of a proceeding described in this paragraph (b)(2) shall be valued under paragraph (a) of this section if the plan sponsor determines that the employer is reasonably expected to be able to pay its withdrawal liability in full and on time.

(c) *Claims against other employers.* The plan sponsor shall value at zero any outstanding claim for withdrawal liability owed by an employer that does not meet the conditions set forth in paragraph (b) of this section.

Subpart C—Benefit Reductions

§ 4281.31 Plan amendment.

The plan sponsor of a plan described in § 4281.31 shall amend the plan to eliminate those benefits subject to reduction in excess of the value of benefits that can be provided by plan assets. Such reductions shall be effected by a pro rata reduction of all benefits subject to reduction or by elimination or pro rata reduction of any category of benefit. Benefit reductions required by this section shall apply only prospectively. An amendment required under this section shall take effect no later than six months after the end of the plan year for which it is determined that the value of nonforfeitable benefits exceeds the value of the plan's assets.

§ 4281.32 Notices of benefit reductions.

(a) *Requirement of notices.* A plan sponsor of a multiemployer plan under which a plan amendment reducing

benefits is adopted pursuant to section 4281(c) of ERISA shall so notify the PBGC and plan participants and beneficiaries whose benefits are reduced by the amendment. The notices shall be delivered in the manner and within the time prescribed, and shall contain the information described, in this section. The notice required in this section shall be filed in lieu of the notice described in section 4244A(b)(2) of ERISA.

(b) *When delivered.* The plan sponsor shall mail or otherwise deliver the notices of benefit reduction no later than the earlier of—

(1) 45 days after the amendment reducing benefits is adopted; or

(2) The date of the first reduced benefit payment.

(c) *Method of delivery.* The notices of benefit reductions shall be delivered by mail or by hand to the PBGC and to plan participants and beneficiaries who are in pay status when the notice is required to be delivered or who are reasonably expected to enter pay status before the end of the plan year after the plan year in which the amendment is adopted. The notice to other participants and beneficiaries whose benefit is reduced by the amendment shall be provided in any manner reasonably calculated to reach those participants and beneficiaries. Reasonable methods of notification include, but are not limited to, posting the notice at participants' worksites or publishing the notice in a union newsletter or newspaper of general circulation in the area or areas where participants reside. Notice to a participant shall be deemed notice to the participant's beneficiary or beneficiaries.

(d) *Contents of notice to the PBGC.* A notice of benefit reduction required to be filed with the PBGC pursuant to paragraph (a) of this section shall contain the following information:

(1) The name of the plan.

(2) The name, address, and telephone number of the plan sponsor and of the plan sponsor's duly authorized representative, if any.

(3) The nine-digit Employer Identification Number (EIN) assigned by the IRS to the plan sponsor and the three-digit Plan Number (PN) assigned by the plan sponsor to the plan, and, if different, the EIN or PN last filed with the PBGC. If no EIN or PN has been assigned, the notice shall so state.

(4) The case number assigned by the PBGC to the filing of the plan's notice of termination pursuant to part 4041A, subpart B, of this chapter.

(5) A statement that a plan amendment reducing benefits has been

adopted, listing the date of adoption and the effective date of the amendment.

(6) A certification, signed by the plan sponsor or its duly authorized representative, that notice of the benefit reductions has been given to all participants and beneficiaries whose benefits are reduced by the plan amendment, in accordance with the requirements of this section.

(e) *Contents of notice to participants and beneficiaries.* A notice of benefit reductions required under paragraph (a) of this section to be given to plan participants and beneficiaries whose benefits are reduced by the amendment shall contain the following information:

(1) The name of the plan.

(2) A statement that a plan amendment reducing benefits has been adopted, listing the date of adoption and the effective date of the amendment.

(3) A summary of the amendment, including a description of the effect of the amendment on the benefits to which it applies.

(4) The name, address, and telephone number of the plan administrator or other person designated by the plan sponsor to answer inquiries concerning benefits.

§ 4281.33 Restoration of benefits.

(a) *General.* The plan sponsor of a plan that has been amended to reduce benefits under this subpart shall amend the plan to restore those benefits before adopting any amendment increasing benefits under the plan. A plan is not required to make retroactive benefit payments with respect to any benefit that was reduced and subsequently restored in accordance with this section.

(b) *Notice to the PBGC.* The plan sponsor shall notify the PBGC in writing of any restoration under this section. The notice shall include the information specified in § 4281.32 (d)(1) through (d)(4); a statement that a plan amendment restoring benefits has been adopted, the date of adoption, and the effective date of the amendment; and a certification, signed by the plan sponsor or its duly authorized representative, that the amendment has been adopted in accordance with this section.

Subpart D—Benefit Suspensions

§ 4281.41 Benefit suspensions.

If the plan sponsor determines that the plan is or is expected to be insolvent for a plan year, the plan sponsor shall suspend benefits to the extent necessary to reduce the benefits to the greater of the resource benefit level or the level of guaranteed benefits.

§ 4281.42 Retroactive payments.

(a) *Erroneous resource benefit level.* If, by the end of a year in which benefits were suspended under § 4281.41, the plan sponsor determines in writing that the plan's available resources in that year could have supported benefit payments above the resource benefit level determined for that year, the plan sponsor may distribute the excess resources to each affected participant and beneficiary who received benefit payments that year on a pro rata basis. The amount distributed to each participant under this paragraph may not exceed the amount that, when added to benefit payments already made, brings the total benefit for the plan year up to the total benefit provided under the plan.

(b) *Benefits paid below resource benefit level.* If, by the end of a plan year in which benefits were suspended under § 4281.41, any benefit has not been paid at the resource benefit level, amounts up to the resource benefit level that were unpaid shall be distributed to each affected participant and beneficiary on a pro rata basis to the extent possible, taking into account the plan's total available resources in that year.

§ 4281.43 Notices of insolvency and annual updates.

(a) *Requirement of notices of insolvency.* A plan sponsor that determines that the plan is, or is expected to be, insolvent for a plan year shall issue notices of insolvency to the PBGC and to plan participants and beneficiaries. Once notices of insolvency have been issued to the PBGC and to plan participants and beneficiaries, no notice of insolvency needs to be issued for subsequent insolvency years. Notices shall be delivered in the manner and within the time prescribed in this section and shall contain the information described in § 4281.44.

(b) *Requirement of annual updates.* A plan sponsor that has issued notices of insolvency to the PBGC and to plan participants and beneficiaries shall thereafter issue annual updates to the PBGC and participants and beneficiaries for each plan year beginning after the plan year for which the notice of insolvency was issued. However, the plan sponsor need not issue an annual update to plan participants and beneficiaries who are issued notices of insolvency benefit level in accordance with § 4281.45 for the same insolvency year. A plan sponsor that, after issuing annual updates for a plan year, determines under § 4041A.25(b) that the plan is or may be insolvent for that plan

year need not issue revised annual updates. Annual updates shall be delivered in the manner and within the time prescribed in this section and shall contain the information described in § 4281.44.

(c) *Notices of insolvency—when delivered.* Except as provided in the next sentence, the plan sponsor shall mail or otherwise deliver the notices of insolvency no later than 30 days after the plan sponsor determines that the plan is or may be insolvent. However, the notice to plan participants and beneficiaries in pay status may be delivered concurrently with the first benefit payment made after the determination of insolvency.

(d) *Annual updates—when delivered.* Except as provided in the next sentence, the plan sponsor shall mail or otherwise deliver annual updates no later than 60 days before the beginning of the plan year for which the annual update is issued. A plan sponsor that determines under § 4041A.25(b) that the plan is or may be insolvent for a plan year and that has not at that time issued annual updates for that year, shall mail or otherwise deliver the annual updates by the later of 60 days before the beginning of the plan year or 30 days after the date of the plan sponsor's determination under § 4041A.25(b).

(e) *Notices of insolvency—method of delivery.* The notices of insolvency shall be delivered by mail or by hand to the PBGC and to plan participants and beneficiaries in pay status when the notice is required to be delivered. Notice to participants and beneficiaries not in pay status shall be provided in any manner reasonably calculated to reach those participants and beneficiaries. Reasonable methods of notification include, but are not limited to, posting the notice at participants' worksites or publishing the notice in a union newsletter or newspaper of general circulation in the area or areas where participants reside. Notice to a participant shall be deemed notice to that participant's beneficiary or beneficiaries.

(f) *Annual updates—method of delivery.* Each annual update shall be delivered by mail or by hand to the PBGC. Each annual update to plan participants and beneficiaries shall be provided in any manner reasonably calculated to reach participants and beneficiaries. Reasonable methods of notification include, but are not limited to, posting the notice at participants' worksites and publishing the notice in a union newsletter of general circulation in the area or areas where participants reside. Notice to a participant shall be

deemed notice to that participant's beneficiary or beneficiaries.

§ 4281.44 Contents of notices of insolvency and annual updates.

(a) *Notice of insolvency to the PBGC.* A notice of insolvency required under § 4281.43(a) to be filed with the PBGC shall contain the following information:

- (1) The name of the plan.
- (2) The name, address, and telephone number of the plan sponsor and of the plan sponsor's duly authorized representative, if any.
- (3) The nine-digit Employer Identification Number (EIN) assigned by the IRS to the plan sponsor and the three-digit Plan Number (PN) assigned by the plan sponsor to the plan, and, if different, the EIN or PN last filed with the PBGC. If no EIN or PN has been assigned, the notice shall so state.

(4) The IRS Key District that has jurisdiction over determination letters with respect to the plan.

(5) The case number assigned by the PBGC to the filing of the plan's notice of termination pursuant to part 4041A, subparts A and B, of this chapter.

(6) The plan year for which the plan sponsor has determined that the plan is or may be insolvent.

(7) A copy of the plan document currently in effect, *i.e.*, a copy of the last restatement of the plan and all subsequent amendments. However, if a copy of the plan document was submitted to the PBGC with a previous filing, only subsequent plan amendments need be submitted, and the notice shall state when the copy of the plan document was filed.

(8) A copy of the most recent actuarial valuation for the plan (*i.e.*, the most recent report submitted to the plan in connection with a valuation of plan assets and liabilities, which shall be performed in accordance with subpart B of this part). If the actuarial valuation was previously submitted to the PBGC, it may be omitted, and the notice shall state the date on which the document was filed and that the information is still accurate and complete.

(9) The estimated amount of annual benefit payments under the plan (determined without regard to the insolvency) for the insolvency year.

(10) The estimated amount of the plan's available resources for the insolvency year.

(11) The estimated amount of the annual benefits guaranteed by the PBGC for the insolvency year.

(12) A statement indicating whether the notice of insolvency is the result of an insolvency determination under § 4041A.25 (a) or (b).

(13) A certification, signed by the plan sponsor or its duly authorized

representative, that notices of insolvency have been given to all plan participants and beneficiaries in accordance with this part.

(b) *Notice of insolvency to participants and beneficiaries.* A notice of insolvency required under § 4281.43(a) to be issued to plan participants and beneficiaries shall contain the following information:

- (1) The name of the plan.
- (2) A statement of the plan year for which the plan sponsor has determined that the plan is or may be insolvent.

(3) A statement that benefits above the amount that can be paid from available resources or the level guaranteed by the PBGC, whichever is greater, will be suspended during the insolvency year, with a brief explanation of which benefits are guaranteed by the PBGC.

(4) The name, address, and telephone number of the plan administrator or other person designated by the plan sponsor to answer inquiries concerning benefits.

(c) *Annual update to the PBGC.* Each annual update required by § 4281.43(b) to be filed with the PBGC shall contain the following information:

(1) The case number assigned by the PBGC to the filing of the plan's notice of termination pursuant to part 4041A, subparts A and B, of this chapter.

(2) A copy of the annual update to plan participants and beneficiaries, as described in paragraph (d) of this section, for the plan year.

(3) A statement indicating whether the annual update is the result of an insolvency determination under § 4041A.25(a) or (b).

(4) A certification, signed by the plan sponsor or a duly authorized representative, that the annual update has been given to all plan participants and beneficiaries in accordance with this part.

(d) *Annual updates to participants and beneficiaries.* Each annual update required by § 4281.43(b) to be issued to plan participants and beneficiaries shall contain the following information:

- (1) The name of the plan.
- (2) The date the notice of insolvency was issued and the insolvency year identified in the notice.

(3) The plan year to which the annual update pertains and the plan sponsor's determination whether the plan may be insolvent in that year.

(4) If the plan may be insolvent for the plan year, a statement that benefits above the amount that can be paid from available resources or the level guaranteed by the PBGC, whichever is greater, will be suspended during the insolvency year, with a brief

explanation of which benefits are guaranteed by the PBGC.

(5) If the plan will not be insolvent for the plan year, a statement that full nonforfeitable benefits under the plan will be paid.

(6) The name, address, and telephone number of the plan administrator or other person designated by the plan sponsor to answer inquiries concerning benefits.

§ 4281.45 Notices of insolvency benefit level.

(a) *Requirement of notices.* For each insolvency year, the plan sponsor shall issue a notice of insolvency benefit level to the PBGC and to plan participants and beneficiaries in pay status or reasonably expected to enter pay status during the insolvency year. The notices shall be delivered in the manner and within the time prescribed in this section and shall contain the information described in § 4281.46.

(b) *When delivered.* The plan sponsor shall mail or otherwise deliver the notices of insolvency benefit level no later than 60 days before the beginning of the insolvency year. A plan sponsor that determines under § 4041A.25(b) that the plan is or may be insolvent for a plan year shall mail or otherwise deliver the notices of insolvency benefit level by the later of 60 days before the beginning of the insolvency year or 60 days after the date of the plan sponsor's determination under § 4041A.25(b).

(c) *Method of delivery.* The notices of insolvency benefit level shall be delivered by mail or by hand to the PBGC and to plan participants and beneficiaries in pay status or reasonably expected to enter pay status during the insolvency year.

§ 4281.46 Contents of notices of insolvency benefit level.

(a) *Notice to the PBGC.* A notice of insolvency benefit level required by § 4281.45(a) to be filed with the PBGC shall contain the information specified in § 4281.44(a)(1) through (a)(5) and (a)(7) through (a)(11) and:

(1) The insolvency year for which the notice is being filed.

(2) The amount of financial assistance, if any, requested from the PBGC. (When financial assistance is requested, the plan sponsor shall submit an application in accordance with § 4281.47.)

(3) A statement indicating whether the notice of insolvency benefit level is the result of an insolvency determination under § 4041A.25(a) or (b).

(4) A certification, signed by the plan sponsor or its duly authorized

representative, that a notice of insolvency benefit level has been sent to all plan participants and beneficiaries in pay status or reasonably expected to enter pay status during the insolvency year, in accordance with this part.

(b) *Notice to participants in or entering pay status.* A notice of insolvency benefit level required by § 4281.45(a) to be delivered to plan participants and beneficiaries in pay status or reasonably expected to enter pay status during the insolvency year for which the notice is given, shall contain the following information:

(1) The name of the plan.

(2) The insolvency year for which the notice is being sent.

(3) The monthly benefit that the participant or beneficiary may expect to receive during the insolvency year.

(4) A statement that in subsequent plan years, depending on the plan's available resources, this benefit level may be increased or decreased but not below the level guaranteed by the PBGC, and that the participant or beneficiary will be notified in advance of the new benefit level if it is less than the participant's full nonforfeitable benefit under the plan.

(5) The amount of the participant's or beneficiary's monthly nonforfeitable benefit under the plan.

(6) The amount of the participant's or beneficiary's monthly benefit that is guaranteed by the PBGC.

(7) The name, address, and telephone number of the plan administrator or other person designated by the plan sponsor to answer inquiries concerning benefits.

§ 4281.47 Application for financial assistance.

(a) *General.* If the plan sponsor determines that the plan's resource benefit level for an insolvency year is below the level of benefits guaranteed by PBGC or that the plan will be unable to pay guaranteed benefits when due for any month during the year, the plan sponsor shall apply to the PBGC for financial assistance pursuant to section 4261 of ERISA. The application shall be filed within the time prescribed in paragraph (b) of this section. When the resource benefit level is below the guarantee level, the application shall contain the information set forth in paragraph (c) of this section. When the plan is unable to pay guaranteed benefits for any month, the application shall contain the information set forth in paragraph (d) of this section.

(b) *When to apply.* When the plan sponsor determines a resource benefit level that is less than guaranteed benefits, it shall apply for financial

assistance at the same time that it submits its notice of insolvency benefit level pursuant to § 4281.45. When the plan sponsor determines an inability to pay guaranteed benefits for any month, it shall apply for financial assistance within 15 days after making that determination.

(c) *Contents of application—resource benefit level below level of guaranteed benefits.* A plan sponsor applying for financial assistance because the plan's resource benefit level is below the level of guaranteed benefits shall file an application that includes the information specified in § 4281.44 (a)(1) through (a)(5) and:

(1) The insolvency year for which the application is being filed.

(2) A participant data schedule showing each participant and beneficiary in pay status or reasonably expected to enter pay status during the year for which financial assistance is requested, listing for each—

(i) Name;

(ii) Sex;

(iii) Date of birth;

(iv) Credited service;

(v) Vested accrued monthly benefit;

(vi) Monthly benefit guaranteed by PBGC;

(vii) Benefit commencement date; and

(viii) Type of benefit.

(d) *Contents of application—unable to pay guaranteed benefits for any month.* A plan sponsor applying for financial assistance because the plan is unable to pay guaranteed benefits for any month shall file an application that includes the data described in § 4281.44 (a)(1) through (a)(5), the month for which financial assistance is requested, and the plan's available resources and guaranteed benefits payable in that month. The participant data schedule described in paragraph (c)(2) of this section shall be submitted upon the request of the PBGC.

(e) *Additional information.* The PBGC may request any additional information that it needs to calculate or verify the amount of financial assistance necessary as part of the conditions of granting financial assistance pursuant to section 4261 of ERISA.

PART 4901—EXAMINATION AND COPYING OF PENSION BENEFIT GUARANTY CORPORATION RECORDS

Subpart A—General

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- Authority: 5 U.S.C. 552; 29 U.S.C. 1302(b)(3); E.O. 12600, 52 FR 23781.

Subpart A—General**§ 4901.1 Purpose and scope.**

This part contains the general rules of the PBGC implementing the Freedom of Information Act. This part sets forth generally the categories of records accessible to the public, the types of records subject to prohibitions or restrictions on disclosure, and the procedure whereby members of the public may obtain access to and inspect and copy information from records in the custody of the PBGC.

§ 4901.2 Definitions.

In addition to terminology in part 4001 of this chapter, as used in this part—

Agency, person, party, rule, rulemaking, order, and adjudication have the meanings attributed to these terms by the definitions in 5 U.S.C. 551, except where the context demonstrates that a different meaning is intended, and except that for purposes of the Freedom of Information Act the term agency as defined in 5 U.S.C. 551 includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President) or any independent regulatory agency.

Disclosure officer means the designated official in the Communications and Public Affairs Department, PBGC.

FOIA means the Freedom of Information Act, as amended (5 U.S.C. 552).

Working day means any weekday excepting Federal holidays.

§ 4901.3 Disclosure facilities.

(a) *Public reference room.* The PBGC will maintain a public reference room in its offices located at 1200 K Street NW., Washington, DC 20005–4026, wherein persons may inspect and copy all records made available for such purposes under this part.

(b) *No withdrawal of records.* No person may remove any record made available for inspection or copying under this part from the place where it is made available except with the written consent of the General Counsel of the PBGC.

§ 4901.4 Information maintained in public reference room.

The PBGC shall make available in its public reference room for inspection and copying without formal request—

(a) *Information published in the Federal Register.* Copies of Federal Register documents published by the PBGC, and copies of Federal Register indexes;

(b) *Information in PBGC publications.* Copies of informational material, such as press releases, pamphlets, and other material ordinarily made available to the public without cost as part of a public information program;

(c) *Rulemaking proceedings.* All papers and documents made a part of the official record in administrative proceedings conducted by the PBGC in connection with the issuance, amendment, or revocation of rules and regulations or determinations having general applicability or legal effect with respect to members of the public or a class thereof (with a register being kept to identify the persons who inspect the records and the times at which they do so);

(d) Except to the extent that deletion of identifying details is required to prevent a clearly unwarranted invasion of personal privacy (in which case the justification for the deletion shall be fully explained in writing)—

(1) *Adjudication proceedings.* Final opinions, orders, and (except to the extent that an exemption provided by FOIA must be asserted in the public interest to prevent a clearly unwarranted invasion of personal privacy or violation of law or to ensure the proper discharge of the functions of the PBGC) other papers and documents made a part of the official record in adjudication proceedings conducted by the PBGC,

(2) *Policy statements and interpretations.* Statements of policy and interpretations affecting a member

of the public which have been adopted by the PBGC and which have not been published in the Federal Register, and

(3) *Staff manuals and instructions.* Administrative staff manuals and instructions to staff issued by the PBGC that affect any member of the public, and

(e) *Indexes to certain records.* Current indexes (updated at least quarterly) identifying materials described in paragraph (a)(2) of FOIA and paragraph (d) of this section.

§ 4901.5 Disclosure of other information.

(a) *In general.* Upon the request of any person submitted in accordance with subpart B of this part, the disclosure officer shall make any document (or portion thereof) from the records of the PBGC in the custody of any official of the PBGC available for inspection and copying unless exempt from disclosure under the provisions of subsection (b) of FOIA and subpart C of this part. The subpart B procedures must be used for records that are not made available in the PBGC's public reference room under § 4901.4 and may be used for records that are available in the public reference room. Records that could be produced only by manipulation of existing information (such as computer analyses of existing data), thus creating information not previously in being, are not records of the PBGC and are not required to be furnished under FOIA.

(b) *Discretionary disclosure.* Notwithstanding the applicability of an exemption under subsection (b) of FOIA and subpart C of this part (other than an exemption under paragraph (b)(1) or (b)(3) of FOIA and § 4901.21 (a)(2) and (a)(3)), the disclosure officer may (subject to 18 U.S.C. 1905 and § 4901.21(a)(1)) make any document (or portion thereof) from the records of the PBGC available for inspection and copying if the disclosure officer determines that disclosure furthers the public interest and does not impede the discharge of any of the functions of the PBGC.

Subpart B—Procedure for Formal Requests**§ 4901.11 Submittal of requests for access to records.**

A request to inspect or copy any record subject to this subpart shall be submitted in writing to the Disclosure Officer, Communications and Public Affairs Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026. To expedite processing, the words "FOIA request" should appear clearly on the request and its envelope.

§ 4901.12 Description of information requested.

(a) *In general.* Each request should reasonably describe the record or records sought in sufficient detail to permit identification and location with a reasonable amount of effort. So far as practicable, the request should specify the subject matter of the record, the place where and date or approximate date when made, the person or office that made it, and any other pertinent identifying details.

(b) *Deficient descriptions.* If the description is insufficient to enable a professional employee familiar with the subject area of the request to locate the record with a reasonable amount of effort, the disclosure officer will notify the requester and, to the extent possible, indicate the additional information required. Every reasonable effort shall be made to assist a requester in the identification and location of the record or records sought. Records will not be withheld merely because it is difficult to find them.

(c) *Requests for categories of records.* Requests calling for all records falling within a reasonably specific category will be regarded as reasonably described within the meaning of this section and paragraph (a)(3) of FOIA if the PBGC is reasonably able to determine which records come within the request and to search for and collect them without unduly interfering with PBGC operations. If PBGC operations would be unduly disrupted, the disclosure officer shall promptly notify the requester and provide an opportunity to confer in an attempt to reduce the request to manageable proportions.

§ 4901.13 Receipt by agency of request.

The disclosure officer shall note the date and time of receipt on each request for access to records. A request shall be deemed received and the period within which action on the request shall be taken, as set forth in § 4901.14 of this part, shall begin on the next business day following such date, except that a request shall be deemed received only if and when the PBGC receives—

(a) A sufficient description under § 4901.12;

(b) Payment or assurance of payment if required under § 4901.33(b); and

(c) The requester's consent to pay substantial search, review, and/or duplication charges under subpart D of this part if the PBGC determines that such charges may be substantial and so notifies the requester. Consent may be in the form of a statement that costs under subpart D will be acceptable either in any amount or up to a specified amount. To avoid possible

delay, a requester may include such a statement in a request.

§ 4901.14 Action on request.

(a) *Time for action.* Promptly and in any event within 10 working days after receipt of a disclosure request (subject to extension under § 4901.16), the disclosure officer shall take action with respect to each requested item (or portion of an item) under either paragraph (b), (c), or (d) of this section.

(b) *Request granted.* If the disclosure officer determines that the request should be granted, the requester shall be so advised and the records shall be promptly made available to the requester.

(c) *Request denied.* If the disclosure officer determines that the request should be denied, the requester shall be so advised in writing with a brief statement of the reasons for the denial, including a reference to the specific exemption(s) authorizing the denial and an explanation of how each such exemption applies to the matter withheld. The denial shall also include the name and title or position of the person(s) responsible for the denial and outline the appeal procedure available.

(d) *Records not promptly located.* As to records that are not located in time to make an informed determination, the disclosure officer may deny the request and so advise the requester in writing with an explanation of the circumstances. The denial shall also include the name and title or position of the person(s) responsible for the denial, outline the appeal procedure available, and advise the requester that the search or examination will be continued and that the denial may be withdrawn, modified, or confirmed when processing of the request is completed.

§ 4901.15 Appeals from denial of requests.

(a) *Submittal of appeals.* If a disclosure request is denied in whole or in part by the disclosure officer, the requester may file a written appeal within 30 days from the date of the denial or, if later (in the case of a partial denial), 30 days from the date the requester receives the disclosed material. The appeal shall state the grounds for appeal and any supporting statements or arguments, and shall be addressed to the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005-4026. To expedite processing, the words "FOIA appeal" should appear clearly on the appeal and its envelope.

(b) *Receipt and consideration of appeal.* The General Counsel shall note the date and time of receipt on each

appeal and notify the requester thereof. Promptly and in any event within 20 working days after receipt of an appeal (subject to extension under § 4901.16), the General Counsel shall issue a decision on the appeal.

(1) The General Counsel may determine de novo whether the denial of disclosure was in accordance with FOIA and this part.

(2) If the denial appealed from was under § 4901.14(d), the General Counsel shall consider any supplementary determination by the disclosure officer in deciding the appeal.

(3) Unless otherwise ordered by the court, the General Counsel may act on an appeal notwithstanding the pendency of an action for judicial relief in the same matter and, if no appeal has been filed, may treat such an action as the filing of an appeal.

(c) *Decision on appeal.* As to each item (or portion of an item) whose nondisclosure is appealed, the General Counsel shall either—

(1) Grant the appeal and so advise the requester in writing, in which case the records with respect to which the appeal is granted shall be promptly made available to the requester; or

(2) Deny the appeal and so advise the requester in writing with a brief statement of the reasons for the denial, including a reference to the specific exemption(s) authorizing the denial, an explanation of how each such exemption applies to the matter withheld, and notice of the provisions for judicial review in paragraph (a)(4) of FOIA. The General Counsel's decision shall be the final action of the PBGC with respect to the request.

(d) *Records of appeals.* Copies of both grants and denials of appeals shall be collected in one file available in the PBGC's public reference room under § 4901.4(d)(1) and indexed under § 4901.4(e).

§ 4901.16 Extensions of time.

In unusual circumstances (as described in subparagraph (a)(6)(B) of FOIA), the time to respond to a disclosure request under § 4901.14(a) or an appeal under § 4901.15(b) may be extended as reasonably necessary to process the request or appeal. The disclosure officer (with the prior approval of the General Counsel) or the General Counsel, as appropriate, shall notify the requester in writing within the original time period of the reasons for the extension and the date when a response is expected to be sent. The maximum extension for responding to a disclosure request shall be 10 working days, and the maximum extension for responding to an appeal shall be 10

working days minus the amount of any extension on the request to which the appeal relates.

§ 4901.17 Exhaustion of administrative remedies.

If the disclosure officer fails to make a determination to grant or deny access to requested records, or the General Counsel does not make a decision on appeal from a denial of access to PBGC records, within the time prescribed (including any extension) for making such determination or decision, the requester's administrative remedies shall be deemed exhausted and the requester may apply for judicial relief under FOIA. However, since a court may allow the PBGC additional time to act as provided in FOIA, processing of the request or appeal shall continue and the requester shall be so advised.

Subpart C—Restrictions on Disclosure

§ 4901.21 Restrictions in general.

(a) *Records not disclosable.* Records shall not be disclosed to the extent prohibited by—

(1) 18 U.S.C. 1905, dealing in general with commercial and financial information;

(2) Paragraph (b)(1) of FOIA, dealing in general with matters of national defense and foreign policy; or

(3) Paragraph (b)(3) of FOIA, dealing in general with matters specifically exempted from disclosure by statute, including information or documentary material submitted to the PBGC pursuant to sections 4010 and 4043 of ERISA.

(b) *Records disclosure of which may be refused.* Records need not (but may, as provided in § 4901.5(b)) be disclosed to the extent provided by—

(1) Paragraph (b)(2) of FOIA, dealing in general with internal agency personnel rules and practices;

(2) Paragraph (b)(4) of FOIA, dealing in general with trade secrets and commercial and financial information;

(3) Paragraph (b)(5) of FOIA, dealing in general with inter-agency and intra-agency memoranda and letters;

(4) Paragraph (b)(6) of FOIA, dealing in general with personnel, medical, and similar files;

(5) Paragraph (b)(7) of FOIA, dealing in general with records or information compiled for law enforcement purposes;

(6) Paragraph (b)(8) of FOIA, dealing in general with reports on financial institutions; or

(7) Paragraph (b)(9) of FOIA, dealing in general with information about wells.

§ 4901.22 Partial disclosure.

If an otherwise disclosable record contains some material that is protected

from disclosure, the record shall not for that reason be withheld from disclosure if deletion of the protected material is feasible. This principle shall be applied in particular to identifying details the disclosure of which would constitute an unwarranted invasion of personal privacy.

§ 4901.23 Record of concern to more than one agency.

If the release of a record in the custody of the PBGC would be of concern not only to the PBGC but also to another Federal agency, the record will be made available by the PBGC only if its interest in the record is the primary interest and only after coordination with the other interested agency. If the interest of the PBGC in the record is not primary, the request will be transferred promptly to the agency having the primary interest, and the requester will be so notified.

§ 4901.24 Special rules for trade secrets and confidential commercial or financial information submitted to the PBGC.

(a) *Application.* To the extent permitted by law, this section applies to a request for disclosure of a record that contains information that has been designated by the submitter in good faith in accordance with paragraph (b) of this section or a record that the PBGC has reason to believe contains such information, unless—

(1) Access to the information is denied;

(2) The information has been published or officially made available to the public;

(3) Disclosure of the information is required by law other than FOIA; or

(4) The designation under paragraph (b) of this section appears obviously frivolous, except that in such a case the PBGC will notify the submitter in writing of a determination to disclose the information within a reasonable time before the disclosure date (which shall be specified in the notice).

(b) *Designation by submitter.* To designate information as being subject to this section, the submitter shall, at the time of submission or by a reasonable time thereafter, assert that information being submitted is confidential business information and designate, with appropriate markings, the portion(s) of the submission to which the assertion applies. Any designation under this paragraph shall expire 10 years after the date of submission unless a longer designation period is requested and reasonable justification is provided therefor.

(c) *Notification to submitter of disclosure request.* When disclosure of

information subject to this section may be made, the disclosure officer or (where disclosure may be made in response to an appeal) the General Counsel shall promptly notify the submitter, describing (or providing a copy of) the information that may be disclosed, and afford the submitter a reasonable period of time to object in writing to the requested disclosure. (The notification to the submitter may be oral or written; if oral, it will be confirmed in writing.) When a submitter is notified under this paragraph, the requester shall be notified that the submitter is being afforded an opportunity to object to disclosure.

(d) *Objection of submitter.* A submitter's statement objecting to disclosure should specify all grounds relied upon for opposing disclosure of any portion(s) of the information under subsection (b) of FOIA and, with respect to the exemption in paragraph (b)(4) of FOIA, demonstrate why the information is a trade secret or is commercial or financial information that is privileged or confidential. Facts asserted should be certified or otherwise supported. (Information provided pursuant to this paragraph may itself be subject to disclosure under FOIA.) Any timely objection of a submitter under this paragraph shall be carefully considered in determining whether to grant a disclosure request or appeal.

(e) *Notification to submitter of decision to disclose.* If the disclosure officer or (where disclosure is in response to an appeal) the General Counsel decides to disclose information subject to this section despite the submitter's objections, the disclosure officer (or General Counsel) shall give the submitter written notice, explaining briefly why the information is to be disclosed despite those objections, describing the information to be disclosed, and specifying the date when the information will be disclosed to the requester. The notification shall, to the extent permitted by law, be provided a reasonable number of days before the disclosure date so specified, and a copy shall be provided to the requester.

(f) *Notification to submitter of action to compel disclosure.* The disclosure officer or the General Counsel shall promptly notify the submitter if a requester brings suit seeking to compel disclosure.

Subpart D—Fees

§ 4901.31 Charges for services.

(a) *Generally.* Pursuant to the provisions of FOIA, as amended, charges will be assessed to cover the direct costs of searching for, reviewing,

and/or duplicating records requested under FOIA from the PBGC, except where the charges are limited or waived under paragraph (b) or (d) of this section, according to the fee schedule in § 4901.32 of this part. No charge will be assessed if the costs of routine collection and processing of the fee would be equal to or greater than the fee itself.

(1) "Direct costs" means those expenditures which the PBGC actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a request under FOIA and this part. Direct costs include, for example, the salary of the employee performing work (*i.e.*, the basic rate of pay plus benefits) or an established average pay for a homogeneous class of personnel (*e.g.*, all administrative/clerical or all professional/executive), and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(2) "Search" means all time spent looking for material that is responsive to a request under FOIA and this part, including page-by-page or line-by-line identification of materials within a document, if required, and may be done manually or by computer using existing programming. "Search" should be distinguished from "review" which is defined in paragraph (a)(3) of this section.

(3) "Review" means the process of examining documents located in response to a request under FOIA and this part to determine whether any portion of any document located is permitted or required to be withheld. It also includes processing any documents for disclosure, *e.g.*, doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(4) "Duplication" means the process of making a copy of a document necessary to respond to a request under FOIA and this part, in a form that is reasonably usable by the requester. Copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (*e.g.*, magnetic tape or disk), among others.

(b) *Categories of requesters.* Requesters who seek access to records under FOIA and this part are divided into four categories: commercial use requesters, educational and noncommercial scientific institutions, representatives of the news media, and all other requesters. The PBGC will

determine the category of a requester and charge fees according to the following rules.

(1) *Commercial use requesters.* When records are requested for commercial use, the PBGC will assess charges, as provided in this subpart, for the full direct costs of searching for, reviewing for release, and duplicating the records sought. Fees for search and review may be charged even if the record searched for is not found or if, after it is found, it is determined that the request to inspect it may be denied under the provisions of subsection (b) of FOIA and this part.

(i) "Commercial use" request means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(ii) In determining whether a request properly belongs in this category, the PBGC will look to the use to which a requester will put the documents requested. Moreover, where the PBGC has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the PBGC will require the requester to provide clarification before assigning the request to this category.

(2) *Educational and noncommercial scientific institution requesters.* When records are requested by an educational or noncommercial scientific institution, the PBGC will assess charges, as provided in this subpart, for the full direct cost of duplication only, excluding charges for the first 100 pages.

(i) "Educational institution" means a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(ii) "Noncommercial scientific institution" means an institution that is not operated on a "commercial" basis as that term is defined in paragraph (b)(1)(i) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(iii) To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not

sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a noncommercial scientific institution) research.

(3) *Requesters who are representatives of the news media.* When records are requested by representatives of the news media, the PBGC will assess charges, as provided in this subpart, for the full direct cost of duplication only, excluding charges for the first 100 pages.

(i) "Representative of the news media" means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

(ii) To be eligible for inclusion in this category, the request must not be made for a commercial use. A request for records supporting the news dissemination function of the requester who is a representative of the news media shall not be considered to be a request that is for a commercial use.

(4) *All other requesters.* When records are requested by requesters who do not fit into any of the categories in paragraphs (b)(1) through (b)(3) of this section, the PBGC will assess charges, as provided in this subpart, for the full direct cost of searching for and duplicating the records sought, with the exceptions that there will be no charge for the first 100 pages of duplication and the first two hours of manual search time (or its cost equivalent in computer search time). Notwithstanding the preceding sentence, there will be no charge for search time in the event of requests under the Privacy Act of 1974 from subjects of records filed in the PBGC's systems of records for the disclosure of records about themselves. Search fees, where applicable, may be charged even if the record searched for is not found.

(c) *Aggregation of requests.* If the PBGC reasonably believes that a

requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the PBGC will aggregate any such requests and charge accordingly. In no case will the PBGC aggregate multiple requests on unrelated subjects from one requester.

(d) *Waiver or reduction of charges.* Circumstances under which searching, review, and duplication facilities or services may be made available to the requester without charge or at a reduced charge are set forth in § 4901.34 of this part.

§ 4901.32 Fee schedule.

(a) *Charges for searching and review of records.* Charges applicable under this subpart to the search for and review of records will be made according to the following fee schedule:

(1) *Search and review time.* (i) Ordinary search and review by custodial or clerical personnel, \$1.75 for each one-quarter hour or fraction thereof of employee worktime required to locate or obtain the records to be searched and to make the necessary review; and (ii) search or review requiring services of professional or supervisory personnel to locate or review requested records, \$4.00 for each one-quarter hour or fraction thereof of professional or supervisory personnel worktime.

(2) *Additional search costs.* If the search for a requested record requires transportation of the searcher to the location of the records or transportation of the records to the searcher, at a cost in excess of \$5.00, actual transportation costs will be added to the search time cost.

(3) *Search in computerized records.* Charges for information that is available in whole or in part in computerized form will include the cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to searching for records responsive to the request, personnel salaries apportionable to the search, and tape or printout production or an established agency-wide average rate for CPU operating costs and operator/programmer salaries involved in FOIA searches. Charges will be computed at the rates prescribed in paragraphs (a) and (b) of this section.

(b) *Charges for duplication of records.* Charges applicable under this subpart for obtaining requested copies of records made available for inspection will be made according to the following fee schedule and subject to the following conditions.

(1) *Standard copying fee.* \$0.15 for each page of record copies furnished. This standard fee is also applicable to

the furnishing of copies of available computer printouts as stated in paragraph (a)(3) of this section.

(2) *Voluminous material.* If the volume of page copy desired by the requester is such that the reproduction charge at the standard page rate would be in excess of \$50, the person desiring reproduction may request a special rate quotation from the PBGC.

(3) *Limit of service.* Not more than 10 copies of any document will be furnished.

(4) *Manual copying by requester.* No charge will be made for manual copying by the requesting party of any document made available for inspection under the provisions of this part. The PBGC shall provide facilities for such copying without charge at reasonable times during normal working hours.

(5) *Indexes.* Pursuant to paragraph (a)(2) of FOIA copies of indexes or supplements thereto which are maintained as therein provided but which have not been published will be provided on request at a cost not to exceed the direct cost of duplication.

(c) *Other charges.* The scheduled fees, set forth in paragraphs (a) and (b) of this section, for furnishing records made available for inspection and duplication represent the direct costs of furnishing the copies at the place of duplication. Upon request, single copies of the records will be mailed, postage prepaid, free of charge. Actual costs of transmitting records by special methods such as registered, certified, or special delivery mail or messenger, and of special handling or packaging, if required, will be charged in addition to the scheduled fees.

§ 4901.33 Payment of fees.

(a) *Medium of payment.* Payment of the applicable fees as provided in this subsection shall be made in cash, by U.S. postal money order, or by check payable to the PBGC. Postage stamps will not be accepted in lieu of cash, checks, or money orders as payment for fees specified in the schedule. Cash should not be sent by mail.

(b) *Advance payment or assurance of payment.* Payment or assurance of payment before work is begun or continued on a request may be required under the following rules.

(1) Where the PBGC estimates or determines that charges allowable under the rules in this subpart are likely to exceed \$250, the PBGC may require advance payment of the entire fee or assurance of payment, as follows:

(i) Where the requester has a history of prompt payment of fees under this part, the PBGC will notify the requester

of the likely cost and obtain satisfactory assurance of full payment; or

(ii) Where the requester has no history of payment for requests made pursuant to FOIA and this part, the PBGC may require the requester to make an advance payment of an amount up to the full estimated charges.

(2) Where the requester has previously failed to pay a fee charged in a timely fashion (*i.e.*, within 30 days of the date of the billing), the PBGC may require the requester to pay the full amount owed plus any applicable interest as provided in paragraph (c) of this section (or demonstrate that he has, in fact, paid the fee) and to make an advance payment of the full amount of the estimated fee.

(c) *Late payment interest charges.* The PBGC may assess late payment interest charges on any amounts unpaid by the 31st day after the date a bill is mailed to a requester. Interest will be assessed at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date the bill is mailed.

§ 4901.34 Waiver or reduction of charges.

(a) The disclosure officer may waive or reduce fees otherwise applicable under this subpart when disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. A fee waiver request shall set forth full and complete information upon which the request for waiver is based.

(b) The disclosure officer may reduce or waive fees applicable under this subpart when the requester has demonstrated his inability to pay such fees.

PART 4902—DISCLOSURE AND AMENDMENT OF RECORDS PERTAINING TO INDIVIDUALS UNDER THE PRIVACY ACT

Sec.

4902.1 Purpose and scope.

4902.2 Definitions.

4902.3 Procedures for determining existence of and requesting access to records.

4902.4 Disclosure of record to an individual.

4902.5 Procedures for requesting amendment of a record.

4902.6 Action on request for amendment of a record.

4902.7 Appeal of a denial of a request for amendment of a record.

4902.8 Fees.

4902.9 Specific exemptions.

Authority: 5 U.S.C. 552a.

§ 4902.1 Purpose and scope.

This part establishes procedures whereby an individual can determine whether the PBGC maintains any system of records that contains a record pertaining to the individual, procedures to effect access to an individual's record upon his or her request, and procedures for making requests to amend records, for making the initial determinations on such requests, and for appealing denials of such requests. This part also prescribes the fees for making copies of an individual's record. Finally, this part sets forth those systems of records that are exempted from certain disclosure and other provisions of the Privacy Act (5 U.S.C. 552a).

§ 4902.2 Definitions.

In addition to terminology in part 4001 of this chapter, as used in this part:

Disclosure officer means the designated official in the Communications and Public Affairs Department, PBGC.

Record means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his or her education, financial transactions, medical history, and criminal or employment history and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

System of records means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

Working day means any weekday excepting Federal holidays.

§ 4902.3 Procedures for determining existence of and requesting access to records.

(a) Any individual may submit a written request, either by mail to the Disclosure Officer, Communications and Public Affairs Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005-4026, or in person between the hours of 9 a.m. and 4 p.m. on any working day in Suite 240 at the above address, for the purpose of—

(1) Learning whether a system of records maintained by the PBGC contains any record pertaining to the requester, or

(2) Obtaining access to such a record.

(b) Each request submitted pursuant to paragraph (a) of this section shall include the name of the system of

records to which the request pertains and the requester's full name, home address and date of birth, and shall clearly state on the envelope and on the request "Privacy Act Request." If this information is insufficient to enable the PBGC to identify the record in question, the disclosure officer shall request such further identifying data as the disclosure officer deems necessary to locate the record.

(c) Unless the request is only for notification of the existence of a record and such notification is required under the Freedom of Information Act (5 U.S.C. 552), the requester shall be required to provide verification of his or her identity to the PBGC as set forth in paragraph (c) (1) or (2) of this section, as appropriate.

(1) If the request is made by mail, the requester shall submit a notarized statement establishing his or her identity.

(2) If the request is made in person, the requester shall show identification satisfactory to the disclosure officer, such as a driver's license, employee identification, annuitant identification or Medicare card.

(d) The disclosure officer shall respond to the request in writing within 10 working days after receipt of the request or of such additional information as may be required under paragraph (b) of this section. If a request for access to a record is granted, the response shall state when the record will be made available.

§ 4902.4 Disclosure of record to an individual.

(a) When the disclosure officer grants a request for access to records under § 4902.3, such records shall be made available when the requester is advised of the determination or as promptly thereafter as possible. At the requester's option, the record will be made available for the requester's inspection and copying at the Communications and Public Affairs Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005-4026, between the hours of 9 a.m. and 4 p.m. on any working day, or a copy of the record will be mailed to the requester.

(b) If the requester desires to be accompanied by another individual during the inspection and/or copying of the record, the requester shall, either when the record is made available or at any earlier time, submit to the disclosure officer a signed statement identifying such other individual and authorizing such other individual to be present during the inspection and/or copying of the record.

§ 4902.5 Procedures for requesting amendment of a record.

(a) Any individual about whom the PBGC maintains a record contained in a system of records may request that the record be amended. Such a request shall be submitted in the same manner described in § 4902.3(a).

(b) Each request submitted under paragraph (a) of this section shall include the information described in § 4902.3(b) and a statement specifying the changes to be made in the record and the justification therefor. The disclosure officer may request further identifying data as described in § 4902.3(b).

(c) An individual who desires assistance in the preparation of a request for amendment of a record shall submit such request for assistance in writing to the Deputy General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005-4026. The Deputy General Counsel shall respond to such request as promptly as possible.

§ 4902.6 Action on request for amendment of a record.

(a) Within 20 working days after receipt by the PBGC of a request for amendment of a record under § 4902.5, unless for good cause shown the Executive Director of the PBGC extends such 20-day period, the disclosure officer shall notify the requester in writing whether and to what extent the request shall be granted. To the extent that the request is granted, the disclosure officer shall cause the requested amendment to be made promptly.

(b) When a request for amendment of a record is denied in whole or in part, the denial shall include a statement of the reasons therefor, the procedures for appealing such denial, and a notice that the requester has a right to assistance in preparing an appeal of the denial.

(c) An individual who desires assistance in preparing an appeal of a denial under this section shall submit a request in writing to the Deputy General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005-4026. The Deputy General Counsel shall respond to the request as promptly as possible, but in no event more than 30 days after receipt.

§ 4902.7 Appeal of a denial of a request for amendment of a record.

(a) An appeal from a denial of a request for amendment of a record under § 4902.6 shall be submitted, within 45 days of receipt of the denial, to the General Counsel, Pension Benefit

Guaranty Corporation, 1200 K Street NW., Washington, DC 20005-4026, unless the record subject to such request is one maintained by the Office of the General Counsel, in which event the appeal shall be submitted to the Deputy Executive Director at the same address. The appeal shall state in detail the basis on which it is made and both the envelope and the appeal shall clearly state "Privacy Act Request".

(b) Within 30 working days after the receipt of the appeal, unless for good cause shown the Executive Director of the PBGC extends such 30-day period, the General Counsel or, where appropriate, the Deputy Executive Director, shall issue a decision in writing granting or denying the appeal in whole or in part. To the extent that the appeal is granted, the General Counsel or, where appropriate, the Deputy Executive Director, shall cause the requested amendment to be made promptly. To the extent that the appeal is denied, the decision shall include the reasons for the denial and a notice of the requester's right to submit a brief statement setting forth reasons for disputing the denial of appeal, to seek judicial review of the denial pursuant to 5 U.S.C. 552a(g)(1)(A), and to obtain further information concerning the provisions for judicial review under that section.

(c) An individual whose appeal has been denied in whole or in part may submit a brief summary statement setting forth reasons for disputing such denial. Such statement shall be submitted within 30 days of receipt of the denial of the appeal to the Disclosure Officer. Any such statement shall be made available by the PBGC to anyone to whom the record is subsequently furnished and may also be accompanied, at the discretion of the PBGC, by a brief statement summarizing the PBGC's reasons for refusing to amend the record. The PBGC shall also provide copies of the individual's statement of dispute to all prior recipients of the record with respect to whom an accounting of the disclosure of the record was maintained pursuant to 5 U.S.C. 552a(c)(1).

(d) To request further information concerning the provisions for judicial review, an individual shall submit such request in writing to the Deputy General Counsel, who shall respond to such request as promptly as possible.

§ 4902.8 Fees.

When an individual requests a copy of his or her record under § 4902.4, charges for the copying shall be made according to the following fee schedule:

(a) *Standard copying fee.* There shall be a charge of \$0.15 per page of record copies furnished. Where the copying fee is less than \$1.50, it shall not be assessed.

(b) *Voluminous material.* If the volume of page copy desired by the requester is such that the reproduction charge at the standard page rate would be in excess of \$50, the individual desiring reproduction may request a special rate quotation from the PBGC.

(c) *Manual copying by requester.* No charge will be made for manual copying by the requester of any document made available for inspection under § 4902.4. The PBGC shall provide facilities for such copying without charge between the hours of 9 a.m. and 4 p.m. on any working day.

§ 4902.9 Specific exemptions.

(a) Under the authority granted by 5 U.S.C. 552a(k)(5), the PBGC hereby exempts the system of records entitled "Personnel Security Investigation Records—PBGC" from the provisions of 5 U.S.C. §§ 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f), to the extent that the disclosure of such material would reveal the identity of a source who furnished information to PBGC under an express promise of confidentiality or, before September 27, 1975, under an implied promise of confidentiality.

(b) The reasons for asserting this exemption are to insure the gaining of information essential to determining suitability and fitness for PBGC employment, access to information, and security clearances, to insure that full and candid disclosures are obtained in making such determinations, to prevent subjects of such determinations from thwarting the completion of such determinations, and to avoid revealing the identities of persons who furnish information to the PBGC in confidence.

PART 4903—DEBT COLLECTION

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Subpart D—Salary Offset [Reserved]

Authority: 29 U.S.C. 1302(b); 31 U.S.C. 3701, 3711(f), 3720A; 4 CFR part 102; 26 CFR 301.6402—6.

Subpart A—General

§ 4903.1 Purpose and scope.

(a) *Subpart A.* Subpart A of this part contains definitions and general provisions applicable to debt collection generally.

(b) *Subpart B.* Subpart B of this part prescribes procedures for debt collection by administrative offset, as authorized by the Federal Claims Collection Act (31 U.S.C. 3716), and consistent with applicable provisions of the Federal Claims Collection Standards. These procedures apply when the PBGC determines that collection by administrative offset of a claim that is liquidated or certain in amount is feasible and not otherwise prohibited or when another agency seeks administrative offset against a payment to be made by the PBGC.

(c) *Subpart C.* Subpart C of this part prescribes procedures for debt collection by tax refund offset, as authorized by section 3720A of subchapter II, chapter 37 of title 31 of the United States Code (31 U.S.C. 3720A) and in accordance with applicable IRS regulations (26 CFR 301-6402.6), including a related procedure for disclosure to a consumer reporting agency. These procedures apply to determinations that a debt of at least \$25 is past-due and legally enforceable, to referrals by the PBGC of past-due, legally enforceable debts to the IRS for offset, and to any subsequent corrections of information contained in such referrals.

§ 4903.2 General.

(a) Certain PBGC efforts to obtain payment of debts arising out of activities under ERISA are authorized by and subject to requirements prescribed under other federal statutes. When, and to the extent, such requirements apply to collection of a debt by the PBGC, PBGC activities will be consistent with such requirements, as well as with any other applicable requirements (see, e.g., parts 4003, 4007, and 4062 of this chapter).

(b)(1) The Executive Director of the PBGC has delegated to the Director of the Financial Operations Department primary responsibility for PBGC debt collection activities. This delegation includes responsibility for procedures implementing requirements prescribed under federal statutes other than ERISA,

and for coordinating the activities of other PBGC departments with functional responsibilities for different types of claims.

(2) PBGC departments are responsible for ascertaining indebtedness and other aspects of agency collection activities within their areas of functional responsibility.

§ 4903.3 Definitions.

The following terms are defined in § 4001.2 of this chapter: IRS, PBGC, and person. In addition, for purposes of this part:

Administrative offset has the meaning set forth in 31 U.S.C. 3701(a)(1).

Agency means an executive or legislative agency (within the meaning of 31 U.S.C. 3701(a)(4)).

Claim and *debt*, as defined in the Federal Claims Collection Standards (4 CFR 101.2(a)), are used synonymously and interchangeably to refer to an amount of money or property which has been determined by an appropriate agency official to be owed to the United States from any person, organization, or entity, except another Federal agency.

Consumer reporting agency has the meaning set forth in 31 U.S.C. 3701(a)(3).

Federal Claims Collection Act means the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701 *et seq.*).

Federal Claims Collection Standards means 4 CFR parts 101 through 105, which are regulations issued jointly by the Comptroller General of the United States and the Attorney General of the United States that implement the Federal Claims Collection Act.

Repayment agreement means a written agreement by a debtor to repay a debt to the PBGC.

Tax refund offset means the reduction by the IRS of a tax overpayment payable to a taxpayer by the amount of past-due, legally enforceable debt owed by that taxpayer to a federal agency that has entered into an agreement with the IRS with regard to its participation in the tax refund offset program, pursuant to IRS regulations (26 CFR 301.6402-6).

Subpart B—Administrative Offset

§ 4903.21 Application of Federal Claims Collection Standards.

The PBGC will determine the feasibility of collection by administrative offset, whether to accept a repayment agreement in lieu of offset, and how to apply amounts collected by administrative offset on multiple debts as provided in the Federal Claims Collection Standards (4 CFR 102.3).

(a) *Feasibility*. The PBGC will determine whether collection by

administrative offset is feasible on a case-by-case basis in the exercise of sound discretion. In making such determinations, the PBGC will consider:

(1) Whether administrative offset can be accomplished, both practically and legally;

(2) Whether administrative offset is best suited to further and protect all governmental interests;

(3) In appropriate circumstances, the debtor's financial condition; and

(4) Whether offset would tend to interfere substantially with or defeat the purposes of the program authorizing the payments against which offset is contemplated.

(b) *Repayment agreements*. The PBGC will exercise its discretion in determining whether to accept a repayment agreement in lieu of offset, balancing the Government's interest in collecting the debt against fairness to the debtor. If the debt is delinquent (within the meaning of 4 CFR 101.2(b)) and the debtor has not disputed its existence or amount, the PBGC will accept a repayment agreement in lieu of offset only if the debtor is able to establish that offset would result in undue financial hardship or would be against equity and good conscience.

(c) *Multiple debts*. When the PBGC collects multiple debts by administrative offset, it will apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

§ 4903.22 Administrative offset procedures.

(a) *General*. Except as otherwise required by law or as provided in paragraph (e) of this section, the PBGC will not effect administrative offset against a payment to be made to a debtor prior to the completion of the procedures specified in paragraphs (b) and (c) of this section. However, the PBGC will not duplicate any notice or other procedural protection it previously provided in connection with the same debt under some other statutory or regulatory authority, such as part 4003 of this chapter.

(b) *Notice*. The PBGC will provide written notice informing the debtor of the following:

(1) The nature and amount of the debt, and the PBGC's intention to collect by offset;

(2) That the debtor may inspect and copy PBGC records pertaining to the debt in accordance with part 4901 or part 4902 of this chapter, as applicable (access under the Freedom of

Information Act (5 U.S.C. 552) or the Privacy Act (5 U.S.C. 552a), respectively);

(3) How and from whom the debtor may obtain administrative review of a determination of indebtedness;

(4) The facts and circumstances that the PBGC will consider in determining whether to accept a repayment agreement in lieu of offset; and

(5) If the PBGC has not previously demanded payment of the debt, the date by which payment must be made to avoid further collection action.

(c) *Administrative review*. (1) A debtor may obtain review within the PBGC of a determination of indebtedness by submitting a written request for review, designated as such, to the PBGC official specified in the notice of indebtedness. Unless another regulation in this chapter specifies a different period of time, such a request must be submitted within 30 days after the date of a PBGC notice under paragraph (b) of this section.

(2) A request for review must:

(i) State the ground(s) on which the debtor disputes the debt; and

(ii) Reference all pertinent information already in the possession of the PBGC and include any additional information believed to be relevant.

(3) The PBGC will review a determination of indebtedness, when requested to do so in a timely manner. The PBGC will issue a written decision, based on the written record, and will notify the debtor of its decision.

(i) The review will be conducted by an official of at least the same level of authority as the person who made the determination of indebtedness.

(ii) The notice of the PBGC's decision on review will include a brief statement of the reason(s) why the determination of indebtedness has or has not been changed.

(4) Upon receipt of a request for administrative review, the PBGC may, in its discretion, temporarily suspend transactions in any of the debtor's accounts maintained by the PBGC. If the PBGC resolves the dispute in the debtor's favor, it will lift the suspension immediately.

(d) *Repayment agreement in lieu of offset*. (1) The PBGC will not consider entering a repayment agreement in lieu of offset unless a debtor submits a copy of the debtor's most recent audited (or if not available, unaudited) financial statement (with balance sheets, income statements, and statements of changes in financial position), to the extent such documents have been prepared, and other information regarding the debtor's financial condition (*e.g.*, the types of information on assets, liabilities,

earnings, and other factors specified in paragraphs (b)(3) through (b)(7) of § 4062.6 of this chapter).

(2) The PBGC may require appropriate security as a condition of accepting a repayment agreement in lieu of offset.

(e) *Exception.* (1) The PBGC may effect administrative offset against a payment to be made to the debtor prior to completing the procedures specified in paragraphs (b) and (c) of this section if:

(i) Failure to take the offset would substantially prejudice the government's ability to collect the debt; and

(ii) The time before the payment is to be made does not reasonably permit the completion of those procedures.

(2) The PBGC has determined that a case in which it applies the special rule in § 4068.3(c) of this chapter meets the criteria in paragraph (e)(1) of this section.

(3) If the PBGC effects administrative offset against a payment to be made to a debtor prior to completing the procedures specified in paragraphs (b) and (c) of this section, the PBGC—

(i) Will promptly complete those procedures; and

(ii) Will promptly refund any amounts recovered by offset but later found not to be owed to the Government.

§ 4903.23 PBGC requests for offset by other agencies.

(a) *General.* The PBGC may request that funds payable to its debtor by another agency be administratively offset to collect a debt owed to the PBGC by the debtor. A PBGC request for administrative offset against amounts due and payable from the Civil Service Retirement and Disability Fund will be made in accordance with 5 CFR part 831, subpart R (Agency Requests to OPM for Recovery of a Debt from the Civil Service Retirement and Disability Fund).

(b) *Certification.* In requesting administrative offset, the Director of the Financial Operations Department (or a department official designated by the Director) will certify in writing to the agency holding funds of the debtor—

(1) That the debtor owes the debt (including the amount) and that the PBGC has fully complied with the provisions of 4 CFR 102.3; and

(2) In a request for administrative offset against amounts due and payable from the Civil Service Retirement and Disability Fund, that the PBGC has complied with applicable statutes and the regulations and procedures of the Office of Personnel Management.

§ 4903.24 Requests for offset from other agencies.

(a) *General.* As provided in the Federal Claims Collections Standards (4 CFR 102.3(d)), the PBGC generally will comply with requests from other agencies to initiate administrative offset to collect debts owed to the United States unless the requesting agency has not complied with the applicable provisions of the Federal Claims Collection Standards or the offset would be otherwise contrary to law.

(b) *Submission of requests.* (1) Any agency may request that funds payable to its debtor by the PBGC be administratively offset to collect a debt owed to such agency by the debtor by submitting the certification described in paragraph (c) of this section.

(2) All such requests should be directed to the Director, Financial Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026.

(c) *Certification required.* The PBGC will not initiate administrative offset in response to a request from another agency until it receives written certification from the requesting agency, signed by an appropriate agency official, that the debtor owes the debt (including the amount) and that the requesting agency has fully complied with the provisions of 4 CFR 102.3 (with a citation to the agency's own administrative offset regulations).

Subpart C—Tax Refund Offset

§ 4903.31 Eligibility of debt for tax refund offset.

The PBGC will determine whether a debt is eligible for tax refund offset in accordance with IRS regulations (26 CFR 301.6402-6 (c) and (d)). The PBGC may refer a past-due, legally enforceable debt to the IRS for offset if:

(a) The debt is a judgment debt, or the PBGC's right of action accrued not more than 10 years earlier (unless the debt is specifically exempt from this requirement);

(b) The PBGC cannot currently collect the debt by salary offset (pursuant to 5 U.S.C. 5514(a)(1));

(c) The debt is ineligible for administrative offset (by reason of 31 U.S.C. 3716(c)(2)), or the PBGC cannot currently collect the debt by administrative offset (under 31 U.S.C. 3716 and subpart B of this part) against amounts payable by the debtor to the PBGC;

(d) The PBGC has notified, or attempted to notify, the debtor of its intent to refer the debt, given the debtor an opportunity to present evidence that all or part of the debt is not past-due or

not legally enforceable, considered any evidence presented by the debtor in accordance with § 4903.32, and determined that the debt is past-due and legally enforceable;

(e) If the debt is a consumer debt and exceeds \$100, the PBGC has disclosed the debt to a consumer reporting agency (as authorized by 31 U.S.C. 3711(f) and provided in § 4903.32), unless a consumer reporting agency would be prohibited from reporting information concerning the debt (by reason of 15 U.S.C. 1681c); and

(f) The debt is at least \$25.

§ 4903.32 Tax refund offset procedures.

(a) *General.* Before referring a debt for tax refund offset, the PBGC will complete the procedures specified in paragraph (b) and, if applicable, paragraph (c) of this section. The PBGC may satisfy these requirements in conjunction with any other procedures that apply to the same debt, such as those prescribed in § 4903.22 or part 4003 of this chapter.

(b) *Notice, opportunity to present evidence, and determination of indebtedness.*

(1) The PBGC will notify, or make a reasonable attempt to notify, a person owing a debt (a "debtor") that a debt is past-due and if not repaid within 60 days, the PBGC will refer the debt to the IRS for offset against any overpayment of tax. For this purpose, compliance with IRS procedures (26 CFR 301.6402-6(d)(1)) constitutes a reasonable attempt to notify a debtor.

(2) A debtor will have at least 60 days to present evidence, for consideration by the PBGC, that all or part of a debt is not past-due or not legally enforceable.

(3) If evidence that all or part of a debt is not past-due or not legally enforceable is considered by an agent or person other than a PBGC employee acting on behalf of the PBGC, a debtor will have at least 30 days from the date of the determination on the debt to request review by the Director of the Financial Operations Department (or a department official designated by the Director).

(4) The PBGC will notify a debtor of its determination as to whether all or part of a debt is past-due and legally enforceable.

(c) *Consumer reporting agency disclosure.*

(1)(i) If a consumer debt exceeds \$100, the Director of the Financial Operations Department (or a department official designated by the Director), after verifying the validity and overdue status of the debt and that section 605 of the Consumer Credit Protection Act (15 U.S.C. 1681c) does not prohibit a

consumer reporting agency from reporting information concerning the debt because it is obsolete, will send the individual who owes the debt a written notice—

(A) That the debt is past-due;

(B) That the PBGC intends to disclose to a consumer reporting agency that the individual is responsible for the debt and the specific information to be disclosed; and

(C) How the individual may obtain an explanation of the debt, dispute the information in PBGC's records, and obtain administrative review of the debt.

(ii) If the PBGC does not have a current address for an individual, the Director of the Financial Operations Department (or a department official designated by the Director) will take reasonable action to locate the individual.

(2) The Director of the Financial Operations Department (or a department official designated by the Director) will disclose the debt if, within 60 days (or, at his or her discretion, more than 60 days) after sending the notice described in paragraph (c)(1) of this section, the individual has not repaid the debt, or agreed to repay the debt under a written agreement, or requested administrative review of the debt.

§ 4903.33 Referral of debt for tax refund offset.

The Director of the Financial Operations Department (or a department official designated by the Director) will refer debts to the IRS for refund offset, and will correct referrals, in accordance with IRS regulations (26 CFR 301.6402–6(e) and (f)).

Subpart D—Salary Offset [Reserved]

PART 4904—ETHICAL CONDUCT OF EMPLOYEES

Sec.

4904.1 Outside employment and other activity.

Authority: 29 U.S.C. 1302(b); E.O. 11222, 30 FR 6469; 5 CFR 735.104.

§ 4904.1 Outside employment and other activity.

(a)–(c) [Reserved].

(d) An employee who is engaged in or is planning to engage in outside employment, business, professional or other such activities for pay shall obtain clearance:

(1) When such activities raise a question of conflict with this subpart or any applicable laws, orders, regulations or standards, or

(2) When applicable laws, orders or regulations require clearance of such activities.

(e) A request for clearance shall be in writing and shall include a statement of the nature of and the amount of time to be devoted to the activity. The heads of offices shall receive and review requests for clearance submitted by members of their staff. The Executive Director or his designee shall receive and review requests for clearance submitted by the heads of offices and special Government employees. The employee reviewing the request for clearance may require the employee making the request to furnish such other information as may be appropriate in considering the request and shall consult with the Corporation's Ethics Counselor where appropriate. The request may be granted only if such activity would be consistent with applicable laws, orders and regulations. If the request for clearance is not granted, the employee making the request shall not commence or continue in the activity unless the Executive Director or his designee, upon written request of the employee, determines that such activity would be consistent with applicable laws, orders and regulations.

PART 4905—APPEARANCES IN CERTAIN PROCEEDINGS

Sec.

4905.1 Purpose and scope.

4905.2 Definitions.

4905.3 General.

4905.4 Appearances by PBGC employees.

4905.5 Requests for authenticated copies of PBGC records.

4905.6 Penalty.

Authority: 29 U.S.C. 1302(b); E.O. 11222, 30 FR 6469; 5 CFR 735.104.

§ 4905.1 Purpose and scope.

(a) *Purpose.* This part sets forth the rules and procedures to be followed when a PBGC employee or former employee is requested or served with compulsory process to appear as a witness or produce documents in a proceeding in which the PBGC is not a party, if such appearance arises out of, or is related to, his or her employment with the PBGC. It provides a centralized decisionmaking mechanism for responding to such requests and compulsory process.

(b) *Scope.* (1) This part applies when, in a judicial, administrative, legislative, or other proceeding, a PBGC employee or former employee is requested or served with compulsory process to provide testimony concerning information acquired in the course of performing official duties or because of official status and/or to produce material acquired in the course of performing official duties or contained in PBGC files.

(2) This part does not apply to:

(i) Proceedings in which the PBGC is a party;

(ii) Congressional requests or subpoenas for testimony or documents; or

(iii) Appearances by PBGC employees in proceedings that do not arise out of, or relate to, their employment with PBGC (e.g., outside activities that are engaged in consistent with applicable standards of ethical conduct).

§ 4905.2 Definitions.

For purposes of this part:

Appearance means testimony or production of documents or other material, including an affidavit, deposition, interrogatory, declaration, or other required written submission.

Compulsory Process means any subpoena, order, or other demand of a court or other authority (e.g., an administrative agency or a state or local legislative body) for the appearance of a PBGC employee or former employee.

Employee means any officer or employee of the PBGC, including a special government employee.

Proceeding means any proceeding before any federal, state, or local court; federal, state, or local agency; state or local legislature; or other authority responsible for administering regulatory requirements or adjudicating disputes or controversies, including arbitration, mediation, and other similar proceedings.

Special government employee means an employee of the PBGC who is retained, designated, appointed or employed to perform, with or without compensation, for not to exceed one hundred and thirty days during any three hundred and sixty-five consecutive days, temporary duties either on a full-time or intermittent basis (18 U.S.C. 202).

§ 4905.3 General.

No PBGC employee or former employee may appear in any proceeding to which this part applies to testify and/or produce documents or other material unless authorized under this part.

§ 4905.4 Appearances by PBGC employees.

(a) Whenever a PBGC employee or former employee is requested or served with compulsory process to appear in a proceeding to which this part applies, he or she will promptly notify the General Counsel.

(b) The General Counsel or his or her designee will authorize an appearance by a PBGC employee or former employee if, and to the extent, he or she determines that such appearance is in the interest of the PBGC.

(1) In determining whether an appearance is in the interest of the PBGC, the General Counsel or his or her designee will consider relevant factors, including:

(i) What, if any, objective of the PBGC (and, where relevant, any federal agency, if the United States is a party) would be promoted by the appearance;

(ii) Whether the appearance would unnecessarily interfere with the employee's official duties;

(iii) Whether the appearance would result in the appearance of improperly favoring one litigant over another; and

(iv) Whether the appearance is appropriate under applicable substantive and procedural rules.

(2) If the General Counsel or his or her designee concludes that compulsory process is essentially a request for PBGC record information, it will be treated as a request under the Freedom of Information Act, as amended, in accordance with part 4901 of this chapter, except to the extent that the Privacy Act of 1974, as amended, and part 4902 of this chapter govern disclosure of a record maintained on an individual.

(c) If, in response to compulsory process in a proceeding to which this part applies, the General Counsel or his or her designee has not authorized an appearance by the return date, the employee or former employee shall appear at the stated time and place (unless advised by the General Counsel or his or her designee that process either was not validly issued or served or has been withdrawn), accompanied by a PBGC attorney, produce a copy of this part of the regulations, and respectfully decline to provide any testimony or produce any documents or other material. When the demand is under consideration, the employee shall respectfully request that the court or other authority stay the demand pending the employee's receipt of instructions from the General Counsel.

§ 4905.5 Requests for authenticated copies of PBGC records.

The PBGC will grant requests for authenticated copies of PBGC records, for purposes of admissibility under 28 U.S.C. 1733 and Rule 44 of the Federal Rules of Civil Procedure, for records that are to be disclosed pursuant to this part or part 4901 of this chapter. Appropriate fees will be charged for providing authenticated copies of PBGC records, in accordance with part 4901, subpart D, of this chapter.

§ 4905.6 Penalty.

A PBGC employee who testifies or produces documents or other material

in violation of a provision of this part of the regulations shall be subject to disciplinary action.

PART 4907—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE PENSION BENEFIT GUARANTY CORPORATION

Sec.

4907.101 Purpose.

4907.102 Application.

4907.103 Definitions.

4907.104–4907.109 [Reserved]

4907.110 Self-evaluation.

4907.111 Notice.

4907.112–4907.129 [Reserved]

4907.130 General prohibitions against discrimination.

4907.131–4907.139 [Reserved]

4907.140 Employment.

4907.141–4907.148 [Reserved]

4907.149 Program accessibility:

Discrimination prohibited.

4907.150 Program accessibility: Existing facilities.

4907.151 Program accessibility: New construction and alterations.

4907.152–4907.159 [Reserved]

4907.160 Communications.

4907.161–4907.169 [Reserved]

4907.170 Compliance procedures.

4907.171–4907.999 [Reserved]

Authority: 29 U.S.C. 794, 1302(b)(3).

§ 4907.101 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 4907.102 Application.

This part applies to all programs or activities conducted by the agency.

§ 4907.103 Definitions.

For purposes of this part, the term—
Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include

telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Handicapped person means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) Major life activities includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in subparagraph (1) of this definition but is treated by the agency as having such an impairment.

Historic preservation programs means programs conducted by the agency that have preservation of historic properties as a primary purpose.

Historic properties means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

Qualified handicapped person means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, a handicapped person who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency.

(2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(3) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) Qualified handicapped person is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 4907.140.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955). As used in this part,

section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

Substantial impairment means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§§ 4907.104–4907.109 [Reserved]

§ 4907.110 Self-evaluation.

(a) The agency shall, by August 24, 1987, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, until three years following the completion of the self-evaluation, maintain on file and make available for public inspection:

(1) a description of areas examined and any problems identified, and

(2) a description of any modifications made.

§ 4907.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 4907.112–4907.129 [Reserved]

§ 4907.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in

or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive Order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive Order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§ 4907.131–4907.139 [Reserved]

§ 4907.140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally-conducted programs or activities.

§§ 4907.141–4907.148 [Reserved]

§ 4907.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 4907.150, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 4907.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities

accessible to and usable by handicapped persons;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 4907.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) Methods—

(1) *General.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of § 4907.150(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to handicapped persons. In cases where a physical alteration to an historic property is not required because of § 4907.150 (a)(2) or (a)(3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide handicapped persons into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by October 21, 1986, except that where structural changes in facilities are undertaken, such changes shall be made by August 22, 1989, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by February 23, 1987 a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 4907.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or

altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§§ 4907.152–4907.159 [Reserved]

§ 4907.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf person (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed

action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 4907.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§§ 4907.161–4907.169 [Reserved]

§ 4907.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Equal Opportunity Manager shall be responsible for coordinating implementation of this section. Complaints may be sent to Equal Opportunity Manager, Human Resources Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction,

it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 4907.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

§§ 4907.171–4907.999 [Reserved]

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July 1, 1996

Part III

**Environmental
Protection Agency**

40 CFR Part 63

**National Emission Standards for
Hazardous Air Pollutants: Off-Site Waste
and Recovery Operations; Final Rule**

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 63****[AD-FRL-5516-7]****RIN 2060-AE05****National Emission Standards for Hazardous Air Pollutants: Off-Site Waste and Recovery Operations****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: This action promulgates National Emission Standards for Hazardous Air Pollutants (NESHAP) under the authority of Section 112 of the Clean Air Act for off-site waste and recovery operations that emit hazardous air pollutants (HAP). The NESHAP applies to specific types of facilities that are determined to be major sources of HAP emissions and receive certain wastes, used oil, and used solvents from off-site locations for storage, treatment, recovery, or disposal at the facility. The rule requires use of maximum achievable control technology (MACT) to reduce HAP emissions from tanks, surface impoundments, containers, oil-water separators, individual drain systems and other material conveyance systems, process vents, and equipment leaks.

The final rule is estimated to reduce HAP emissions from the source category by approximately 82 percent or 43,000 megagrams per year (47,000 tons per year). In addition, application of MACT required by this rule will achieve similar levels of reduction in volatile organic compounds (VOC) emissions from the source category. The human health effects associated with exposure to the HAP emissions can range from mild to severe and may include reduction of lung function, respiratory irritation, and neurotoxic effects. Similarly, emissions of VOC are associated with a variety of adverse health and welfare impacts.

The HAP and VOC emissions reductions achieved by implementing this rule in combination with similar rules will achieve the primary Clean Air Act goal to "enhance the quality of the Nation's air resources so as to promote the public health and welfare and productive capacity of its population." The intent of this final rule is to protect

public health by requiring the maximum degree of reduction of HAP emissions from new and existing sources, taking into consideration the cost of achieving such emission reduction; any non air quality, health, and environmental impacts; and energy requirements.

EFFECTIVE DATE: July 1, 1996. See the Supplementary Information section concerning judicial review.

ADDRESSES: *Docket.* The docket for this rulemaking containing the information considered by the EPA in development of the final rule is Docket No. A-92-16. This docket is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday except for Federal holidays, at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (MC-6102), 401 M Street SW, Washington, D.C. 20460; telephone: (202) 260-7548. The docket is located at the above address in Room M-1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

Basis and Support Document. A basis and support document, titled "National Emission Standards for Hazardous Air Pollutants, Off-Site Waste and Recovery Operations—Basis and Support for Final Standards," has been prepared summarizing the significant public comments made on the proposed rule and the Administrator's response to those comments. This document is available in the docket for this rulemaking, and also is available for downloading from the Technology Transfer Network (see below) under the Clean Air Act Amendments, Recently Signed Rules.

Technology Transfer Network. The Technology Transfer Network is one of the EPA's electronic bulletin boards. The Technology Transfer Network provides information and technology exchange in various areas of air pollution control. The service is free except for the cost of a phone call. Dial (919) 541-5472 for up to a 14,400 bps modem. If more information on the Technology Transfer Network is needed call the HELP line at (919) 541-5384.

FOR FURTHER INFORMATION CONTACT: For information concerning applicability and rule determinations, contact the appropriate regional representative:

Region I: Greg Rosco, Air Programs Compliance Branch Chief, U.S. EPA,

Region I, ASO, JFK Federal Building, Boston, MA 02203, (617) 565-3221
 Region II: Kenneth Eng, Air Compliance Branch Chief, U.S. EPA, Region II, 290 Broadway, New York, NY 10007-1866, (212) 637-4000
 Region III: Bernard Turlinski, Air Enforcement Branch Chief, U.S. EPA, Region III, 3AT10, 841 Chestnut Building, Philadelphia, PA 19107, (215) 597-3989
 Region IV: Jewell A. Harper, Air Enforcement Branch, U.S. EPA, Region IV, 345 Courtland Street, N.E., Atlanta, GA 30365, (404) 347-2904
 Region V: George T. Czerniak, Jr., Air Enforcement Branch Chief, U.S. EPA, Region V, 5AE-26, 77 West Jackson Street, Chicago, IL 60604, (312) 353-2088
 Region VI: John R. Hepola, Air Enforcement Branch Chief, U.S. EPA, Region VI, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202-2733, (214) 655-7220
 Region VII: Royan Teeter, Air Planning and Development Branch, U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, KS 66101, (913) 551-7609
 Region VIII: Douglas M. Skie, Air and Technical Operations Branch Chief, U.S. EPA, Region VIII, 999 18th Street, Suite 500, Denver, CO 80202-2466, (303) 312-6432
 Region IX: Colleen W. McKaughan, Air Compliance Branch Chief, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA, (415) 744-1198
 Region X: Chris Hall, Air and Radiation Branch, U.S. EPA, Region X, OAQ-107, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553-1949

For information concerning the analyses performed in developing this rule, contact Ms. Michele Aston, Waste and Chemical Processes Group, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, telephone number (919) 541-2363.

SUPPLEMENTARY INFORMATION:**Regulated Entities**

Entities potentially regulated by this action include the following types of facilities if the facility receives off-site material, as defined in the rule, and the facility is determined to be a major source of HAP emissions as defined in 40 CFR 63.2.

Category	Examples of regulated entities
Industry	Businesses that operate any of the following: hazardous waste treatment, storage, and disposal facilities (TSDF); RCRA exempt hazardous wastewater treatment facilities; nonhazardous wastewater treatment facilities other than publicly-owned treatment works; used solvent recovery plants; RCRA exempt hazardous waste recycling operations; used oil re-refineries.
Federal Government	Federal agency facilities that operate any of the waste management or recovery operations that meet the description of the entities listed under the "Industry" category in this table.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that the EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by the action, you should carefully examine the applicability criteria in § 63.680 of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review

The NESHAP for off-site waste and recovery operations was proposed in the Federal Register on October 13, 1994 (59 FR 51913). This Federal Register action announces the EPA's final decisions on the rule. Under section 307(b)(1) of the Act, judicial review of the NESHAP is available only by the petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Under section 307(b)(2) of the Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

The following outline is provided to aid in reading this preamble to the final rule.

I. Background

- A. Section 112 Statutory Requirements
- B. Listing of Source Category
- C. Public Participation in Rule Development
- D. Relationship of Rule to Other EPA Regulatory Actions

II. Basis and Purpose

- A. Purpose of Regulation
- B. Source Category Description
- C. Definition of Affected Sources
- D. MACT Floor Determination
- E. Format of Standards
- F. Unit-Specific Subparts
- G. Alternative Test Validation Method

III. Summary of Impacts

IV. Summary of Responses to Major Comments

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VI. Administrative Requirements

- A. Docket

- B. Paperwork Reduction Act
- C. Executive Order 12866
- D. Regulatory Flexibility Act
- E. Unfunded Mandates
- F. Review

VII. Statutory Authority

I. Background

A. Section 112 Statutory Requirements

Section 112 of the Clean Air Act (Act) regulates stationary sources of hazardous air pollutants (HAP). This section of the Act was comprehensively amended under Title III of the 1990 Amendments to the Clean Air Act (1990 Amendments). In the 1990 Amendments, Congress listed 189 chemicals, compounds, or groups of chemicals as HAP. The EPA is directed by the 1990 Amendments to regulate the emission of these HAP from stationary sources by establishing national emission standards (i.e., National Emission Standards for Hazardous Air Pollutants or NESHAP).

Each NESHAP for a specific source category is technology-based and is developed based on application of Maximum Achievable Control Technology (MACT). Section 112(d)(2) of the 1990 Amendments defines MACT as " * * * the maximum degree of reduction in emissions of the HAP * * * that the Administrator, taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impacts and energy requirements, determines is achievable for new or existing sources in the category or subcategory to which such emission standard applies * * *."

B. Listing of Source Category

Section 112(c) of the 1990 Amendments required the EPA to develop and publish a list of source categories that emit HAP for which NESHAP will be developed. This list is required under Section 112 to include all known categories and subcategories of "major sources." The term "major source" is defined by the Act to mean "any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate 10 tons per year (ton/yr) or

more of any HAP or 25 ton/yr or more of any combination of HAP."

The EPA published its initial list of HAP emission source categories in the Federal Register on July 16, 1992 (57 FR 31576). On this list, the EPA included one source category which the Agency intended to represent those waste management and recovery operations that would not be subject to air standards under other listed NESHAP source categories. This source category was titled on the initial list as "solid waste treatment, storage, and disposal facilities." After publication of the initial source category list, the EPA decided that it was appropriate to change the title of the NESHAP source category to better reflect the types of operations for which the EPA intended to establish air standards under a NESHAP for the source category. Therefore at proposal, the EPA changed the title of the source category subject to "off-site waste and recovery operations" (see 59 FR 51918, October 13, 1994).

For the purpose of developing the rules for this source category, the term "off-site" is used in the context that the source category represents those waste management and recovery operations which receive material delivered, transferred, or otherwise moved to the plant or facility where the operation is located from a separate site. In other words, the material placed in the waste management or recovery operation is not produced or generated at the same site where the operation is located.

C. Summary of Public Participation in Rule Development

The EPA published an advance notice of proposed rulemaking (ANPR) in the Federal Register on December 20, 1993 (58 FR 66336) to inform owners and operators of the potentially affected waste management and recovery operations and the general public of the planned scope of this NESHAP rulemaking. In the ANPR, the EPA requested information that would aid the Agency in the development of the rule. A 30-day comment period, from December 20, 1993 to January 19, 1994 was provided for interested parties to submit comments on the ANPR. The comments received by the EPA were

considered in developing the proposed rule.

The EPA proposed the Off-Site Waste and Recovery Operations NESHAP on October 13, 1994 (refer to 59 FR 51913). A proposed regulatory text for the rule and the background information document (BID) (EPA-453/R-94-070a) that presented information used in the development of the proposed rule was made available to the public for review and comment. A 90-day comment period from October 13, 1994 to January 11, 1995 (an initial 60 days plus a 30-day extension) was provided to accept written comments from the public on the proposed rule. The opportunity for a public hearing was provided to allow interested persons to present oral comments to the EPA on the rulemaking. However, the EPA did not receive a request for a public hearing, so a public hearing was not held.

A total of 89 comment letters regarding the proposed Off-Site Waste and Recovery Operations NESHAP were received by the EPA. A copy of each comment letter is available for public inspection in the docket for the rulemaking (Docket No. A-92-16; see the **ADDRESSES** section of this notice for information on inspecting the docket). The EPA received 70 letters containing specific comments on the proposed Off-Site Waste and Recovery Operations NESHAP. The other 19 letters were regarding extension of the public comment period and requests for copies of the regulatory text. The EPA has had extensive follow-up discussions with various commenters regarding specific issues initially raised in their written comments that were submitted to the Agency during the comment period. Copies of correspondence and other information exchanged between the EPA and the commenters during the post-comment period are available for public inspection in the docket for the rulemaking.

All of the comments received by the EPA were reviewed and carefully considered by the Agency. Changes to the rule were made when the EPA determined it to be appropriate. A summary of the EPA's responses to selected major comments on the proposed rule is presented in Section IV of this notice. Additional responses to comments are presented in the basis and support document described in the **ADDRESSES** section of this notice.

D. Relationship of Rule to Other EPA Regulatory Actions

1. Clean Air Act

Owners and operators of sites at which are located waste management

and recovery operations that are subject to Off-Site Waste and Recovery Operations NESHAP may also be subject to another NESHAP because of other operations conducted at the site. For example, a waste management or recovery operation receiving materials from off-site may be located at a synthetic organic chemical manufacturing plant that is subject to 40 CFR 63 subparts F, G, and H—National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry (referred to hereafter in this notice as the "HON") or at a petroleum refinery that is subject to 40 CFR 63 subpart CC—National Emission Standards for Organic Hazardous Air Pollutants from Petroleum Refineries. At plants subject to both the Off-Site Waste and Recovery Operations NESHAP and another NESHAP, the Off-Site Waste and Recovery Operations NESHAP applies only to those specific waste management or recovery operations listed in the rule that receive off-site material. The Off-Site Waste and Recovery Operations NESHAP does not apply to other units or equipment components at the site that are not part of the waste management and recovery operations specified in the rule.

Some NESHAP already regulate air emissions from the off-site management of certain wastes containing HAP. To avoid duplication of requirements in these cases, the Off-Site Waste and Recovery Operations NESHAP does not apply to waste management units that either receive waste from units complying with all applicable regulations under the HON, or receive waste from units complying with all applicable requirements specified by § 61.342(b) under 40 CFR 61 subpart FF—National Emission Standards for Benzene Waste Operations for a plant at which the total annual benzene quantity is greater than or equal to 10 Mg/yr.

2. Resource Conservation and Recovery Act

The EPA establishes rules for the management of solid wastes under authority of the Resource Conservation and Recovery Act (RCRA). Under authority of subtitle C of RCRA, the EPA has established rules in 40 CFR parts 260 through 271 regulating the management of solid wastes determined to be hazardous waste. Municipal solid wastes and other types of nonhazardous solid wastes are regulated by rules established under authority of subtitle D of RCRA in 40 CFR Parts 257 and 258.

The Clean Air Act requires that the requirements of rules developed under

the Act be consistent, but avoid duplication, with requirements of rules developed under RCRA. The final Off-Site Waste and Recovery Operations NESHAP includes several provisions to ensure that this directive of the Act is met. First, certain types of wastes regulated under RCRA are excluded outright from the definition of "off-site material" used to determine the applicability of the Off-Site Waste and Recovery Operation NESHAP. These wastes include household waste as defined in 40 CFR 258.2; waste that is generated by remedial activities required under the RCRA corrective action authorities (RCRA section 3004(u), 3004(v), or 3008(h)), CERCLA authorities, or similar Federal or State authorities; and radioactive mixed waste.

The EPA also is fully aware that at some sites managing hazardous wastes not generated onsite, the owner and operator of a hazardous waste treatment, storage, and disposal facility (TSDF) could be subject to both the Off-Site Waste and Recovery Operations NESHAP and RCRA air rules under subparts AA, BB, and CC of 40 CFR parts 264 and 265. At a particular TSDF, some waste management units may be required to use air emission controls under one or the other, but not both, the Off-Site Waste and Recovery Operations NESHAP and the RCRA rules. However, some other waste management units could be subject to using air emission controls to comply with both sets of rules. It is unnecessary for owners and operators of those waste management units subject to air standards under both sets of rules to perform duplicative testing and monitoring, keep duplicate sets of records, or perform other duplicative actions. The EPA has decided that the best way to eliminate any regulatory overlap is to amend the RCRA rules to exempt units that are using air emission controls in accordance with the requirements of Off-Site Waste and Recovery Operations NESHAP or any other applicable NESHAP. The EPA therefore plans to amend the RCRA rules this summer and expects that these revisions will be finalized prior to the effective dates of both rules.

3. Pollution Prevention Act

The Pollution Prevention Act of 1990 (42 U.S.C. 13101 et seq., Pub. L. 101-508, November 5, 1990) establishes the national policy of the United States for pollution prevention. This act declares that: (1) Pollution should be prevented or reduced whenever feasible; (2) pollution that cannot be prevented or reduced should be recycled or reused in

an environmentally-safe manner wherever feasible; (3) pollution that cannot be recycled or reused should be treated; and (4) disposal or release into the atmosphere should be chosen only as a last resort.

Opportunities for applying pollution prevention to the Off-Site Waste and Recovery Operations NESHAP are basically limited to treatment to remove HAP (e.g., treatment of waste prior to its disposal). The off-site waste and recovery operations source category consists only of operations used to manage certain materials that have already been generated at other locations such as a manufacturing plant. Thus, there are no pollution prevention practices such as modifying the manufacturing process to reduce the quantity of HAP contained in materials or to recycle the materials back to the process which can be implemented once the material arrives at a site at which waste management and recovery operations subject to the NESHAP are located. The EPA has incorporated the pollution prevention policy into the NESHAP by requiring off-site materials be treated to remove or destroy HAP prior to management in units open directly to the environment. Thus, to the extent possible, pollution prevention has been considered in the development of this rulemaking. The Off-Site Waste and Recovery Operations NESHAP is consistent with the pollution prevention policy.

II. Basis and Purpose

A. Purpose of Regulation

The Clean Air Act was created in part "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population" [Act section 101(b)(1)]. Title III of the 1990 Amendments establishes a control technology-based program to reduce stationary source emissions of HAP. The goal of section 112(d) of the 1990 Amendments is to apply such control technology to reduce emissions and thereby reduce the hazard of the HAP emitted from stationary sources.

This final rule is technology-based (i.e., based on application of MACT to off-site waste and recovery operations). The Clean Air Act strategy avoids the dependence on a risk-based approach which would be limited by incomplete information on what HAP are emitted, what level of emissions is occurring, what health and safety benchmarks are available to assess risk, what health effects may be caused by certain pollutants and how best to model these

effects, among other things. Because of these issues a quantitative risk assessment of the potential effects from the HAP emitted from off-site waste and recovery operations is not included in this rulemaking.

The EPA does recognize that the degree of adverse effects to health can range from mild to severe. The extent and degree to which the health effects may be experienced is dependent upon: (1) The ambient concentrations observed in the area; (2) duration of exposures; and (3) characteristics of exposed individuals (e.g., genetics, age, preexisting health conditions, and lifestyle) which vary significantly with the population. Some of these factors are also influenced by source-specific characteristics (e.g., emission rates and local meteorological conditions) as well as pollutant specific characteristics such as toxicity.

On a nationwide basis, the off-site waste and recovery operations at the facilities regulated by this rule emit significant quantities of organic HAP. Implementation of Off-Site Waste and Recovery Operations NESHAP will result in substantial reductions of these organic HAP emissions to the atmosphere. The final Off-Site Waste and Recovery Operations NESHAP will require control of material streams containing 1 or more of 98 specified compounds listed in Table 1 of the rule. This table is subset of the 189 HAP compounds listed in the Clean Air Act. Following is a summary of the potential health and environmental effects associated with exposures, at some level, to the emitted pollutants that would be reduced by this NESHAP.

The range of potential human health effects associated with exposure to organic HAP include cancer, aplastic anemia, pulmonary (lung) structural changes, dyspnea (difficulty in breathing), upper respiratory tract irritation with cough, conjunctivitis, and neurotoxic effects (e.g., visual blurring, tremors, delirium, unconsciousness, coma, convulsions). The EPA estimates that implementation of the Off-Site Waste and Recovery Operations NESHAP will reduce nationwide organic HAP emissions by approximately 43,000 megagrams per year (Mg/yr). Thus, this rule has the potential for providing both cancer and noncancer related health benefits.

By requiring facilities to reduce organic HAP emitted from off-site waste and recovery operations, today's rule will also reduce emissions of volatile organic compounds (VOC). Many VOC react photochemically with nitrogen oxides in the atmosphere to form tropospheric ozone. A number of factors

affect the degree to which VOC emission reductions will reduce ambient ozone concentrations.

Human laboratory and community studies have shown that exposure to tropospheric ozone levels that exceed the National Ambient Air Quality Standards (NAAQS) can result in various adverse health impacts such as alterations in lung capacity; eye, nose, and throat irritation; and aggravation of existing respiratory disease. Animal studies have shown increased susceptibility to respiratory infection and lung structure changes.

Among the welfare impacts from exposure to tropospheric ozone levels that exceed the ozone NAAQS are damage to selected commercial timber species and economic losses for commercially valuable crops such as soybeans and cotton. Studies have shown that exposure to ozone can disrupt carbohydrate production and distribution in plants. The reduction in carbohydrate production and allocation can lead to reduced root growth, reduced biomass or yield, reduced plant vigor (which can cause increased susceptibility to attack from insects and disease and damage from cold) and diminished ability to successfully compete with more tolerant species. These effects have been observed in native vegetation in natural ecosystems as well as for selected number of commercial trees and agricultural crops that have been studied.

Although the final Off-Site Waste and Recovery Operations NESHAP does not specifically require control of VOC emissions, the organic emission control technologies upon which the final rule is based also significantly reduce VOC emissions from the source category. The EPA conservatively estimates that implementation of the Off-Site Waste and Recovery Operations NESHAP will reduce nationwide VOC emissions from the source category by 52,000 Mg/yr. Therefore, it is anticipated that additional health and welfare benefits will be associated with this reduction in VOC emissions.

B. Source Category Description

The final Off-Site Waste and Recovery Operations NESHAP only applies to certain waste management and recovery operations at those sites determined to "major sources" as defined in section 112(a)(1) of the 1990 Amendments. This means those plants or facilities where the stationary sources located within a contiguous area and under common control emit or have the potential to emit, considering controls, in total 10 ton/yr or more of any single HAP or 25 ton/yr or more of any combination of

HAP. Waste management and recovery operations receiving materials from off-site that are located at plants or facilities which are area sources are not being regulated at this time. These area sources could be considered at a future date by the EPA for regulation as part of the area source strategy authorized under section 112(k) of the Act.

At proposal, the EPA identified the types of waste management and recovery operations the Agency was considering for inclusion in the off-site waste and recovery operations source category. In response to public comments on the proposed rule and considering decisions made by the Agency since proposal regarding other related rulemakings, the EPA has reconsidered the types of waste management and recovery operations to be regulated under the Off-Site Waste and Recovery Operations NESHAP. The EPA reviewed information used for the source category impact analysis at proposal and evaluated new information provided to the Agency since proposal by commenters. As a result of this review, the EPA decided that the final Off-Site Waste and Recovery Operations NESHAP should not apply to owners and operators of certain operations originally considered to be in the scope of the rulemaking. The rationale for including or excluding specific waste management or recovery operations in the final rule applicability is presented below.

Facilities where operations are conducted to treat, store, and dispose of wastes determined to be hazardous wastes under RCRA may be subject to organic air emission standards under 40 CFR parts 264 and 265. At these facilities, referred to under the RCRA rules as a hazardous waste treatment, storage, and disposal facility (TSDF), a RCRA hazardous waste may be generated at the same site where a TSDF is located, or may be generated at one site and then transported to a TSDF at a separate location. At TSDF where RCRA hazardous waste is received from off-site, certain types of waste management units such as wastewater treatment tanks and hazardous waste recycling units can be exempted from the air standards specified in 40 CFR parts 264 and 265. Many (but not all) TSDF are expected by the EPA to be located at sites that are major sources of HAP emissions. Therefore, the EPA decided that the final Off-Site Waste and Recovery Operations NESHAP be applicable to hazardous waste TSDF as well as to sites where waste or recovery operations managing hazardous waste are performed and the entire operation is exempted under RCRA from the air

standards in subparts AA, BB, and CC under 40 CFR parts 264 and 265.

Wastewater treatment facilities are operated by public entities and private companies throughout the United States for the treatment of wastewaters other than those that are RCRA hazardous wastewaters. Publicly owned treatment works (POTW) are not included in the off-site waste operations source category because POTW are listed as a separate NESHAP source category. A review of nationwide survey data by the EPA indicates that privately-owned wastewater treatment plants are operated at some locations in the United States for which the predominate function performed at the site is to treat wastewaters received from off-site. Although a wastewater may not be a RCRA hazardous waste, this wastewater can still contain significant quantities of HAP. The EPA concluded this group of wastewater treatment plants would not be subject to other NESHAP and would likely include some individual facilities that are major sources of HAP emissions.

Used oils from motor vehicles and other sources can contain HAP. While the management of used oils which are recycled is regulated by separate rules promulgated by the EPA under section 3014 of RCRA, these RCRA rules do not specifically establish air standards for used oil management operations. A major portion of the used oil is processed for sale as fuel for burning in boilers, furnaces, and space heaters. The remainder of the recycled used oil is sent to facilities categorized as "used oil re-refiners." At these facilities the used oil is processed into base lube oil stocks and other products. The EPA determined that some used oil re-refining facilities are likely to be major sources of HAP emissions. Consequently, the EPA decided that the final Off-Site Waste and Recovery Operations NESHAP apply to operations that reprocess or re-refine used oil and are subject to regulation under 40 CFR 279 subpart F—Standards for Used Oil Processors and Refiners.

Another recovery operation analogous to used oil re-refining operations is solvent recovery operations. Organic solvents are used in many types of businesses to clean oils, grease, dirt, or other foreign matter from mechanical parts and like items. These used organic solvents are often collected and reprocessed by a company for re-sale as a product or for use by another company as a process feedstock. The EPA expects that some solvent recovery operations could be major sources of HAP emissions. Therefore, the EPA decided that the final Off-Site Waste and

Recovery Operations NESHAP be applicable to operations that reprocess or re-refine used solvents except in situations where the operation is not part of a chemical, petroleum, or other manufacturing process that is required to use air emission controls by another subpart of 40 CFR part 63.

Many landfill facilities operated in the United States are used for disposal of waste received from off-site. Municipal solid waste (MSW) landfills are not included in the off-site waste and recovery operations source category because these facilities are listed as a separate NESHAP source category. However, other landfill facilities operate in the United States which are not MSW landfills and accept only nonhazardous wastes. It is the EPA's understanding that landfills used for disposal of construction/demolition debris do not accept wastes containing significant amounts of organic HAP. One commenter submitted to the EPA additional information regarding operations, waste characterizations, and HAP emission estimates from industrial waste landfills. The potential for some industrial waste landfills to be a major source is possible due to special circumstances (e.g., accepting predominately soils contaminated with organics). However, under current operating practices, the EPA concluded that it is unlikely that any of the existing industrial waste landfills nationwide is a major source of HAP emissions. Therefore, the EPA decided that the final Off-Site Waste and Recovery Operations NESHAP not be applicable to any landfill facilities.

Some wastes generated during oil and gas exploration and production (E&P) are subsequently transferred to operations at other locations for centralized treatment or disposal. At proposal, the EPA identified these centralized treatment and disposal operations as waste management operations that would be subject to the Off-Site Waste and Recovery Operations NESHAP. Additional information was received by the EPA from commenters on the proposed rule regarding the nature of E&P operations as presently practiced in oil and gas production fields. Upon further consideration, the EPA decided it is not necessary to include E&P waste operations under the final Off-Site Waste and Recovery Operations NESHAP. Instead, the EPA is planning to address these sources under the Oil and Gas Production NESHAP currently being developed by the Agency.

C. Definition of Affected Source

For the purpose of implementing NESHAP under 40 CFR Part 63, "affected source" is defined to mean the stationary source, or portion of a stationary source that is regulated by a relevant standard or other requirement established pursuant to section 112 of the Act. Each relevant standard is to designate the "affected source" for the purposes of that standard. Within a source category, the EPA decides which HAP emission sources (i.e., emission points or groupings of emission points) are most appropriate for establishing separate emission standards in the context of the Clean Air Act statutory requirements and the industry operating practices for the particular source category.

At proposal, the EPA considered different options for defining "affected source" for the Off-Site Waste and Recovery Operations NESHAP ranging from using a broad definition (e.g., the entire plant or facility site) to narrow definitions (e.g., individual emission points) (59 FR 51923). The EPA proposed using the narrowest definition of affected source for the Off-Site Waste and Recovery Operations NESHAP by defining the affected sources to be each of the individual emission point types identified for the rule (e.g., each individual tank). The EPA received comments that its proposed designation of affected source for the Off-Site Waste and Recovery Operations NESHAP was too restrictive and would complicate an owner's or operator's determination of when reconstruction of a source has occurred triggering the requirement to comply with the standards for new sources. Upon consideration of these comments, the EPA decided that using a broader definition is a more appropriate approach for defining the affected sources for the Off-Site Waste and Recovery Operations NESHAP.

Designating the affected source for the Off-Site Waste and Recovery Operations NESHAP as the entire plant site was rejected by the EPA. This approach would allow the MACT floor to be established by the plant-wide emission reduction indicative of the level that is achieved by the best performing 12 percent of the existing sources. Application of a single MACT floor to all of the emission points located at the plant site and selected for control under the Off-Site Waste and Recovery Operations NESHAP would be difficult, if not technically infeasible, for several reasons. First, the EPA's data base for the off-site waste and recovery operations NESHAP lacks sufficient data regarding the type of information

required to implement this approach for the source category. Also, the mechanism by which organic HAP are emitted to the atmosphere and the types of controls relevant for reducing these air emissions is not the same for all of the emission point types identified for off-site waste and recovery operation source category. For example, covers frequently are installed on tanks to control air emissions while work practice programs are used to control air emissions from equipment leaks. Furthermore, not all waste management and recovery operations at a particular plant site may be subject to this rulemaking because they are not used to manage off-site material, as defined in the rule.

A second approach is to designate several different affected sources by grouping the similar emission points for each waste management and recovery operation used at the plant site to manage off-site materials. Under this approach, each affected source consists of the group of similar emission point types for the entire sequence of units or equipment components in which a particular off-site material is managed at the site. An example of such a group of emission points is the collection of tanks, containers, surface impoundments, and similar units that are used at a site to manage a waste from the point where the waste is received at the site to the point where the material enters an on-site disposal unit not regulated under this rule (e.g., waste incinerator, landfill unit). An individual MACT floor is established for the entire group of emission points comprising each designated affected source.

This second approach offers several advantages for implementing the Off-Site Waste and Recovery Operations NESHAP. Designating the affected source to be a group of similar emission point types ensures that air emission controls of equivalent performance are applied at the same time to all of the units used to manage a particular off-site material stream. In contrast, had the EPA maintained the proposed designation for the affected sources (i.e., each individual emission point), situations could have occurred where an owner or operator was required to use controls on a new tank (or other newly installed unit) downstream of existing tanks managing the same off-site material but not required to use air emission controls under the rule. This would be an inefficient application of air emission controls since a significant portion of the HAP contained in the off-site material likely would have escaped to the atmosphere before the material entered the controlled unit. The

approach also provides a logical grouping of equipment by which an owner or operator readily can determine when reconstruction of the affected source triggers the air emission control requirements under the rule for new sources. Therefore, for the final off-site waste and recovery operations NESHAP, the EPA decided to designate the affected sources by three distinct groups of the emission point types for the waste management and recovery operation subject to using air emission controls under the rule.

The first group of similar emission points designated to be an affected source for the Off-Site Waste and Recovery Operations NESHAP is the group of tanks, containers, surface impoundments, oil-water and organic-water separators, individual drain systems and other stationary material conveyance systems used to manage off-site material in each of the waste management and recovery operations specified in the rule that are located at the plant site. The units regulated under this affected source designation are collectively referred to hereafter in this notice as "off-site material management units."

The second the group of similar emission points designated to be an affected source for the Off-Site Waste and Recovery Operations NESHAP is process vents on units used to manage off-site material in each of the waste management and recovery operations specified in the rule that are located at the plant site. As defined for the rule, a process vent is an open-ended pipe, stack, or duct used for passage of gases, vapors, or fumes to the atmosphere and this passage is caused by mechanical means (such as compressors or vacuum-producing systems) or by process-related means (such as volatilization produced by heating). A stack or duct used to exhaust combustion products from an enclosed combustion unit (e.g., boiler, furnace, heater, incinerator) is not a process vent for this rulemaking.

The third group of similar emission points designated to be an affected source for the Off-Site Waste and Recovery Operations NESHAP is the group of equipment components prone to emitting HAP as a result of equipment leaks. This group of equipment consists of pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves and lines, valves, connectors, and instrumentation systems that contain or contact off-site material in each of the waste management and recovery operations specified in the rule that are located at the plant site.

D. MACT Floor Determination

Specific statutory directives set out in section 112 of the 1990 Amendments require the EPA to establish standards under a NESHAP to reflect application of maximum achievable control technology (MACT). A statutory minimum or baseline level of HAP emission control that the EPA can select to be MACT for a particular source category is defined under section 112(d)(3) of the 1990 Amendments, and is referred to as the "MACT floor." For new sources, the MACT floor is the level of HAP emission control that is achieved in practice by the best controlled similar source. The statute allows standards under a NESHAP for existing sources to be less stringent than standards for new sources. The determination of MACT floor for existing sources is dependent on the nationwide number of existing sources within the source category. The off-site waste and recovery operations source category contains more than 30 existing sources nationwide. For a source category with 30 or more existing sources, the MACT floor is the average emission limitation achieved by the best performing 12 percent of the existing sources.

Once the MACT floors are determined for new and existing sources in a source category, the EPA must establish standards under a NESHAP that are no less stringent than the applicable MACT floors. The Administrator may promulgate standards that are more stringent than the MACT floor when such standards are determined by the EPA to be achievable taking into consideration the cost of implementing the standards as well as any non-air quality health and environmental impacts and energy requirements.

1. MACT Floor for Existing Sources

a. Off-site Material Management Units. As discussed in Section II.C of this notice, the EPA has revised the affected source designation for the off-site material management units at a plant site subject to the Off-Site Waste and Recovery Operations NESHAP. For the final rule, the designated affected source is the group of off-site material management units (e.g., tanks, surface impoundments, containers, oil-water and organic-water separators, individual drain systems and other stationary transfer systems) in each of the waste management and recovery operations specified in the rule that are located at the plant site. Because the MACT floor determination for these off-site material management units used at proposal was based on the application of the floor to

individual units rather than the group of units, the EPA reconsidered the MACT floor determination following revision of the affected source designation for the rule.

The EPA reviewed site-specific information in the source category data base regarding existing air emission control practices for off-site material management units. In addition, the EPA considered the air emission controls that off-site material management units could be required to use by new air rules promulgated since the Off-Site Waste and Recovery Operations NESHAP was proposed (e.g., air rules for hazardous waste tanks, surface impoundments, and containers in subpart CC under 40 CFR parts 264 and 265).

Based on the EPA's review of the air emission control information in the data base for the off-site waste and recovery operations source category, the Agency concluded that most groups of off-site material management units (significantly more than 12 percent) manage off-site material, at a minimum, in covered units. A portion of these off-site material management units use more effective air emission controls such as venting the covered unit to a control device. However, based on the information available to Agency, the EPA cannot definitively determine whether the higher level of air emission control achieved by that portion of units using controls in addition to covers is representative of the average of the top 12 percent of all existing off-site material management units. Thus, the EPA decided to establish the MACT floor control technology for the existing off-site material managements as use of a cover.

For other source categories, the EPA has established whether a particular unit warrants the use of air emission controls under rules for the source category on the basis of a characteristic parameter for the materials placed in the unit (e.g., vapor pressure or organic concentration). The EPA believes that using this approach provides an effective and enforceable means for identifying the units that warrant air emission controls while excluding those units for which installation of controls is unnecessary because the units have no or little potential for HAP emissions. Consequently, to complete the definition of the MACT floor for this affected source, an applicability cutoff provision (referred to hereafter in this notice as an "action level") is needed to identify which off-site material management units use the selected air emission controls.

Establishing an action level required first selecting an appropriate format for the action level that allows the value to be relatively simple to be determined by an owner or operator and expeditiously checked by EPA or State enforcement personnel. For the proposed rule, the EPA evaluated several possible action level formats and decided that an action level based on the volatile organic HAP concentration (VOHAP) of the off-site materials is appropriate for identifying those units which emit HAP and warrant the application of air emission controls.

The data available to the EPA at this time for the off-site waste and recovery operations source category are insufficient to perform a rigorous statistical analysis for the purpose of establishing the minimum VOHAP concentration value for off-site material management units currently using air emission controls. From a qualitative perspective, application of air emission controls under the Off-Site Waste and Recovery Operations NESHAP is not needed when a material managed in an uncontrolled unit has little or no potential for HAP emissions. In general, these off-site materials can be characterized as materials having low VOHAP concentrations.

The EPA considered a range of possible values to establish the VOHAP concentration limit for the Off-Site Waste and Recovery Operations NESHAP. The EPA proposed a VOHAP concentration value of 100 ppmw to be used as the action level for the rule. However, in proposing this value, the EPA acknowledged that some off-site material management units subject to the Off-Site Waste and Recovery Operations NESHAP could be subject to other NESHAP and NSPS with differing action levels. The EPA therefore requested comment on establishing the VOHAP concentration action level for the rule at 100 ppmw, as well as information that could be used to support alternative action levels such as 500 ppmw (59 FR 51924). The EPA received comments stating that the 100 ppmw VOHAP concentration action level proposed by the EPA for the Off-site Waste and Recovery Operations NESHAP is inappropriate and inconsistent with other applicable NSPS and NESHAP and recommending that the EPA select a higher action level for the rule.

The EPA considered the comments received regarding the proposed action level, other revisions to the final Off-Site Waste and Recovery Operations NESHAP, and changes that the EPA anticipates making for other waste and wastewater related rules. The EPA

concluded that a reexamination of the MACT floor action level determination was appropriate. Based on consideration of the information available to the Agency regarding HAP emissions from waste management and recovery operations receiving off-site material, the EPA has concluded that a VOHAP concentration value of 500 ppmw best represents the MACT floor for existing off-site material management units using covers.

Having established the MACT floor for existing off-site material management units, the EPA considers control options that are more stringent than the MACT floor based on the air emission control requirements under existing EPA rules for HAP emission sources similar to off-site material management units (e.g., air standards for tanks under the HON, air standards for tanks, surface impoundments, and containers at hazardous waste TSDF under 40 CFR parts 264 and 265). These existing rules establish requirements for application of controls more effective than covers on certain categories of tanks, containers, and other units based on air emission potential related characteristics such as the capacity of the unit and the vapor pressure of the material managed in the unit. In the development of these other rules, the EPA determined for these particular units that the more effective controls are appropriate for control of the pollutants emitted from the units and that implementing these controls is cost-effective. Therefore, for the Off-Site Waste and Recovery Operations NESHAP the EPA concluded that it is reasonable to establish standards for certain off-site waste management units that are more stringent than the MACT floor when such standards are determined by the EPA to be appropriate and consistent with the control requirements for similar HAP emission sources under other existing EPA rules.

b. *Process Vents.* The MACT floor for affected sources consisting of process vents is the same MACT floor used at proposal with one revision to the action level. As discussed in the proposal notice (59 FR 51925), this MACT floor is based on adapting, to the extent applicable and relevant to the Off-Site Waste and Recovery Operations NESHAP, the air emission standards for process vents on hazardous waste management units and recycling units under 40 CFR 264 subpart AA and 40 CFR 265 subpart AA. The action level identifying application of air emission controls on process vents has been revised to be consistent with the 500 ppmw action level selected for MACT

floor for off-site material management units. The control technology selected for the floor is connecting the process vents to appropriate control devices such that an organic HAP emission control efficiency of 95 percent or more is achieved.

c. *Equipment Leaks.* The same MACT floor selected at proposal is used for affected sources consisting of the group of equipment components consisting of pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves and lines, valves, connectors, and instrumentation systems that contain or contact off-site material in each of the waste management and recovery operations specified in the rule that are located at the plant site. The MACT floor requires control of HAP emissions from equipment leaks by implementing leak detection and repair (LDAR) work practices and equipment modifications for those equipment components containing or contacting off-site material having a total organic HAP concentrations equal to or greater than 10 percent. As discussed in the proposal notice (59 FR 51925), the EPA selected this MACT floor based on the existing equipment leak air standards applicable to waste management operations to treat hazardous waste under 40 CFR 264 subpart BB and 40 CFR 265 subpart BB. The requirements of the MACT floor selected for the Off-Site Waste and Recovery Operations NESHAP are also consistent with existing NSPS equipment leak standards (e.g., 40 CFR 60 subparts VV, GG, and KK) and for certain NESHAP equipment leak standards (e.g., 40 CFR 61 subpart V).

2. MACT Floor for New Sources

At proposal, the EPA concluded that the MACT floor determined for existing sources also represents the HAP emission control that is achieved in practice by the best controlled similar sources in the off-site waste and recovery operation source category with the exception of new tanks. The MACT floor for new tanks was established based on the level of emission control that is required for new tanks under the HON (i.e., 40 CFR 63 subpart G). The EPA still believes these are appropriate decisions for establishing the MACT floor for new sources under the revised affected source designations selected for the final Off-Site Waste and Recovery Operations NESHAP.

E. Format of Standards

Section 112 of the Act requires promulgation of an emission standard whenever it is feasible; section 112(h) states that "if it is not feasible in the

judgment of the Administrator to prescribe or enforce an emission standard for control of a hazardous air pollutant or pollutants, the Administrator may, in lieu thereof, promulgate a design, equipment, work practice, or operational standard, or combination thereof * * *". The term "not feasible" is applicable if the emission cannot be captured and vented through a vent or stack designed for that purpose, or if the application of a measurement methodology is not practicable because of technical or economic limitations. Alternative formats were considered for the three types of affected sources defined for the Off-Site Waste and Recovery Operations NESHAP.

For off-site material management units, the EPA concluded that a numerical emission standard would not be feasible because it would be difficult to capture and measure emissions from these units for the purpose of evaluating compliance. Therefore, the format of the rule for these affected sources includes a combination of design, equipment, work practice, and operational standards. For process vents, the EPA considered two alternative numerical emission limitation formats. These emission limitation formats are a mass percent reduction of HAP from process vents and a mass limitation of HAP emission from process vents. The percent reduction format was chosen for the Off-Site Waste and Recovery Operations NESHAP because it is the best representation of control technology performance, and provides flexibility to owners and operators. This format is based on the HAP removal efficiency of conventional air pollution control devices and any control technology that can achieve the reduction efficiency can be applied to any configuration of process vents to comply with the standards. For equipment leak sources (i.e., pumps, valves, etc.), numerical emission standards are not feasible and the final standards for equipment leaks are in the format of work practice and equipment specifications.

F. Unit-Specific Subparts

The regulatory text that EPA proposed for the Off-Site Waste and Recovery Operations NESHAP included all of the requirements for the rule in a single subpart to be added to 40 CFR part 63. The EPA decided to promulgate the final requirements for the Off-Site Waste and Recovery Operations NESHAP as a series of six new subparts added to 40 CFR part 63. These subparts are Subpart DD—National Emission Standards for Off-Site Waste and Recovery

Operations, Subpart OO—National Emission Standards for Tanks—Level 1, Subpart PP—National Emission Standards for Containers, Subpart QQ—National Emission Standards for Surface Impoundments, Subpart RR—National Emission Standards for Individual Drain Systems, and Subpart VV—National Emission Standards for Oil-Water Separators and Organic-Water Separators.

The air emission control requirements promulgated in Subparts OO, PP, QQ, and RR are derived from and incorporate public comments on the air emission control requirements originally proposed in Subpart DD for tanks, surface impoundments, containers, and individual drain systems. In addition, an individual subpart (Subpart VV) has been added to the final rule specifying air emission control requirements for oil-water separators and organic-water separators (referred to collectively hereafter as “separators”). At proposal, the EPA assumed that if a separator was subject to using air emission controls under the Off-Site Waste and Recovery Operations NESHAP it would be considered a type of tank. As such, this separator would have been required to meet the air emission control requirements specific in the rule for tanks. In actual practice, application of these controls to a separator in strict accordance with the requirements specified in the proposed rule may not be practical given special design and operating characteristics for separators. Therefore, the EPA concluded that it is appropriate to add an individual subpart specifically for separators that will provide a level of air emission control comparable to the control level established for tanks yet address the special design and operating features of separators.

The EPA decided to promulgate the air emission control requirements for selected types of units in individual subparts for ease of reference, administrative convenience, and as a step towards assuring consistency of the air emission control requirements applied to similar types of units under different rules. The EPA believes adopting the format of codifying the air emission control requirements for specific unit types in individual subparts will provide significant advantages to both regulated industries and to the Agency.

By today's notice, the air emission control requirements promulgated in Subparts OO, PP, QQ, RR, and VV presently are applicable only to units in waste management and recovery operations regulated under Subpart DD. For application of the unit-specific

subparts to new rules for other source categories, the EPA is planning to reference these unit-specific subparts to specify the air emission control requirements for the units subject to using controls under the rule. The applicability, action level, designation of which units are required to use controls, treatment requirements, and any other requirements specific to the source category will be in the regulatory text under the source-specific subpart (i.e., the same format that is being promulgated today for the Off-Site Waste and Recovery Operations NESHAP). Also, the EPA may, in the future, amend existing NSPS, NESHAP, or other rules to reference the appropriate unit-specific subparts, whether as a replacement for the air emission control requirements in the existing rule or as an alternative means of compliance. In these rulemaking cases, the EPA will first propose the Agency's intention of applying the requirements of Subparts OO, PP, QQ, RR, and VV, as applicable, to other rules. The public will have the opportunity to comment on the appropriateness and application of using these unit-specific subparts for the particular sources regulated by the new or amended rule.

A major advantage for using the unit-specific subpart format for NESHAP and other air rules is for those situations when more than one rule applies to a particular source (e.g., a tank) and each of these rules requires use of air emission controls on that source (e.g., a fixed roof). By establishing unit-specific subparts, all of the rules will reference a common set of design, operating, testing, inspection, monitoring, repair, recordkeeping, and reporting requirements for air emission controls. This eliminates the potential for duplicative or conflicting air emission control requirements being placed on the unit by the different rules, and assures consistency of the air emission control requirements applied to the same types of units.

In the future, the EPA may decide it is appropriate to amend the air emission control requirements for different types of units to reflect improvements in control technologies or to add other control alternatives. When this occurs, using a unit-specific subpart format will simplify the amendment process and ensure that all source-specific subparts are amended in a consistent and timely manner. To incorporate the desired changes in the air emission control requirements, the EPA will need to amend only one subpart instead of amending each of the individual source category specific subparts. The identical

amended regulatory language will automatically apply to all of the source category specific subparts that reference the amended unit-specific subpart. The amendments will become effective for all of the source category specific subparts at the same time.

G. Alternative Test Method Validation Procedure

As part of today's action, the EPA is promulgating a new validation procedure titled “Alternative Validation Procedure for EPA Waste Methods” that can be used as an alternative to Method 301 in Appendix A under 40 CFR part 63 for the validation of a test method established by the EPA Office of Water (OW) or the EPA Office of Solid Waste (OSW) when this test method is used for air emission standards. The alternative method is less rigorous than Method 301. A proposed version of the alternative validation procedure was made available for public review and comment on August 14, 1996 (60 FR 41870) as part of the information placed in the public docket and being considered by the Agency in revising air standards in the RCRA rules. Comments on the information were accepted by the EPA through October 13, 1995. No significant comments were received by the EPA regarding the proposed alternative validation procedure.

For the Off-Site Waste and Recovery Operations NESHAP, the EPA decided it is appropriate to allow organic concentration data test that are validated in accordance with the alternative validation method to be used as direct measurement data. Today's action promulgates “Alternative Validation Procedure for EPA Waste and Wastewater Methods” as Appendix D in 40 CFR part 63. This final version of Appendix D is the same as the proposed version. As promulgated, the alternative validation procedure is to be applied exclusively to those EPA methods developed by OW and OSW when the method is being applied to EPA air emission standards. If an owner or operator wants to use a test method not issued by either of these two EPA offices as an alternative to the test methods specifically listed in the rule, this test method must be validated according to the procedures in Sections 5.1 and 5.3 of Test Method 301.

III. Summary of Impacts

The EPA estimates that implementation of the Off-Site Waste and Recovery Operations NESHAP will reduce HAP emissions from the source category on a nationwide basis by approximately 82 percent, from 52,000 Mg/yr to 9,000 Mg/yr.

The EPA also estimated the reduction in VOC emissions from the source category. The Off-Site Waste and Recovery Operations NESHAP is estimated to reduce nationwide VOC emissions by approximately 52,000 Mg/yr. This value was calculated using the estimated nationwide HAP emission value times a value of approximately 1.2 to represent the ratio of VOC-to-HAP constituents in the off-site material regulated under the rule. The value for this ratio was derived from information in the data base for the off-site waste and recovery operations source category. This derived value is lower than VOC-to-HAP ratios indicated for other HAP emission sources. Thus, the procedure used to estimate nationwide VOC emissions for the source category is considered by the EPA to be conservative and may understate the actual quantity of VOC emission reduction that will occur from implementing the Off-Site Waste and Recovery Operations NESHAP.

The EPA prepared estimates of the cost to owners and operators of implementing the requirements of the final Off-Site Waste and Recovery Operations NESHAP at plant sites the EPA expects are likely to be subject to the rule. The total nationwide capital investment cost to purchase and install the air emission controls that are required by the rule is estimated by the EPA to be approximately \$42 million. The total nationwide annual cost of the Off-Site Waste and Recovery Operations NESHAP is estimated to be approximately \$18 million per year. This corresponds to an average cost of approximately \$420 per megagram of HAP controlled.

Price increases in affected markets are projected at less than 0.01 percent of baseline price, and decreases in production are projected at less than 0.1 percent. No businesses or facilities are projected by the EPA to close as a result of implementing the requirements of the final rule. For more information regarding the economic analysis, consult the Economic Impact Analysis of National Emissions Standards for Hazardous Air Pollutants: Off-Site Waste and Recovery Operations available in the docket (Docket No. A-92-16).

IV. Summary of Responses to Major Comments

A summary of responses to selected major comments received on the proposed rule is presented below. Additional discussion of the EPA's responses to public comments is presented in the Basis and Support

Document (see **ADDRESSES** section of this preamble).

A. Rule Applicability

Comment: Many commenters stated that the proposed applicability of the Off-Site Waste and Recovery Operations NESHAP would be too broad and should be narrower. Major reasons presented by individual commenters include: (1) the rule's applicability was expanded by the EPA beyond the scope of the initial source category listing without providing adequate notice to the public; (2) including operations managing "recoverable materials" received from off-site in the rule's applicability discourages recycling, provides a disincentive to pollution prevention, and is inconsistent with the Pollution Prevention Act; and (3) range of facility types subject to the rule is too broad because many of these facility types have significantly different HAP emission sources.

Response: The EPA proposed that the Off-Site Waste and Recovery Operations NESHAP be applicable to owners and operators of facilities that are "major sources" (as defined in 40 CFR 63.2) and at which operations are conducted to manage, convey, or handle "wastes" or "recoverable materials" received from off-site and containing specific organic HAP constituents (as specified in Table 1 of the rule). Under the proposed rule, waste management and recovery operations listed by the EPA as separate NESHAP source categories were specifically exempted from the requirements of the rule.

The EPA has not expanded the applicability of the Off-Site Waste and Recovery Operations NESHAP beyond the scope of the initial source category listing without providing adequate notice to the public. The EPA published an advance notice of proposed rulemaking (ANPR) in the Federal Register on December 20, 1993 (58 FR 66336) announcing the EPA's intent to develop a NESHAP for the off-site waste and recovery operations source category. In the ANPR, the EPA provided a general description of the types of facilities the EPA planned to regulate under this rulemaking (see 58 FR 66337). The EPA further provided a definition of "waste" that the Agency intended to be used for this rulemaking which included materials managed prior to being recycled. Thus, the Agency clearly expressed its intent in the ANPR to include recovery operations in the scope of this rulemaking.

As described in Section II.D.3 of this notice, the Pollution Prevention Act of 1990 (42 U.S.C. 13101 *et seq.*, Pub. L.

101-508, November 5, 1990) establishes the national policy of the United States for pollution prevention. The EPA believes that applying the Off-Site Waste and Recovery Operations NESHAP to units managing materials that are collected and transported to a facility for subsequent reprocessing or recycling is fully consistent with the Pollution Prevention Act. The final rule neither discourages recycling nor provides a disincentive to pollution prevention. The final rule does not prohibit or discourage an owner or operator from continuing to use the recovery operation; the rule only requires that the owner or operator control the organic HAP emitted to the atmosphere from the operation. This is consistent with the Pollution Prevention Act's declaration that operations to recycle or reuse materials be performed in an environmentally-safe manner.

In proposed regulatory text, the EPA split the definition of "waste" the Agency stated in the ANPR, into two separate terms; "waste" being defined as materials managed prior to being discarded or discharged, and "recoverable materials" being defined as materials managed prior to being recycled, reprocessed, or reused. Based on the comments received by the EPA, it appears that commenters interpreted the proposed regulatory text using these terms to extend the applicability of the rule to certain types of recycling and recovery operations that the Agency never intended to be subject to this rulemaking. To clarify the EPA's intent, the general term "recoverable material" is not used in the final rule. Instead, the EPA has added to the final rule the new terms "used oil" and "used solvent" to define the specific types of recycled or reprocessed materials subject to the rule. In each case where the final Off-Site Waste and Recovery Operations NESHAP is applicable to a used oil or used solvent recovery operation, the EPA has included this operation because the Agency has concluded that the operation when uncontrolled can be a significant source of HAP emissions and the operation will not be regulated by another NESHAP.

The EPA disagrees that the applicability of the Off-Site Waste and Recovery Operations NESHAP is too broad because many of the types of waste management and recovery operations included in the source category have significantly different HAP emission sources. In the Federal Register notice for the proposed rule, the EPA provided examples of specific types of facilities included in the off-site waste and recovery operations source category (see 59 FR 51920). At all of

these facilities, similar types of units are used to manage wastes or the other materials subject to the rule (e.g., tanks, containers, surface impoundments). Organic HAP are emitted from each type of unit by the same emission mechanisms regardless of the type of facility at which the unit is located. Common organic HAP control technologies are applicable to the units used at all of the off-site waste and recovery operations facility types. There are no significant differences in the organic HAP emissions or the control technologies applicable to controlling these emissions from the off-site waste and recovery operations facility types subject to this rulemaking.

Many commenters mistakenly interpreted the regulatory language of the proposed rule to extend the applicability of the Off-Site Waste and Recovery Operations NESHAP to facilities that the Agency never intended to be subject to this rulemaking. In response to the different interpretation of the proposed rule's applicability by commenters versus the Agency's intent for this rulemaking, the EPA reviewed the proposed regulatory text for the rule. The EPA decided to revise the format to be inclusive by specifically identifying those waste management and recovery operations that are subject to the Off-Site Waste and Recovery Operations NESHAP. Owners and operators of waste and recovery operations not explicitly included in the set of conditions specified for the final Off-Site Waste and Recovery NESHAP are not subject to the rule.

B. Data Base Used for Rule Development

Comment: Commenters stated that the data base used by the EPA to develop the Off-Site Waste and Recovery Operations NESHAP is not representative of all of the waste management recovery operations that would be potentially subject to the rule; and the information in the data base is not representative of current waste management and recovery operation practices.

Response: In the development of the Off-Site Waste and Recovery Operations NESHAP, the EPA used the best information available to the Agency. Earlier in the development of the rule, the EPA recognized that more up-to-date data and additional information would be beneficial for evaluating the different types of waste management and recovery operations included in the source category and for estimating the impacts associated with this rulemaking. The EPA made several requests for information from the public to supplement the Agency's information

regarding the off-site waste and recovery operations source category.

Prior to proposal of the Off-Site Waste and Recovery NESHAP, the EPA announced in the ANPR the data bases the Agency was using for the impact analyses and requested information from the public (see 58 FR 66338 and 66339). The EPA specifically requested more information on off-site material characteristics (types, quantities, organic composition), operating practices, and waste and recovery operation emission points and air emission data. No additional information regarding these topics was received by the EPA.

At proposal, the EPA requested additional information to improve the Agency's understanding and profile of the waste management and recovery operations intended to be addressed by this rulemaking (see 59 FR 51921). Additional information was provided to the EPA by commenters regarding the following topics: (1) industrial waste landfill operations, waste characterizations, and HAP emissions; (2) general practices for waste management and recovery operations commonly used at chemical manufacturing plants and petroleum refineries; and (3) general waste management practices used at oil exploration and production leases. In addition, the EPA obtained additional information regarding used solvent collection and management practices for businesses that reprocess used solvent for sale to other users.

The data base used for the impact analysis for the rulemaking was compiled by collecting information related to off-site waste and recovery operations from nationwide surveys of hazardous waste TSDF, wastewater treatment facilities, and used oil management facilities that the EPA conducted for other rulemakings. The EPA is fully aware that off-site waste and recovery operations have changed since the surveys were conducted. These changes are the result of multiple factors including reductions in the quantities of certain wastes sent to waste management facilities as waste minimization programs have been implemented by generators; changes in waste disposal practices to comply with RCRA land disposal restrictions and other rules; and changes in ownership arrangements of waste management and recovery operations located within large petrochemical and other manufacturing complexes. In recognition of these changes, the EPA adjusted the data base to reflect these changes to the extent possible using other information available to the Agency.

The EPA reviewed the data base used to develop the Off-Site Waste and Recovery Operations NESHAP with respect to the Agency's decisions regarding the rule revisions made to the applicability of the final rule. The EPA believes that the data base contains sufficient information regarding the types of the waste management and recovery operations that are subject to the final Off-Site Waste and Recovery Operations NESHAP to support the Agency's decisions for this rulemaking.

C. Land Disposal Unit Requirements

Comment: Commenters disagreed with the proposed requirement to treat wastes prior to being placed in land disposal units because they state that the requirement is inconsistent with the RCRA land disposal restrictions and any solid waste land disposal restrictions should be promulgated by the EPA's Office of Solid Waste.

Response: The EPA proposed that, prior to being placed in land disposal units, owners and operators treat those off-site materials having a VOHAP concentration equal to or greater than the action level. Based on the EPA's decisions regarding applicability of the rule to landfills and considering the existing requirements under RCRA land disposal restrictions, the EPA concluded that the proposed requirement is not needed for the Off-Site Waste and Recovery Operations NESHAP. The final rule places no restrictions on the disposal of wastes in land disposal units nor places any other air emission control requirements on these units.

D. Off-Site Material Determination Test Methods

Comment: Commenters stated that proposed requirements for determining the average VOHAP concentration of a off-site material use inappropriate test methods and are excessive, impractical, and too costly to implement at many facilities potentially subject to the rule.

Response: Under the Off-Site Waste and Recovery Operations NESHAP, air emission controls are not required for those off-site material management units located in the affected source when the unit manages off-site material having a VOHAP concentration less than the action level. As part of the procedure for determining the VOHAP concentration of the off-site material, the EPA proposed that an owner or operator could use either: (1) Direct measurement using Method 305 of samples of the material collected in accordance with the procedures specified in the rule; or (2) the owner's or operator's knowledge of the VOHAP concentration in material

based on information, as specified in the rule.

For the final Off-Site Waste and Recovery Operations NESHAP, the EPA decided to add other appropriate test methods that an owner or operator can choose to use for direct measurement of the VOHAP concentration of an off-site material. In addition, the EPA has made certain other changes to facilitate the use of organic concentration data obtained using other alternative test methods not specifically listed in the rule. The EPA believes that the changes incorporated into waste determination requirements in conjunction with changes to the applicability and action level for the final Off-Site Waste and Recovery Operations NESHAP provide a range of options for determining the VOHAP concentration of an off-site material such that every owner and operator of facilities subject to the final rule has available practical and inexpensive waste determination alternatives.

The EPA developed Method 305 to provide a relative measure of the potential for specific volatile organic compounds to be emitted from waste materials. In developing Method 305, the EPA solicited public comments on a proposed version of the method and addressed these comments in the final version of the method (59 FR 19402). Method 305 has been validated and the EPA considers Method 305 to be an appropriate method for determining the VOHAP concentration of off-site materials subject to the Off-Site Waste and Recovery Operations NESHAP.

Method 305 uses the same waste sample collection procedures and sample recovery conditions established by Method 25D (40 CFR part 60, Appendix A). When using Method 25D, the waste sample is analyzed to determine the total concentration, by weight, of all organics recovered from the waste sample. When using Method 305, the waste sample is analyzed to determine the purged concentration, by weight, of only those specific hazardous air pollutants in the waste sample which are listed in Table 1 in the rule (i.e., the VOHAP concentration). Any hazardous air pollutant or organic constituent that may be contained in the sample but is not listed in Table 1 in the rule is not counted in the VOHAP concentration determination. For the off-site materials typically managed in the operations subject to the Off-Site Waste and Recovery Operations NESHAP, the EPA concluded that using Method 25D is a reasonable alternative to using Method 305 for the purpose of this rulemaking. Therefore, the final Off-Site Waste and Recovery Operations

NESHAP includes use of Method 25D as one of the test methods an owner or operator may choose among for direct measurement of the VOHAP concentration of an off-site material.

Other test methods have been developed by the EPA for use in rulemakings under the Clean Water Act that measure the concentration of organic pollutants in municipal and industrial wastewaters (see Appendix A to 40 CFR part 136). Commenters suggested that certain of these test methods are applicable to EPA air rulemakings affecting wastewater management units. After extensive review, the EPA decided that as alternatives to using Method 305 or Method 25D for direct measurement of VOHAP concentration in an off-site material for the Off-Site Waste and Recovery Operations NESHAP it is appropriate to add Methods 624, 1624, and 1625 (all contained in 40 CFR 136, Appendix A) when used under certain specified conditions. Because these methods measure the total concentration of the HAP constituents listed in Table 1 of the rule, owners and operators may choose to "correct" these measured values to equate to the values that would be measured using Method 305. This is accomplished by multiplying the total concentration measured values times the appropriate " f_m factor" presented in Table 1 of the rule to obtain the Method 305 VOHAP concentration.

Sufficient recovery study results are available for Methods 1624 and 1625 to correct for possible bias, and therefore, these methods are considered adequate by the EPA to characterize the concentration of a off-site material sample. In addition, Method 624 is appropriate provided the initial calibration of the analytical system is performed with the target compounds to be measured. However, none of these methods specifies a sample collection and handling procedure that is considered by the EPA adequate to minimize the volatilization of organics from the sample prior to analysis. Therefore, to ensure that an adequately representative sample of an off-site material is analyzed by the method, an owner or operator that chooses to use either Method 624, 1624, or 1625 for the Off-Site waste and Recovery Operations NESHAP is required to develop and follow a written sampling plan. This plan describes a step-by-step procedure for collecting representative samples of the off-site materials such that material integrity is maintained and minimal loss of organics from the sample occurs throughout the collection and analysis process. An example of an acceptable

sampling plan is one that incorporates sample collection and sample handling procedures similar to those specified in Method 25D. The sampling plan is to be maintained on-site in the facility records.

The EPA proposed use of knowledge-of-the-waste, allowing a facility owner or operator to use test data obtained using a test method other than Method 305 provided that the method was validated in accordance with Method 301 (40 CFR part 63, Appendix A). Under this application of Method 301, the owner or operator would be validating the alternative test method results as compared to test results obtained using Method 305. Since proposal, the EPA decided to allow organic concentration data test that are validated in accordance specifically with Sections 5.1 and 5.3 of Method 301 to be used as direct measurement data. This makes validation of the alternative test method a self-check of the method being validated. Also, if appropriate, owners and operators may choose to "correct" values measured by the alternative test method to equate to the values that would be measured using Method 305 by multiplying the measured values times the appropriate " f_m factor" presented for each hazardous air pollutant listed in Table 1 of the rule.

Finally, as discussed in Section II.G of this notice, the EPA is promulgating today a less rigorous validation procedure, "Alternative Validation Procedure for EPA Waste Methods," in Appendix to 40 CFR part 63 as an alternative to Method 301 for the validation of a test method established by the EPA Office of Water (OW) or the EPA Office of Solid Waste (OSW) when this test method is used for air emission standards. The EPA decided it is appropriate to allow organic concentration data test that are validated in accordance with this method to be used as direct measurement data.

E. Container Air Emission Controls

Comment: Commenters stated that proposed air emission control requirements for containers are commercially unavailable or impractical to implement. Also, commenters stated that the requirements should be consistent with the container air emission control requirements under the RCRA rules.

Response: Since proposal, the EPA has obtained more information on the practices and equipment currently used to manage waste and used solvents in containers. Based on consideration of this information, the EPA decided to

revise the air emission control requirements for containers to better reflect the container organic HAP emission potential, the various container types, and the common container management practices used for off-site waste and recovery operations. The EPA believes that these revised requirements are technically feasible and practical to implement on all types of containers that the Agency expects to be subject to the rule. These revisions are described in detail in Section V.G of this notice.

The EPA is addressing consistency between the air emission control requirements for containers (as well as the other affected units) in the Off-Site Waste and Recovery Operations NESHAP and the RCRA rules by amending the RCRA rules to include an exemption for those affected units using organic emission controls in accordance with the requirements of the Off-Site Waste and Recovery Operations NESHAP or any other applicable NESHAP.

F. Recordkeeping and Reporting

Comment: Commenters stated that the recordkeeping and reporting requirements proposed for the Off-Site Waste and Recovery Operations NESHAP would be excessive and inconsistent with other NSPS, NESHAP, and RCRA rules that also may be applicable to a unit subject to the rule.

Response: Under section 114(a) of the Act, the EPA may require any owner or operator of a source subject to a NESHAP to establish and maintain records as well as prepare and submit notifications and reports to the EPA or authorized State. Review by EPA and State officials of appropriate information that is maintained in facility records and is submitted in facility prepared reports provides one means for checking the compliance status of the facility with the NESHAP technical requirements. However, the EPA also recognizes that excessive and duplicative recordkeeping and reporting requirements can create a burden to facility owners and operators complying with a NESHAP as well as to the EPA and State officials responsible for assuring compliance with the NESHAP. Thus, it is the EPA's intention to limit the amount of recordkeeping and reporting required for a particular NESHAP to reasonable requirements which will provide the appropriate information needed by EPA and State officials to enforce the rule.

For the Off-Site Waste and Recovery Operations NESHAP, the EPA proposed adopting the recordkeeping and reporting requirements as specified in

the Part 63 General Provisions. The EPA reviewed the recordkeeping and reporting needed for the final rule considering the revisions made to the rule applicability and technical requirements. Based on this review, the EPA decided that certain changes to simplify the recordkeeping and reporting requirements for the final Off-Site Waste and Recovery Operations NESHAP can be made without compromising the enforceability of the rule.

VI. Summary of Changes Since Proposal

Changes have been incorporated into the final Off-Site Waste and Recovery Operations NESHAP in response to comments on the proposed rule. Also, the EPA has made many changes to the specific air emission control requirements to clarify the EPA's intent in the application and implementation of these requirements and to make these requirements consistent and up-to-date with EPA decisions made for other related NESHAP and RCRA rules. The substantive changes to the Off-Site Waste and Recovery Operations NESHAP since proposal are summarized below.

A. Applicability

Several major changes have been made to the applicability of the final Off-Site Waste and Recovery Operations NESHAP to address comments on the proposed rule and to clarify the specific waste management and recovery operations that the EPA intends to be subject to the Off-Site Waste and Recovery Operations NESHAP. These changes include: (1) Deleting the proposed term "recoverable material" and defining new terms "off-site material", "used oil", and "used solvent" to explicitly specify the types of materials that the EPA is regulating under this rule; (2) adding a list of the specific wastes and other materials which can be received at a plant site but not considered by the EPA to be off-site materials for the purpose of implementing the rule; and (3) using an inclusive format to limit the rule applicability to six specific types of waste management and recovery operations. A detailed description of each of these changes is presented in the following paragraphs.

The Off-Site Waste and Recovery Operations NESHAP is applicable to owners and operators of a plant site that meet both of the following conditions: (1) The plant site is a major source of HAP emissions as defined in the General Provisions to 40 CFR part 63; and (2) at the plant site, the owner or

operator manages "off-site material," as defined in the rule, in one or more of the specific waste management or recovery operations listed in the rule. If either one (or both) of the conditions do not apply to a plant site, then the owner and operator of the plant site is not subject to the Off-Site Waste and Recovery Operations NESHAP, and no action is required by the owner or operator in regards to this rule.

For the purpose of implementing the Off-Site Waste and Recovery Operations NESHAP, a "plant site" is all contiguous or adjoining property that is under common control including properties that are separated only by a road or other public right-of-way. Common control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, or any combination thereof. A unit or group of units within a contiguous property that are not under common control (e.g., a wastewater treatment unit or solvent recovery unit located at the site but is sold to a different company) is a different plant site.

The first applicability condition for the Off-Site Waste and Recovery Operations NESHAP is determined by whether or not the plant site is a major source of HAP emissions as defined in 40 CFR 63.2. In general, this would be a plant site that emits or has the potential to emit considering controls, in total, 10 tons per year or more of any one HAP or 25 tons per year or more of any combination of HAP. If the plant site is not a major source, then the owner and operator of the plant site is not subject to the Off-Site Waste and Recovery Operations NESHAP regardless of the types of materials received from off-site.

The second applicability condition involves the combined requirement that "off-site material" must be received at the plant site and this material must be managed in one of the six types of waste management or recovery operations specified in the rule. The first part of the applicability condition involves determining whether an "off-site material" as defined in the rule is received at the plant site. The second part of the applicability condition involves determining whether one or more of the following types of waste management or recovery operations is located at the plant site: (1) a hazardous waste treatment, storage, and disposal facility (TSDF) regulated under 40 CFR part 264 or 265 that manages waste received from off-site; (2) a wastewater treatment facility that manages wastewater received from off-site and this facility is exempted from regulation

as a TSDF under 40 CFR 264.1(g)(6) or 40 CFR 265.1(c)(10); (3) a wastewater treatment facility other than a POTW that manages wastewaters received from off-site and operation of this facility is the predominant function performed at the plant site; (4) a facility that recycles off-site material and this facility is exempted from regulation as a TSDF under 40 CFR 264.1(g)(2) or 40 CFR 265.1(c)(6); (5) a facility in which used solvents received from off-site are reprocessed or recovered; and (6) a facility in which used oil received from off-site is reprocessed or re-refined and this facility is regulated under 40 CFR Part 279, subpart F—Standards for Used Oil Processors and Refiners.

For the purpose of implementing the rule, “off-site material” is defined to be a material for which all three of the following criteria apply: (1) The material is a “waste”, “used oil”, or “used solvent” as defined in the rule; (2) this material is delivered, transferred, or otherwise moved to the plant site from another location; and (3) this material contains one or more of the specific HAP constituents listed in Table 1 in the rule. If the material received at the plant site does not meet any one of these criteria, then the material is not an “off-site material” under the rule.

The term “waste” used for the final rule is the same definition proposed for the rule. Waste types that EPA does not intend to be regulated under this rulemaking are specifically listed in the final rule. For the purpose of the implementing the Off-Site Waste and Recovery Operations NESHAP, none of the following wastes are “off-site materials”: household waste as defined in 40 CFR 258.2; radioactive mixed waste managed in accordance with all applicable regulations under Atomic Energy Act and Nuclear Waste Policy Act authorities; waste that is generated by remedial activities required under the RCRA corrective action authorities (RCRA sections 3004(u), 3004(v), or 3008(h)), CERCLA authorities, or similar Federal or State authorities; waste containing HAP that is generated by residential households (e.g., old paint, home garden pesticides) and subsequently is collected as a community service by government agencies, businesses, or other organizations for the purpose of promoting the proper disposal of this waste; waste that is generated by or transferred from units complying with all applicable regulations under 40 CFR Part 63, subparts F and G—National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical

Manufacturing Industry; waste containing benzene that is generated by or transferred from units complying with all applicable requirements specified by § 61.342(b) under 40 CFR Part 61, subpart FF—National Emission Standards for Benzene Waste Operations for a facility at which the total annual benzene quantity from facility waste is equal to or greater than 10 Mg/yr; and ship ballast water that is pumped from a ship to an onshore wastewater treatment facility.

“Used oil” means any oil refined from crude oil or any synthetic oil that has been used and as a result of such use is contaminated by physical or chemical impurities. This definition is consistent with the definition used by the EPA for the RCRA used oil management standards under 40 CFR Part 279, subpart F.

“Used solvent” means a solvent composed of mixtures of one or more aliphatic hydrocarbons or aromatic hydrocarbons that has been used and as a result of such use is contaminated by physical or chemical impurities.

Based on the applicability conditions for the final Off-Site Waste and Recovery Operations NESHAP, an owner or operator is not subject to the rule and no action is required by the rule for the following cases. If a plant site is not a major source of HAP emissions, then the owner and operator of the plant site are not subject to the Off Site Waste and Recovery Operations NESHAP regardless of whether the site receives off-site material. If at a plant site is located one or more of the specific waste management or recovery operations listed in the rule but off-site material received at the plant site is not managed in these operations, then the owner and operator of the plant site are not subject to the Off-Site Waste and Recovery Operations NESHAP. In a case when a plant site receives off-site material and is a major source of HAP emissions but there is not one of the waste management or recovery operations listed in the rule located at the site, then owner and operator of the plant site are not subject to the Off-Site Waste and Recovery Operations NESHAP.

At a plant site subject to the Off-Site Waste and Recovery Operations NESHAP, the rule only applies to the affected sources used to manage off-site material in the waste management and recovery operations specified in the rule that are located at the plant site. Units and equipment used to manage off-site material at the plant site but are not part of one of the waste management or recovery operations specified in the rule are not affected sources under the rule.

The first affected source for the Off-Site Waste and Recovery Operations NESHAP is the group of tanks, surface impoundments, separators, transfer systems, and containers used to manage off-site material in each of the waste management and recovery operations specified in the rule that are located at the plant site. The second affected source for the rule is the group of process vents on units in each of the waste management and recovery operations specified in the rule that are located at the plant site.

The third affected source for the rule is the group of equipment components consisting of pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves and lines, valves, connectors, and instrumentation systems that contain or contact off-site material in each of the waste management and recovery operations specified in the rule that are located at the plant site.

The compliance date for existing sources subject to the Off-Site Waste and Recovery Operations NESHAP (i.e., affected sources that commenced construction or reconstruction before October 13, 1994) to meet the air emission control requirements of the rule is beginning 3 years after today's date. If management of off-site material in the source is discontinued by this date, then source would no longer subject to the rule. On the other hand, if an existing waste management operation or recovery operation does not presently receive off-site material but begins receiving off-site materials for the first time 3 years after today's date (and meets the other applicability conditions in the rule), then the source is a new source subject to the rule. In this case, the owner or operator of the source must achieve compliance with the provisions of the rule upon the first date that the waste management operation or recovery operation begins to manage the off-site material.

Finally, the list of the specific HAP constituents for the Off-Site Waste and Recovery Operations NESHAP (Table 1 in Subpart DD) was revised by the EPA for the final rule. The EPA decided to delete eight chemicals from the proposed list because of the low potential for these chemicals to be emitted from the waste management and recovery operations subject to the rule. The criterion used to characterize and evaluate emission potential was based on a chemical constituent's Henry's law constant. The following chemical compounds were deleted from the proposed list: acrylic acid, aniline, o-cresol, dibutylphthalate, 1,1-

dimethylhydrazine, formaldehyde, methyl hydrazine, and n-nitrosodimethylamine.

B. General Standards

Several major changes have been made to the general standards for the final rule. First, the average VOHAP concentration action level for off-site material required to be managed in the units using air emission controls under the rule has been changed to 500 ppmw (as determined at the point-of-delivery). Units managing off-site materials determined by the owner or operator to have average VOHAP concentrations that remain less than 500 ppmw are not required to use air emission controls under the rule. The second change is land disposal units have been deleted as an affected source and the final rule places no restrictions on the disposal of wastes in land disposal units.

A third change is the addition of an exemption to the general standards in the final Off-Site Waste and Recovery Operations NESHAP that relates to the treatment of the off-site material. This exemption provides that an off-site material management unit is exempted from the air emission control requirements if the off-site material placed in the unit is a hazardous waste that meets the numerical concentration limits, applicable to the hazardous waste, as specified in 40 CFR part 268—Land Disposal Restrictions under both of the following tables: (1) Table “Treatment Standards for Hazardous Waste” in 40 CFR 268.40, and (2) Table UTS—“Universal Treatment Standards” in 40 CFR 268.48.

C. Treatment Standards

The final Off-Site Waste and Recovery Operations NESHAP provides owners or operators with a selection of alternative provisions for determining when a treated off-site material is no longer required to be managed in units meeting the air emission control requirements of the rule. The proposed treatment alternatives have been revised where appropriate to reflect the new action level of 500 ppmw and additional alternatives have been added to the rule to provide greater flexibility to the owner or operator in the treatment of off-site materials.

D. Tank Standards

The tank standards have been revised to address comments on the proposed requirements, to be consistent with tank standards established for related NESHAP source categories, and to reduce the inspection, monitoring, recordkeeping, and reporting requirements. In general, the final Off-

Site Waste and Recovery Operations NESHAP establishes two levels of air emission control for tanks managing off-site materials having a maximum HAP vapor pressure less than 76.6 kPa. The control level applicable to a tank required to use controls is determined by the tank design capacity and the maximum organic HAP vapor pressure of the off-site material in the tank. Different capacity and vapor pressure limits have been established for tanks determined to be part of an existing affected source and those determined to be part of a new affected source. Tanks used for waste stabilization processes are required to use Tank Level 2 air emission controls. The designation of which tanks are required to use controls and the required control level for the tank are specified in 40 CFR part 63, subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations. The specific air emission control requirements for Tank Level 1 controls are specified in 40 CFR part 63, subpart OO—National Emission Standards for Tanks-Level 1. The specific air emission control requirements for Tank Level 2 controls remain in 40 CFR part 63, subpart DD.

The tank capacity limits for existing tanks in which the maximum HAP vapor pressure of the off-site material in the tank is less than 76.6 kPa have been corrected to be consistent with the EPA's original intent to be compatible with other RCRA and NESHAP air emission standards already promulgated by the Agency which potentially could be applicable to the same tank. The proposed rule was incorrectly drafted to exclude existing tanks having a design capacity less than 75 m³ (approximately 20,000 gallons) from using any air emission controls. The EPA never intended to exclude this group of tanks from this rulemaking. Under the final rule, when applicable, use of Tank Level 1 air emission controls is required for an existing tank having a design capacity less than 75 m³.

For a tank required to use Level 1 controls, the final rule specifies that the off-site material be managed in a tank using a fixed-roof. For the Level 2 controls, the final rule requires that off-site material be managed in one of the following: (1) a fixed roof tank equipped with an internal floating roof; (2) a tank equipped with an external floating roof; (3) a tank vented through a closed-vent system to a control device; (4) a pressure tank; or (5) a tank located inside an enclosure that is vented through a closed-vent system to an enclosed combustion control device.

E. Oil-Water Separator and Organic-Water Standards

Under the final Off-Site Waste and Recovery Operations NESHAP, individual air emission control requirements have been established for oil-water separator or organic-waster separators. For each separator required to use controls under the rule, the owner or operator is required to control air emissions from the separator by installing and operating on each section of the unit either a floating roof or a fixed-roof that is vented through a closed-vent system to a control device. The designation of which separators are required to use controls is specified in 40 CFR part 63, subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations. The specific air emission control requirements are specified in 40 CFR part 63, subpart VV—National Emission Standards for Oil-Water and Organic-Water Separators.

F. Surface Impoundment Standards

Revisions have been made to the surface impoundment standards so that, where relevant and appropriate, the inspection, monitoring, recordkeeping, and reporting requirements for surface impoundments are consistent with the requirements established for tanks and separators. The designation of which surface impoundments are required to use controls is specified in 40 CFR 63 subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations. The specific air emission control requirements are specified in 40 CFR part 63, subpart QQ—National Emission Standards for Surface Impoundments.

G. Container Standards

The container standards have been significantly revised to address comments on the proposed requirements, to make this rule compatible with the existing U.S. Department of Transportation (DOT) regulations for transporting hazardous materials, and to reduce the inspection, monitoring, recordkeeping, and reporting requirements. The designation of which containers are required to use controls and the required control level for the container are specified in 40 CFR 63 subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations. The specific air emission control requirements for each control level are specified in 40 CFR Part 63

subpart PP—National Emission Standards for Containers.

The revised container standards for the Off-Site Waste and Recovery Operations NESHAP establish three levels of air emission control. The control level applicable to a container is determined by the container design capacity, the total organic content of the material in the container, and use of the container. For example, containers with a design capacity less than or equal to 0.1 m³ (approximately 26 gallons) are not subject to any requirements under the rule.

Under the final rule, Level 1 controls are required for the following container categories (except when the container remains uncovered for waste stabilization processes): (1) containers having a design capacity greater than 0.1 m³ and less than or equal to 0.46 m³ (approximately 119 gallons); and (2) containers with a design capacity greater than 0.46 m³ and used to manage off-site materials that do not meet the definition of "light material." Level 2 controls are required for containers with a design capacity greater than 0.46 m³ and used to handle "light materials" (i.e., off-site materials where the vapor pressure of one or more of the components in the material is greater than 0.3 kilopascals [kPa] at 20 °C, and the total concentration of the pure components having a vapor pressure greater than 0.3 kPa at 20 °C is equal to or greater than 20 percent by weight), except when the container remains uncovered for waste stabilization processes. Level 3 controls are required for containers having a design capacity greater than 0.1 m³ that must remain uncovered for waste stabilization processes.

For the containers required to use Level 1 controls, the final rule requires that the off-site material be managed either: (1) in a container that meets the relevant DOT regulations on packaging hazardous materials for transportation under 49 CFR parts 173, 178, 179, and 180; or (2) a covered container that meets the requirements specified in the final rule. No additional requirements are specified by the final rule for containers complying with the applicable DOT regulations. In the case when an owner or operator elects to comply with the covered container requirements (i.e., non-DOT containers), the container must be equipped with a tight-fitting cover that has no visible gaps, spaces, holes, or other openings. The rule does require a visual inspection when the cover is applied and, thereafter, annually if the container remains in on-site storage for a period longer than 1 year. No testing for

detectable organic emissions using Method 21 is required. No recordkeeping and reporting are required under the final rule for containers using Level 1 controls.

For the containers required to use Level 2 controls, the final rule requires that the off-site material be managed in one of the following: (1) a container that meets the relevant DOT regulations on packaging hazardous materials for transportation under 49 CFR parts 173, 178, 179, and 180; or (2) a container that has been demonstrated within the preceding 12 months to operate with no detectable organic emissions by using Method 21; or (3) a container that has been demonstrated within the preceding 12 months to be vapor-tight by using Method 27. No additional requirements are specified by the final rule for containers complying with the applicable DOT regulations. Specific design, operating, inspection and monitoring, repair, recordkeeping, and reporting requirements for containers tested using either Method 21 or 27 are specified in the rule.

For the containers required to use Level 3 controls, the final rule requires that an open container be placed in an enclosure vented through a closed-vent system to a control device or a covered container be vented directly to a control device. If an enclosure is used, the enclosure is to be designed in accordance with the criteria for a permanent total enclosure as specified in 40 CFR 52.741, Appendix B, Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure.

Requirements for loading off-site material into a container have been revised since proposal. Under the final rule there are no requirements for loading off-site material into containers using Level 1 controls. For containers using Level 2 controls, the loading requirements have been revised to allow flexibility to use any appropriate loading method that will minimize exposure of the off-site material to the atmosphere and thereby reduce organic air emissions, to the extent practical considering the physical properties of the off-site material and good engineering and safety practices. Examples of container loading procedures that the EPA considers to meet these requirements include, but are not limited to, using a submerged-fill pipe or other submerged-fill method to load liquids into the container; or using a vapor-balancing or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations.

The inspection, monitoring, recordkeeping, and reporting requirements for containers have been significantly simplified from those proposed. Owners and operators of containers using either Container Level 1 or Container Level 2 controls in accordance with the provisions of the rule are required to visually inspect the container and its cover and closure devices to check for defects at the time the owner or operator first accepts possession of the container at the facility site with the exception of those containers emptied within 24 hours of being received. Also, in the case when a container used for managing regulated-material remains at the facility site for a period of 1 year or more, the container and its cover and closure devices are to be visually inspected to check for defects at least once every 12 months.

There are no requirements for periodic Method 21 leak monitoring of containers. There are no recordkeeping nor reporting requirements under this final rulemaking for containers using either Container Level 1 or Container Level 2 controls.

H. Transfer System Standards

The major change to the transfer system standards is the addition of specific requirements for individual drain systems to the final rule. The designation of which individual drain systems are required to use controls is specified in 40 CFR 63 subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations. The specific air emission control requirements are specified in 40 CFR 63 subpart RR—National Emission Standards for Individual Drain systems. Other revisions have been made, where relevant and appropriate, so that the requirements for transfer systems other than an individual drain system are consistent with the requirements established for the other types of off-site material management units.

I. Process Vent Standards

In response to comments, several changes have been made to the air emission control requirements for process vents under the Off-Site Waste and Recovery Operations NESHAP. The term "enclosed treatment unit" proposed for the rule has been deleted from the final rule and replaced with a definition for the term "process vent." The EPA decided to use this new term to clarify the process vents that must use air emission controls under the rule. The final rule has also been revised to require an average emission reduction of

at least 95 percent by weight in total HAP emissions from the combination of all affected process vents at the plant site (i.e., all process vents that are a part of the affected sources subject to the Off-Site Waste and Recovery Operations NESHAP).

J. Equipment Leak Air Standards

The EPA has not included in the final Off-Site Waste and Recovery Operations NESHAP a definition for "ancillary equipment" as was originally proposed. Instead, the specific equipment types subject to equipment leak standards under the Off-Site Waste and Recovery Operations NESHAP are listed directly in the applicability section of the rule (§ 63.690). These equipment types are consistent with other NESHAP equipment leak standards.

K. Control Device and Closed-Vent System Standards

Revisions to the control device and closed-vent system standards consist of incorporating changes to the closed-vent system and control device requirements so that these requirements are consistent and up-to-date with the general decisions the EPA has made regarding NESHAP inspection, monitoring, maintenance, repair, malfunctions, recordkeeping, and reporting requirements for organic emission control devices. Also, to improve the readability and user understanding of the requirements, the format used to present the standards has been revised. In the final rule, all of the requirements for a particular type of control device (e.g., vapor incinerator, carbon adsorber, or condenser) are grouped together.

L. Test Methods and Procedures

For the final Off-Site Waste and Recovery Operations NESHAP, the EPA decided to allow an owner or operator to use any one of several existing EPA test methods for direct measurement of the VOHAP concentration of an off-site material. In addition, the EPA has made certain other changes to the rule to facilitate the use of organic concentration data obtained using other alternative test methods not specifically listed in the rule.

The final rule allows an owner or operator to directly measure the volatile organic concentration using any one of the following methods: Method 305 in 40 CFR part 63, Appendix A; Method 25D in 40 CFR part 60, Appendix A; or Method 624, Method 1624, or Method 1625 in 40 CFR part 136, Appendix A (when used in accordance with the procedure specified in the rule). In addition, an owner or operator may use any other alternative method that has

been validated in accordance with the procedures specified in Sections 5.1 and 5.3 of Method 301 or specified in the Appendix D—Alternative Validation Procedure for EPA Waste Methods promulgated by this action in 40 CFR part 63.

M. Recordkeeping and Reporting Requirements

The EPA has changed the recordkeeping and reporting requirements for the final Off-Site Waste and Recovery Operations NESHAP to reflect the revisions to the rule applicability and technical requirements and reduce the burden of these requirements on owners and operators.

VII. Administrative Requirements

A. Docket

The docket is an organized and complete file of information considered by the EPA in the development of a rulemaking. The docket pertaining to the Off-Site Waste and Recovery Operations NESHAP is Docket No. A-92-16. This docket contains a copy of the regulatory text of the proposed rule, the BID, and copies of all BID references and other information related to the development of the proposed and final rule. The public may review all materials in this docket at the EPA's Air and Radiation Docket and Information Center (see the ADDRESSES section at the beginning of this notice).

B. Paperwork Reduction Act

The information collection requirements for this NESHAP 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 the EPA (ICR No. 1717.02), and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division (2137), U.S. Environmental Protection Agency, 401 M Street, S.W.; Washington, DC 20460, or by calling (202) 260-2740.

The public recordkeeping and reporting burden for this collection of information is estimated to average approximately 830 hours per respondent for each of the first 3 years following promulgation of the rule. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the recordkeeping and reporting burden estimate or any other aspect of this

collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch (2137), U.S. Environmental Protection Agency, 401 M Street, S.W.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

C. Executive Order 12866

Under Executive Order 12866 (58 FR 5173, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "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 environment, public health or safety, or State, local, or tribal governments or communities;
- (2) create a 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 thereof; 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 the Executive Order 12866, it has been determined that this action will be treated as a "significant regulatory action" within the meaning of the Executive Order. As such, this action was submitted to the Office of Management and Budget (OMB) for review. Changes made in response to OMB suggestions or recommendations are documented in the docket pertaining to the Off-Site Waste and Recovery Operations NESHAP rulemaking (Docket No. A-92-16).

D. Regulatory Flexibility Act

Section 605 of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.), the EPA Regulatory Flexibility guidelines (April, 1992), and the Small Business Regulatory Fairness Act of 1996 requires Federal agencies to give special consideration to the impacts of regulations on small entities, which are small businesses, small organizations, and small governments. The major purpose of the Regulatory Flexibility Act, the EPA guidelines, and the Small Business Fairness Act is to keep paperwork and regulatory requirements

from being out of proportion to the scale of the entities being regulated, without compromising the objectives of, in this case, the Clean Air Act.

A small business with establishments in Standard Industrial Classification 4953, Refuse Systems, is defined by the Small Business Administration as one receiving less than \$6 million per year, averaged over the most recent three fiscal years. A small organization is a not-for-profit enterprise that is independently owned and operated and is not dominant in the waste disposal industry. A small government is one that serves a population of less than 50,000 people. The EPA may use other definitions, but elects to use these. The EPA believes that small organizations and small governments have at most a very minor involvement with the types of waste management and recovery operations subject to this rule, and therefore would not be significantly affected by the Off-Site Waste and Recovery Operations NESHAP. Hence, the EPA has concentrated its attention on small businesses.

The Regulatory Flexibility Act specifies that Federal agencies must prepare an initial regulatory flexibility analysis if a proposed regulatory action would have "a significant economic impact on a substantial number of small entities." The data bases available to the EPA reflect the state of the hazardous waste TSDF industry in 1986, and provide limited basis for updating the economic factors. Furthermore, the EPA does not have reliable projections of construction of new facilities with the types of waste management and recovery operations that will be subject to the rule. The EPA, based on its initial Regulatory Flexibility analysis, therefore assumed that the rule may have a significant impact on a substantial number of small businesses, and conducted a final regulatory flexibility analysis. This analysis is part of the economic impact analysis (titled *Economic Impact Analysis of National Emission Standards for Hazardous Air Pollutants: Off-Site Waste and Recovery Operations*) prepared for the rulemaking and available in the docket (Docket No. A-92-16).

Even though many facilities at which are located waste management and recovery operations receiving off-site materials are expected to be area sources and would not be subject to this NESHAP, the EPA assumed for the regulatory flexibility analysis that all facilities listed in the source category data base are collocated at major sources. Also, the analysis did not exclude those facilities that are major sources but would not be subject to the

air emission control requirements under the Off-Site Waste and Recovery Operations NESHAP because the facility qualifies for the rule exemption for a facility at which the total annual organic HAP mass content of all off-site material is less than 1 Mg/yr.

From the source category data base, the EPA identified for the analysis 110 small businesses that own 112 facilities subject to the Off-Site Waste and Recovery Operations NESHAP. As a result of exemptions allowed by the final rule, none of these small businesses would incur costs beyond costs for recordkeeping and reporting. All of these small businesses would meet at least one of the exemption criteria in the rule and, therefore, would not need to use the air emission controls required by the rule. The small costs for recordkeeping and reporting are required to document compliance with the rule exemptions. For a median small business, the same costs come to less than 0.1 percent of sales—compared with about 0.01 percent for the median large business. Since there are no capital costs to small businesses, none of the small businesses would exceed the capital cost retained earning breakpoints (the maximum amount of new capital a business can raise without issuing new stock and without changing its existing capital structure). By way of comparison, 30 percent of large businesses would have capital costs of compliance exceeding their breakpoints. None of these large businesses are expected to receive significant economic impacts.

Finally, the EPA evaluated the possibility that the final rule might cause a small business to close. Based on this review, no small businesses are expected to close as a result of having to comply with the requirements of the final rule.

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities.

E. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the 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 the private sector, of \$100 million or more. Under section 205, the 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 the 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 action promulgated today 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. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

F. Review

The off-site waste and recovery operations NESHAP will be reviewed 8 years from today's date of promulgation. This review will include an assessment of such factors as evaluation of the residual health risks, any duplication with other air programs, the existence of alternative methods, enforceability, improvements in air emission control technology and health data, and the recordkeeping and reporting requirements.

VII. Statutory Authority

The statutory authority for this proposal is provided by section 101, 112, 114, 116, and 301 of the Clean Air Act, as amended; 42 U.S.C., 7401, 7412, 7414, 7416, and 7601.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Containers, Equipment leaks, Hazardous air pollutants, Individual drain systems, NESHAP, Off-site waste and recovery operations, Oil-water separators, Process vents, Tanks, Surface impoundments, Used oil, Used solvents, Waste.

Dated: May 28, 1996.

Carol M. Browner,
The Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations are amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1–3. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

4. Part 63 is amended by adding subpart DD consisting of §§ 63.680 through 63.698 to read as follows:

Subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations

Sec.

- 63.680 Applicability and designation of affected sources.
- 63.681 Definitions.
- 63.682 [Reserved]
- 63.683 Standards: General.
- 63.684 Standards: Off-site material treatment.
- 63.685 Standards: Tanks.
- 63.686 Standards: Oil-water and organic-water separators.
- 63.687 Standards: Surface impoundments.
- 63.688 Standards: Containers.
- 63.689 Standards: Transfer systems..
- 63.690 Standards: Process vents.
- 63.691 Standards: Equipment leaks.
- 63.692 [Reserved]
- 63.693 Standards: Closed-vent systems and control devices.
- 63.694 Testing methods and procedures.
- 63.695 Inspection and monitoring requirements.
- 63.696 Recordkeeping requirements.
- 63.697 Reporting requirements.
- 63.698 Delegation of Authority.
- Table 1 to Subpart DD—List of Hazardous Air Pollutants (HAP) for Subpart DD.
- Table 2 to Subpart DD—Applicability of paragraphs in 40 CFR Subpart A, General Provisions, to Subpart DD.
- Table 3 to Subpart DD—Tank Control Levels for Tanks at Existing Affected Sources as Required by 40 CFR 63.685(b)(1).
- Table 4 to Subpart DD—Tank Control Levels for Tanks at New Affected Sources as Required by 40 CFR 63.685(b)(2).

Subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations

§ 63.680 Applicability and designation of affected sources.

(a) The provisions of this subpart apply to the owner and operator of a plant site for which both of the conditions specified in paragraphs (a)(1) and (a)(2) of this section are applicable. If either one of these conditions does not apply to the plant site, then the owner and operator of the plant site are not subject to the provisions of this subpart.

(1) The plant site is a major source of hazardous air pollutant (HAP) emissions as defined in 40 CFR 63.2.

(2) At the plant site is located one or more of operations that receives off-site materials as specified in paragraph (b) of this section and the operations is one of the following waste management operations or recovery operations as specified in paragraphs (a)(2)(i) through (a)(2)(vi) of this section.

(i) A waste management operation that receives off-site material and the operation is regulated as a hazardous waste treatment, storage, and disposal

facility (TSDF) under either 40 CFR part 264 or part 265.

(ii) A waste management operation that treats wastewater which is an off-site material and the operation is exempted from regulation as a hazardous waste treatment, storage, and disposal facility under 40 CFR 264.1(g)(6) or 40 CFR 265.1(c)(10).

(iii) A waste management operation that treats wastewater which is an off-site material and the operation meets both of the following conditions:

(A) The operation is subject to regulation under either section 402 or 307(b) of the Clean Water Act but is not owned by a "state" or "municipality" as defined by section 502(3) and 502(4), respectively, of the Clean Water Act; and

(B) The treatment of wastewater received from off-site is the predominant activity performed at the plant site.

(iv) A recovery operation that recycles or reprocesses hazardous waste which is an off-site material and the operation is exempted from regulation as a hazardous waste treatment, disposal, and storage facility under 40 CFR 264.1(g)(2) or 40 CFR 265.1(c)(6).

(v) A recovery operation that recycles or reprocesses used solvent which is an off-site material and the operation is not part of a chemical, petroleum, or other manufacturing process that is required to use air emission controls by another subpart of 40 CFR part 63.

(vi) A recovery operation that re-refines or reprocesses used oil which is an off-site material and the operation is regulated under 40 CFR 279 subpart F—Standards for Used Oil Processors and Refiners.

(b) For the purpose of implementing this subpart, an off-site material is a material that meets all of the criteria specified in paragraph (b)(1) of this section but is not one of the materials specified in paragraph (b)(2) of this section.

(1) An off-site material is a material that meets all of the criteria specified in paragraphs (b)(1)(i) through (b)(1)(iii) of this section. If any one of these criteria do not apply to the material, then the material is not an off-site material subject to this subpart.

(i) The material is a waste, used oil, or used solvent as defined in § 63.681 of this subpart;

(ii) The material is not produced or generated within the plant site, but the material is delivered, transferred, or otherwise moved to the plant site from a location outside the boundaries of the plant site; and

(iii) The material contains one or more of the hazardous air pollutants

(HAP) listed in Table 1 of this subpart based on the composition of the material at the point-of-delivery, as defined in § 63.681 of this subpart.

(2) For the purpose of implementing this subpart, the following materials are not off-site materials:

(i) Household waste as defined in 40 CFR 258.2.

(ii) Radioactive mixed waste managed in accordance with all applicable regulations under Atomic Energy Act and Nuclear Waste Policy Act authorities.

(iii) Waste that is generated as a result of implementing remedial activities required under the Resource Conservation and Recovery Act (RCRA) corrective action authorities (RCRA sections 3004(u), 3004(v), or 3008(h)), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) authorities, or similar Federal or State authorities.

(iv) Waste containing HAP that is generated by residential households (e.g., old paint, home garden pesticides) and subsequently is collected as a community service by government agencies, businesses, or other organizations for the purpose of promoting the proper disposal of this waste.

(v) Waste that is generated by or transferred from units complying with all applicable regulations under 40 CFR 63 subparts F and G—National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.

(vi) Waste that is generated by or transferred from units complying with all applicable requirements specified by § 61.342(b) under 40 CFR 61 subpart FF—National Emission Standards for Benzene Waste Operations for a facility at which the total annual benzene quantity from the facility waste is equal to or greater than 10 megagrams per year.

(vii) Ship ballast water pumped from a ship to an onshore wastewater treatment facility.

(c) For the purpose of implementing this subpart, the affected sources at a plant site subject to this subpart are as follows:

(1) Off-site material management units. The affected source is the group of tanks, containers, oil-water or organic-water separators, surface impoundments, and transfer systems used to manage off-site material in each of the waste management operations and recovery operations specified in paragraphs (a)(2)(i) through (a)(2)(vi) of this section that is located at the plant site.

(2) Process vents. The affected source is the group of process vents on units used to manage off-site material in each of the waste management operations and recovery operations specified in paragraphs (a)(2)(i) through (a)(2)(vi) of this section that is located at the plant site.

(3) Equipment leaks. The affected source is the group of equipment specified in § 63.683(b)(2)(i) through (b)(2)(iii) of this subpart that is used to handle off-site material in each of the waste management operations and recovery operations specified in paragraphs (a)(2)(i) through (a)(2)(vi) of this section that is located at the plant site.

(d) Owners and operators of plant sites at which are located affected sources subject to this subpart are exempted from the requirements of §§ 63.682 through 63.699 of this subpart in situations when the total annual quantity of the HAP that is contained in the off-site material received at the plant site is less than 1 megagram per year. This total annual HAP quantity for the off-site material shall be based on the total quantity of the HAP listed in Table 1 of this subpart as determined at the point-of-delivery for each off-site material stream. Documentation shall be prepared by the owner or operator and maintained at the plant site to support the initial determination of the total annual HAP quantity for the off-site material. The owner or operator shall perform a new determination when the extent of changes to the quantity or composition of the off-site material received at the plant site could cause the total annual HAP quantity in the off-site material to exceed limit of 1 megagram per year.

(e) Compliance dates.

(1) Existing sources. The owner or operator of an affected source that commenced construction or reconstruction before October 13, 1994, shall achieve compliance with the provisions of the subpart no later than July 1, 1999 unless an extension has been granted by the Administrator as provided in 40 CFR 63.6(i).

(2) New sources. The owner or operator of an affected source for which construction or reconstruction commences on or after October 13, 1994, shall achieve compliance with the provisions of this subpart by July 1, 1996 or upon initial startup of operations, whichever date is later as provided in 40 CFR 63.6(b). For the purpose of implementing this subpart, a waste management operation or recovery operation that commenced construction or reconstruction before October 13, 1994, and receives off-site

material for the first time after July 1, 1999 is a new source, and the owner or operator of this affected source shall achieve compliance with the provisions of this subpart upon the first date that the waste management operation or recovery operation begins to manage the off-site material.

(f) The provisions of 40 CFR part 63, subpart A—General Provisions that apply and those that do not apply to this subpart are specified in Table 2 of this subpart.

§ 63.681 Definitions.

All terms used in this subpart shall have the meaning given to them in this section, 40 CFR 63.2 of this part, and the Act.

Boiler means an enclosed combustion device that extracts useful energy in the form of steam and is not an incinerator or a process heater.

Closed-vent system means a system that is not open to the atmosphere and is composed of hard-piping, ductwork, connections, and, if necessary, fans, blowers, or other flow-inducing devices that conveys gas or vapor from an emission point to a control device.

Closure device means a cap, hatch, lid, plug, seal, valve, or other type of fitting that prevents or reduces air pollutant emissions to the atmosphere by blocking an opening in a cover when the device is secured in the closed position. Closure devices include devices that are detachable from the cover (e.g., a sampling port cap), manually operated (e.g., a hinged access lid or hatch), or automatically operated (e.g., a spring-loaded pressure relief valve).

Container means a portable unit used to hold material. Examples of containers include but are not limited to drums, dumpsters, roll-off boxes, bulk cargo containers commonly known as "portable tanks" or "totes", cargo tank trucks, and tank rail cars.

Continuous record means documentation of data values measured at least once every 15 minutes and recorded at the frequency specified in this subpart.

Continuous recorder means a data recording device that either records an instantaneous data value at least once every 15 minutes or records 15-minutes or more frequent block averages.

Continuous seal means a seal that forms a continuous closure that completely covers the space between the edge of the floating roof and the wall of a tank. A continuous seal may be a vapor-mounted seal, liquid-mounted seal, or metallic shoe seal. A continuous seal may be constructed of fastened

segments so as to form a continuous seal.

Control device means equipment used for recovering or oxidizing organic vapors. Examples of such equipment include but are not limited to carbon adsorbers, condensers, vapor incinerators, flares, boilers, and process heaters.

Cover means a device that prevents or reduces air pollutant emissions to the atmosphere by forming a continuous barrier over the off-site material managed in a unit. A cover may have openings (such as access hatches, sampling ports, gauge wells) that are necessary for operation, inspection, maintenance, and repair of the unit on which the cover is used. A cover may be a separate piece of equipment which can be detached and removed from the unit or a cover may be formed by structural features permanently integrated into the design of the unit.

Emission point means an individual tank, surface impoundment, container, oil-water or organic-water separator, transfer system, process vent, or enclosure.

Enclosure means a structure that surrounds a tank or container, captures organic vapors emitted from the tank or container, and vents the captured vapor through a closed vent system to a control device.

External floating roof means a pontoon-type or double-deck type cover that rests on the liquid surface in a tank with no fixed roof.

Fixed roof means a cover that is mounted on a unit in a stationary position and does not move with fluctuations in the level of the liquid managed in the unit.

Flame zone means the portion of the combustion chamber in a boiler or process heater occupied by the flame envelope.

Floating roof means a cover consisting of a double deck, pontoon single deck, or internal floating cover which rests upon and is supported by the liquid being contained, and is equipped with a continuous seal.

HAP means hazardous air pollutants.

Hard-piping means pipe or tubing that is manufactured and properly installed in accordance with relevant standards and good engineering practices.

Hazardous waste means a waste that is determined to be hazardous under the Resource Conservation and Recovery Act (PL 94-580) (RCRA), as implemented by 40 CFR parts 260 and 261.

Individual drain system means a stationary system used to convey wastewater streams or residuals to a waste management unit or to discharge

or disposal. The term includes hard-piping, all drains and junction boxes, together with their associated sewer lines and other junction boxes (e.g., manholes, sumps, and lift stations) conveying wastewater streams or residuals. For the purpose of this subpart, an individual drain system is not a drain and collection system that is designed and operated for the sole purpose of collecting rainfall runoff (e.g., stormwater sewer system) and is segregated from all other individual drain systems.

Internal floating roof means a cover that rests or floats on the liquid surface (but not necessarily in complete contact with it inside a tank that has a fixed roof).

Light-material service means the container is used to manage an off-site material for which both of the following conditions apply: the vapor pressure of one or more of the organic constituents in the off-site material is greater than 0.3 kilopascals (kPa) at 20 °C; and the total concentration of the pure organic constituents having a vapor pressure greater than 0.3 kPa at 20 °C is equal to or greater than 20 percent by weight.

Liquid-mounted seal means a foam- or liquid-filled continuous seal mounted in contact with the liquid in a unit.

Maximum HAP vapor pressure means the sum of the individual HAP equilibrium partial pressure exerted by an off-site material at the temperature equal to either: the local maximum monthly average temperature as reported by the National Weather Service when the off-site material is stored or treated at ambient temperature; or the highest calendar-month average temperature of the off-site material when the off-site material is stored at temperatures above the ambient temperature or when the off-site material is stored or treated at temperatures below the ambient temperature. For the purpose of this subpart, maximum HAP vapor pressure is determined using the procedures specified in § 63.694(j) of this subpart.

Metallic shoe seal means a continuous seal that is constructed of metal sheets which are held vertically against the wall of the tank by springs, weighted levers, or other mechanisms and is connected to the floating roof by braces or other means. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

No detectable organic emissions means no escape of organics to the atmosphere as determined using the procedure specified in § 63.694(k) of this subpart.

Off-site material means a material that meets all of the criteria specified in paragraph § 63.680(b)(1) of this subpart but is not one of the materials specified in § 63.680(b)(2) of this subpart.

Off-site material management unit means a tank, container, surface impoundment, oil-water separator, organic-water separator, or transfer system used to manage off-site material.

Off-site material stream means an off-site material produced or generated by a particular process or source such that the composition and form of the material comprising the stream remain consistent. An off-site material stream may be delivered, transferred, or otherwise moved to the plant site in a continuous flow of material (e.g., wastewater flowing through a pipeline) or in a series of discrete batches of material (e.g., a truckload of drums all containing the same off-site material or multiple bulk truck loads of an off-site material produced by the same process).

Oil-water separator means a separator as defined for this subpart that is used to separate oil from water.

Operating parameter value means a minimum or maximum value established for a control device or treatment process parameter which, if achieved by itself or in combination with one or more other operating parameter values, determines that an owner or operator has complied with an applicable emission limitation or standard.

Organic-water separator means a separator as defined for this subpart that is used to separate organics from water.

Plant site means all contiguous or adjoining property that is under common control including properties that are separated only by a road or other public right-of-way. Common control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, or any combination thereof. A unit or group of units within a contiguous property that are not under common control (e.g., a wastewater treatment unit or solvent recovery unit located at the site but is sold to a different company) is a different plant site.

Point-of-delivery means the point at the boundary or within the plant site where the owner or operator first accepts custody, takes possession, or assumes responsibility for the management of an off-site material stream managed in a waste management operation or recovery operation specified in § 63.680 (a)(2)(i) through (a)(2)(vi) of this subpart. The characteristics of an off-site material stream are determined prior to combining the off-site material stream

with other off-site material streams or with any other materials.

Point-of-treatment means a point where the off-site material to be treated in accordance with § 63.683(b)(1)(ii) of this subpart exits the treatment process. The characteristics shall be determined before this material is conveyed, handled, or otherwise managed in such a manner that the material has the potential to volatilize to the atmosphere.

Process heater means an enclosed combustion device that transfers heat released by burning fuel directly to process streams or to heat transfer liquids other than water.

Process vent means any open-ended pipe, stack, or duct that allows the passage of gases, vapors, or fumes to the atmosphere and this passage is caused by mechanical means (such as compressors or vacuum-producing systems) or by process-related means (such as volatilization produced by heating). For the purpose of this subpart, a process vent is not a stack or duct used to exhaust combustion products from a boiler, furnace, process heater, incinerator, or other combustion device.

Recovery operation means the collection of off-site material management units, process vents, and equipment components used at a plant site to manage an off-site material stream from the point-of-delivery through the point where the material has been recycled, reprocessed, or re-refined to obtain the intended product or to remove the physical and chemical impurities of concern.

Safety device means a closure device such as a pressure relief valve, frangible disc, fusible plug, or any other type of device which functions exclusively to prevent physical damage or permanent deformation to a unit or its air emission control equipment by venting gases or vapors directly to the atmosphere during unsafe conditions resulting from an unplanned, accidental, or emergency event. For the purpose of this subpart, a safety device is not used for routine venting of gases or vapors from the vapor headspace underneath a cover such as during filling of the unit or to adjust the pressure in this vapor headspace in response to normal daily diurnal ambient temperature fluctuations. A safety device is designed to remain in a closed position during normal operations and open only when the internal pressure, or another relevant parameter, exceeds the device threshold setting applicable to the air emission control equipment as determined by the owner or operator based on manufacturer recommendations, applicable

regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, combustible, explosive, reactive, or hazardous materials.

Separator means a waste management unit, generally a tank, used to separate oil or organics from water. A separator consists of not only the separation unit but also the forebay and other separator basins, skimmers, weirs, grit chambers, sludge hoppers, and bar screens that are located directly after the individual drain system and prior to any additional treatment units such as an air flotation unit clarifier or biological treatment unit. Examples of a separator include, but are not limited to, an API separator, parallel-plate interceptor, and corrugated-plate interceptor with the associated ancillary equipment.

Single-seal system means a floating roof having one continuous seal. This seal may be vapor-mounted, liquid-mounted, or a metallic shoe seal.

Surface impoundment means a unit that is a natural topographical depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquids. Examples of surface impoundments include holding, storage, settling, and aeration pits, ponds, and lagoons.

Tank means a stationary unit that is constructed primarily of nonearthen materials (such as wood, concrete, steel, fiberglass, or plastic) which provide structural support and is designed to hold an accumulation of liquids or other materials.

Transfer system means a stationary system for which the predominant function is to convey liquids or solid materials from one point to another point within a waste management operation or recovery operation. For the purpose of this subpart, the conveyance of material using a container (as defined for this subpart) or a self-propelled vehicle (e.g., a front-end loader) is not a transfer system. Examples of a transfer system include but are not limited to a pipeline, an individual drain system, a gravity-operated conveyor (such as a chute), and a mechanically-powered conveyor (such as a belt or screw conveyor).

Temperature monitoring device means a piece of equipment used to monitor temperature and having an accuracy of ± 1 percent of the temperature being monitored expressed in degrees Celsius ($^{\circ}\text{C}$) or ± 1.2 degrees $^{\circ}\text{C}$, whichever value is greater.

Treatment process means a process in which an off-site material stream is

physically, chemically, thermally, or biologically treated to destroy, degrade, or remove hazardous air pollutants contained in the off-site material. A treatment process can be composed of a single unit (e.g., a steam stripper) or a series of units (e.g., a wastewater treatment system). A treatment process can be used to treat one or more off-site material streams at the same time.

Used oil means any oil refined from crude oil or any synthetic oil that has been used and as a result of such use is contaminated by physical or chemical impurities. This definition is the same definition of "used oil" in 40 CFR 279.1.

Used solvent means a solvent composed of a mixture of aliphatic hydrocarbons or a mixture of one and two ring aromatic hydrocarbons that has been used and as a result of such use is contaminated by physical or chemical impurities.

Vapor-mounted seal means a continuous seal that is mounted such that there is a vapor space between the liquid in the unit and the bottom of the seal.

Volatile organic hazardous air pollutant concentration or VOHAP concentration means the fraction by weight of the HAP listed in Table 1 of this subpart that are contained in an off-site material. For the purpose of this subpart, VOHAP concentration is determined in accordance with the test methods and procedures specified in § 63.694 (b) and (c) of this subpart.

Waste means a material generated from industrial, commercial, mining, or agricultural operations or from community activities that is discarded, discharged, or is being accumulated, stored, or physically, chemically, thermally, or biologically treated prior to being discarded or discharged.

Waste management operation means the collection of off-site material management units, process vents, and equipment components used at a plant site to manage an off-site material stream from the point-of-delivery to the point where the waste exits or is discharged from the plant site or the waste is placed for on-site disposal in a unit not subject to this subpart (e.g., a waste incinerator, a land disposal unit).

Waste stabilization process means any physical or chemical process used to either reduce the mobility of hazardous constituents in a waste or eliminate free liquids as determined by Test Method 9095—Paint Filter Liquids Test in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW-846, Third Edition, September 1986, as amended by Update I, November 15, 1992. A waste stabilization process includes mixing

the waste with binders or other materials, and curing the resulting waste and binder mixture. Other synonymous terms used to refer to this process are "waste fixation" or "waste solidification." A waste stabilization process does not include the adding of absorbent materials to the surface of a waste, without mixing, agitation, or subsequent curing, to absorb free liquid.

§ 63.682 [Reserved]

§ 63.683 Standards: General.

(a) This section applies to owners and operators of affected sources as defined in § 63.680(c) of this subpart.

(b) The owner or operator shall control the air emissions from each affected source in accordance with the following requirements:

(1) For each off-site material management unit that is part of an affected source, the owner or operator shall perform one of the following except when the unit is exempted under provisions of paragraph (c) of this section:

(i) Install and operate air emission controls on the off-site material management unit in accordance with the standards specified in §§ 63.685 through 63.689 of this subpart, as applicable to the unit;

(ii) Treat the off-site material to remove or destroy the HAP in accordance with the treatment standards specified in § 63.684 of this subpart before placing the material in the off-site material management unit; or

(iii) Determine that the average VOHAP concentration of each off-site material stream managed in the off-site material unit remains at a level less than 500 parts per million by weight (ppmw) based on the HAP content of the off-site material stream at the point-of-delivery. The owner or operator shall perform an initial determination of the average VOHAP concentration of each off-site material stream using the procedures specified in § 63.694(b) of this subpart before the first time any portion of the off-site material stream is placed in the unit. Thereafter, the owner or operator shall review and update, as necessary, this determination at least once every 12 months following the date of the initial determination for the off-site material stream.

(2) For each process vent that is part of an affected source, the owner or operator shall control the HAP emitted from the process vent by implementing one of the following control measures.

(i) Install and operate air emission controls on the process vent in accordance with the standards specified in § 63.690 of this subpart.

(ii) Determine that the average VOHAP concentration of each off-site material stream managed in the unit on which the process vent is used remains at a level less than 500 parts per million by weight (ppmw) based on the HAP content of the off-site material stream at the point-of-delivery. The owner or operator shall perform an initial determination of the average VOHAP concentration of each off-site material stream using the procedures specified in § 63.694(b) of this subpart before the first time any portion of the off-site material stream is placed in the unit. Thereafter, the owner or operator shall review and update, as necessary, this determination at least once every 12 months following the date of the initial determination for the off-site material stream.

(3) For each equipment component that is part of an affected source and meets all of the criteria specified in paragraphs (b)(3)(i) through (b)(3)(iii) of this section, the owner or operator shall control the HAP emitted from equipment leaks by implementing control measures in accordance with the standards specified in § 63.691 of this subpart.

(i) The equipment component contains or contacts off-site material having a total HAP concentration equal to or greater than 10 percent by weight;

(ii) The equipment piece is a pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, or instrumentation system; and

(iii) The equipment piece is intended to operate 300 hours or more during a 12-month period.

(c) Exempted off-site material management units. An off-site material management unit is exempted from the requirements specified in paragraph (b) of this section when the unit meets any one of the exemptions provided in paragraphs (c)(1) through (c)(5) of this section.

(1) An off-site material management unit is exempted from the requirements specified in paragraph (b) of this section if the unit is also subject to another subpart under 40 CFR part 61 or 40 CFR part 63, and the owner or operator is controlling the HAP listed in Table 1 of this subpart that are emitted from the unit in compliance with the provisions specified in the other applicable subpart.

(2) One or more off-site material management units located at a plant site can be exempted from the requirements specified in paragraph (b) of this section at the discretion of the owner or operator provided that the total annual

quantity of HAP contained in the off-site material placed in the off-site material management units selected by the owner or operator to be exempted under this provision is less than 1 megagram per year. This total annual HAP quantity for the off-site material shall be based on the total quantity of the HAP listed in Table 1 of this subpart as determined at the point where the off-site material is placed in each exempted unit. For the off-site material management unit selected by the owner or operator to be exempted from the under this provision, the owner or operator shall meet the following requirements:

(i) Documentation shall be prepared by the owner or operator and maintained at the plant site to support the initial determination of the total annual HAP quantity of the off-site material. This documentation shall include identification of each off-site material management unit selected by the owner or operator to be exempted under paragraph (c)(2) of this section and the basis for determining the HAP content of the off-site material. The owner or operator shall perform a new determination when the extent of changes to the quantity or composition of the off-site material placed in the exempted units could cause the total annual HAP content in the off-site material to exceed 1 megagram per year.

(ii) Each of the off-site material management units exempted under paragraph (c)(2) of this section shall be permanently marked in such a manner that it can be readily identified as an exempted unit from the other off-site material management units located at the plant site.

(3) A tank or surface impoundment is exempted from the requirements specified in paragraph (b) of this section if the unit is used for a biological treatment process that destroys or degrades the HAP contained in the material entering the unit, such that either of the following conditions is met:

(i) The HAP reduction efficiency (R) for the process is equal to or greater than 95 percent, and the HAP biodegradation efficiency (R_{bio}) for the process is equal to or greater than 95 percent. The HAP reduction efficiency (R) shall be determined using the procedure specified in § 63.694(g) of this subpart. The HAP biodegradation efficiency (R_{bio}) shall be determined in accordance with the requirements of § 63.694(h) of this subpart.

(ii) The total actual HAP mass removal rate (MR_{bio}) as determined in accordance with the requirements of § 63.694(i) of this subpart for the off-site material treated by the process is equal

to or greater than the required HAP mass removal rate (RMR) as determined in accordance with the requirements of § 63.694(e) of this subpart.

(4) An off-site material management unit is exempted from the requirements specified in paragraph (b) of this section if the off-site material placed in the unit is a hazardous waste that meets the numerical concentration limits, applicable to the hazardous waste, as specified in 40 CFR part 268—Land Disposal Restrictions under both of the following tables:

(i) Table “Treatment Standards for Hazardous Waste” in 40 CFR 268.40; and

(ii) Table UTS—“Universal Treatment Standards” in 40 CFR 268.48.

(5) A tank used for bulk feed of off-site material to a waste incinerator is exempted from the requirements specified in paragraph (b) of this section if all of the following conditions are met:

(i) The tank is located inside an enclosure vented to a control device that is designed and operated in accordance with all applicable requirements specified under 40 CFR part 61, subpart FF—National Emission Standards for Benzene Waste Operations for a facility at which the total annual benzene quantity from the facility waste is equal to or greater than 10 megagrams per year;

(ii) The enclosure and control device serving the tank were installed and began operation prior to July 1, 1996; and

(iii) The enclosure is designed and operated in accordance with the criteria for a permanent total enclosure as specified in “Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure” under 40 CFR 52.741, Appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of material into or out of the enclosure by conveyor, vehicles, or other mechanical means; entry of permanent mechanical or electrical equipment; or to direct airflow into the enclosure. The owner or operator shall perform the verification procedure for the enclosure as specified in Section 5.0 to “Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure” annually.

§ 63.684 Standards: Off-Site Material Treatment.

(a) The provisions of this section apply to the treatment of off-site material to control air emissions for which § 63.683(b)(1)(ii) of this subpart references the requirements of this section for such treatment.

(b) The owner or operator shall remove or destroy the HAP contained in off-site material streams to be managed in the off-site material management unit in accordance with § 63.683(b)(1)(ii) of this subpart using a treatment process that continuously achieves, under normal operations, one of the following performance levels for the range of off-site material stream compositions and quantities expected to be treated:

(1) *VOHAP concentration.* The treatment process shall reduce the VOHAP concentration of the off-site material using a means, other than by dilution, to achieve one of the following performance levels, as applicable:

(i) In the case when every off-site material stream entering the treatment process has an average VOHAP concentration equal to or greater than 500 ppmw at the point-of-delivery, then the VOHAP concentration of the off-site material shall be reduced to a level that is less than 500 ppmw at the point-of-treatment.

(ii) In the case when the off-site material streams entering the treatment process include off-site material streams having average VOHAP concentrations less than 500 ppmw at the point-of-delivery, then the VOHAP concentration of the off-site material shall be reduced to a level at the point-of-treatment that is either:

(A) Less than the VOHAP concentration limit (C_R) established for the treatment process using the procedure specified in § 63.694(d) of this subpart; or

(B) Less than the lowest VOHAP concentration determined for each of the off-site material streams entering the treatment process as determined by the VOHAP concentration of the off-site material at the point-of-delivery.

(2) *HAP mass removal.* The treatment process shall achieve a performance level such that the total quantity of HAP actually removed from the off-site material stream (MR) is equal to or greater than the required mass removal (RMR) established for the off-site material stream using the procedure specified in § 63.694(e) of this subpart. The MR for the off-site material streams shall be determined using the procedures specified in § 63.694(f) of this subpart.

(3) *HAP reduction efficiency.* The treatment process shall achieve a performance level such that the total quantity of HAP in the off-site material stream is reduced to one of the following performance levels, as applicable:

(i) In the case when the owner or operator determines that off-site material stream entering the treatment

process has an average VOHAP concentration less than 10,000 ppmw at the point-of-delivery, then the treatment process shall achieve a performance level such that the total quantity of HAP in the off-site material stream is reduced by 95 percent or more. The HAP reduction efficiency (R) for the treatment process shall be determined using the procedure specified in § 63.694(g) of this subpart. The average VOHAP concentration of the off-site material stream at the point-of-delivery shall be determined using the procedure specified in § 63.694(b) of this subpart.

(ii) In the case when the off-site material stream entering the treatment process has an average VOHAP concentration equal to or greater than 10,000 ppmw at the point-of-delivery, then the treatment process shall achieve a performance level such that the total quantity of HAP in the off-site material stream is reduced by 95 percent or more, and the average VOHAP concentration of the off-site material at the point-of-treatment is less than 100 parts per million by weight (ppmw). The HAP reduction efficiency (R) for the treatment process shall be determined using the procedure specified in § 63.694(g) of this subpart. The average VOHAP concentration of the off-site material stream at the point-of-treatment shall be determined using the procedure specified in § 63.694(c) of this subpart.

(4) *Biological degradation.* The treatment process shall achieve either of the following performance levels:

(i) The HAP reduction efficiency (R) for the treatment process is equal to or greater than 95 percent, and the HAP biodegradation efficiency (R_{bio}) for the treatment process is equal to or greater than 95 percent. The HAP reduction efficiency (R) shall be determined using the procedure specified in § 63.694(g) of this subpart. The HAP biodegradation efficiency (R_{bio}) shall be determined in accordance with the requirements of § 63.694(h) of this subpart.

(ii) The total quantity of HAP actually removed from the off-site material stream by biological degradation (MR_{bio}) shall be equal to or greater than the required mass removal (RMR) established for the off-site material stream using the procedure specified in § 63.694(e) of this subpart. The MR_{bio} of the off-site material stream shall be determined using the procedures specified in § 63.694(i) of this subpart.

(5) *Incineration.* The HAP contained in the off-site material stream shall be destroyed using one of the following combustion devices:

(i) An incinerator for which the owner or operator has either:

(A) Been issued a final permit under 40 CFR part 270, and the incinerator is designed and operated in accordance with the requirements of 40 CFR 264 subpart O—Incinerators, or

(B) Has certified compliance with the interim status requirements of 40 CFR 265 subpart O—Incinerators.

(ii) A boiler or industrial furnace for which the owner or operator has either:

(A) Been issued a final permit under 40 CFR part 270, and the combustion unit is designed and operated in accordance with the requirements of 40 CFR part 266 subpart H—Hazardous Waste Burned in Boilers and Industrial Furnaces, or

(B) Has certified compliance with the interim status requirements of 40 CFR part 266 subpart H Hazardous Waste Burned in Boilers and Industrial Furnaces.

(c) For a treatment process that removes the HAP from the off-site material by a means other than thermal destruction or biological degradation to achieve one of the performances levels specified in paragraph (b)(1), (b)(2), or (b)(3) of this section, the owner or operator shall manage the HAP removed from the off-site material in such a manner to minimize release of these HAP to the atmosphere, to the extent practical. Examples of HAP emission control measures that meet the requirements of this paragraph include managing the HAP removed from the off-site material in units that use air emission controls in accordance with the standards specified in §§ 63.685 through 63.689 of this subpart, as applicable to the unit.

(d) When the owner or operator treats the off-site material to meet one of the performance levels specified in paragraphs (b)(1) through (b)(4) of this section, the owner or operator shall demonstrate that the treatment process achieves the selected performance level for the range of expected off-site material stream compositions expected to be treated. An initial demonstration shall be performed as soon as possible but no later than 30 days after first time an owner or operator begins using the treatment process to manage off-site material streams in accordance with the requirements of § 63.683(b)(1)(ii) of this subpart. Thereafter, the owner or operator shall review and update, as necessary, this demonstration at least once every 12 months following the date of the initial demonstration.

(e) When the owner or operator treats the off-site material to meet one of the performance levels specified in paragraphs (b)(1) through (b)(4) of this section, the owner or operator shall ensure that the treatment process is

achieving the applicable performance requirements by continuously monitoring the operation of the process when it is used to treat off-site material:

(1) A continuous monitoring system shall be installed and operated for each treatment that measures operating parameters appropriate for the treatment process technology. This system shall include a continuous recorder that records the measured values of the selected operating parameters. The monitoring equipment shall be installed, calibrated, and maintained in accordance with the equipment manufacturer's specifications. The continuous recorder shall be a data recording device that records either an instantaneous data value at least once every 15 minutes or an average value for intervals of 15 minutes or less.

(2) For each monitored operating parameter, the owner or operator shall establish a minimum operating parameter value or a maximum operating parameter value, as appropriate, to define the range of conditions at which the treatment process must be operated to continuously achieve the applicable performance requirements of this section.

(3) When the treatment process is operating to treat off-site material, the owner or operator shall inspect the data recorded by the continuous monitoring system on a routine basis and operate the treatment process such that the actual value of each monitored operating parameter is greater than the minimum operating parameter value or less than the maximum operating parameter value, as appropriate, established for the treatment process.

(f) The owner or operator shall maintain records for each treatment process in accordance with the requirements of § 63.696 of this subpart.

(g) The owner or operator shall prepare and submit reports for each treatment process in accordance with the requirements of § 63.697 of this subpart.

(h) The Administrator may at any time conduct or request that the owner or operator conduct testing necessary to demonstrate that a treatment process is achieving the applicable performance requirements of this section. The testing shall be conducted in accordance with the applicable requirements of this section. The Administrator may elect to have an authorized representative observe testing conducted by the owner or operator.

§ 63.685 Standards: Tanks.

(a) The provisions of this section apply to the control of air emissions

from tanks for which § 63.683(b)(1)(i) of this subpart references the use of this section for such air emission control.

(b) The owner or operator shall control air emissions from each tank subject to this section in accordance with the following applicable requirements:

(1) For a tank that is part of an existing affected source but the tank is not used to manage off-site material having a maximum organic vapor pressure that is equal to or greater than 76.6 kPa nor is the tank used for a waste stabilization process as defined in § 63.681 of this subpart, the owner or operator shall determine whether the tank is required to use either Tank Level 1 controls or Tank Level 2 controls as specified for the tank by Table 3 of this subpart based on the off-site material maximum HAP vapor pressure and the tank's design capacity. The owner or operator shall control air emissions from a tank required by Table 3 to use Tank Level 1 controls in accordance with the requirements of paragraph (c) of this section. The owner or operator shall control air emissions from a tank required by Table 3 to use Tank Level 2 controls in accordance with the requirements of paragraph (d) of this section.

(2) For a tank that is part of a new affected source but the tank is not used to manage off-site material having a maximum organic vapor pressure that is equal to or greater than 76.6 kPa nor is the tank used for a waste stabilization process as defined in § 63.681 of this subpart, the owner or operator shall determine whether the tank is required to use either Tank Level 1 controls or Tank Level 2 controls as specified for the tank by Table 4 of this subpart based on the off-site material maximum HAP vapor pressure and the tank's design capacity. The owner or operator shall control air emissions from a tank required by Table 4 to use Tank Level 1 controls in accordance with the requirements of paragraph (c) of this section. The owner or operator shall control air emissions from a tank required by Table 4 to use Tank Level 2 controls in accordance with the requirements of paragraph (d) of this section.

(3) For a tank that is used for a waste stabilization process, the owner or operator shall control air emissions from the tank by using Tank Level 2 controls in accordance with the requirements of paragraph (d) of this section.

(4) For a tank that manages off-site material having a maximum organic vapor pressure that is equal to or greater than the 76.6 kPa, the owner or operator shall control air emissions from the tank

by venting the tank through a closed-vent system to a control device in accordance with the requirements of paragraph (g) of this section.

(c) Owners and operators controlling air emissions from a tank using Tank Level 1 controls shall meet the following requirements:

(1) The owner or operator shall determine the maximum HAP vapor pressure for an off-site material to be managed in the tank using Tank Level 1 controls before the first time the off-site material is placed in the tank. The maximum HAP vapor pressure shall be determined using the procedures specified in § 63.694(j) of this subpart. Thereafter, the owner or operator shall perform a new determination whenever changes to the off-site material managed in the tank could potentially cause the maximum HAP vapor pressure to increase to a level that is equal to or greater than the maximum HAP vapor pressure limit for the tank design capacity category specified in Table 3 or Table 4 of this subpart, as applicable to the tank.

(2) The owner or operator shall control air emissions from the tank using a fixed-roof in accordance with the provisions specified in 40 CFR 63 subpart OO—National Emission Standards for Tanks—Level 1.

(d) Owners and operators controlling air emissions from a tank using Tank Level 2 controls shall use one of the following tanks:

(1) A fixed-roof tank equipped with an internal floating roof in accordance with the requirements specified in paragraph (e) of this section;

(2) A tank equipped with an external floating roof in accordance with the requirements specified in paragraph (f) of this section;

(3) A tank vented through a closed-vent system to a control device in accordance with the requirements specified in paragraph (g) of this section;

(4) A pressure tank designed and operated in accordance with the requirements specified in paragraph (h) of this section; or

(5) A tank located inside an enclosure that is vented through a closed-vent system to an enclosed combustion control device in accordance with the requirements specified in paragraph (i) of this section.

(e) The owner or operator who elects to control air emissions from a tank using a fixed-roof with an internal floating roof shall meet the requirements specified in paragraphs (e)(1) through (e)(3) of this section.

(1) The tank shall be equipped with a fixed roof and an internal floating roof

in accordance with the following requirements:

(i) The internal floating roof shall be designed to float on the liquid surface except when the floating roof must be supported by the leg supports.

(ii) The internal floating roof shall be equipped with a continuous seal between the wall of the tank and the floating roof edge that meets either of the following requirements:

(A) A single continuous seal that is either a liquid-mounted seal or a metallic shoe seal, as defined in § 63.681 of this subpart; or

(B) Two continuous seals mounted one above the other. The lower seal may be a vapor-mounted seal.

(iii) The internal floating roof shall meet the following specifications:

(A) Each opening in a noncontact internal floating roof except for automatic bleeder vents (vacuum breaker vents) and the rim space vents is to provide a projection below the liquid surface.

(B) Each opening in the internal floating roof shall be equipped with a gasketed cover or a gasketed lid except for leg sleeves, automatic bleeder vents, rim space vents, column wells, ladder wells, sample wells, and stub drains.

(C) Each penetration of the internal floating roof for the purpose of sampling shall have a slit fabric cover that covers at least 90 percent of the opening.

(D) Each automatic bleeder vent and rim space vent shall be gasketed.

(E) Each penetration of the internal floating roof that allows for passage of a ladder shall have a gasketed sliding cover.

(F) Each penetration of the internal floating roof that allows for passage of a column supporting the fixed roof shall have a flexible fabric sleeve seal or a gasketed sliding cover.

(2) The owner or operator shall operate the tank in accordance with the following requirements:

(i) When the floating roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be accomplished as soon as practical.

(ii) Automatic bleeder vents are to be set closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the leg supports.

(iii) Prior to filling the tank, each cover, access hatch, gauge float well or lid on any opening in the internal floating roof shall be bolted or fastened closed (i.e., no visible gaps). Rim spaces vents are to be set to open only when the internal floating roof is not floating or when the pressure beneath the rim

exceeds the manufacturer's recommended setting.

(3) The owner or operator shall inspect the internal floating roof in accordance with the procedures specified in § 63.695(b) of this subpart.

(f) The owner or operator who elects to control tank emissions by using an external floating roof shall meet the requirements specified in paragraphs (f)(1) through (f)(3) of this section.

(1) The owner or operator shall design the external floating roof in accordance with the following requirements:

(i) The external floating roof shall be designed to float on the liquid surface except when the floating roof must be supported by the leg supports.

(ii) The floating roof shall be equipped with two continuous seals, one above the other, between the wall of the tank and the roof edge. The lower seal is referred to as the primary seal, and the upper seal is referred to as the secondary seal.

(A) The primary seal shall be a liquid-mounted seal or a metallic shoe seal, as defined in § 63.681 of this subpart. The total area of the gaps between the tank wall and the primary seal shall not exceed 212 square centimeters (cm²) per meter of tank diameter, and the width of any portion of these gaps shall not exceed 3.8 centimeters (cm). If a metallic shoe seal is used for the primary seal, the metallic shoe seal shall be designed so that one end extends into the liquid in the tank and the other end extends a vertical distance of at least 61 centimeters above the liquid surface.

(B) The secondary seal shall be mounted above the primary seal and cover the annular space between the floating roof and the wall of the tank. The total area of the gaps between the tank wall and the secondary seal shall not exceed 21.2 square centimeters (cm²) per meter of tank diameter, and the width of any portion of these gaps shall not exceed 1.3 centimeters (cm).

(iii) The external floating roof shall be meet the following specifications:

(A) Except for automatic bleeder vents (vacuum breaker vents) and rim space vents, each opening in a noncontact external floating roof shall provide a projection below the liquid surface.

(B) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof shall be equipped with a gasketed cover, seal, or lid.

(C) Each access hatch and each gauge float wells shall be equipped with covers designed to be bolted or fastened when the cover is secured in the closed position.

(D) Each automatic bleeder vent and each rim space vents shall be equipped with a gasket.

(E) Each roof drain that empties into the liquid managed in the tank shall be equipped with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening.

(F) Each unslotted and slotted guide pole well shall be equipped with a gasketed sliding cover or a flexible fabric sleeve seal.

(G) Each unslotted guide pole shall be equipped with a gasketed cap on the end of the pole.

(H) Each slotted guide pole shall be equipped with a gasketed float or other device which closes off the surface from the atmosphere.

(I) Each gauge hatch and each sample well shall be equipped with a gasketed cover.

(2) The owner or operator shall operate the tank in accordance with the following requirements:

(i) When the floating roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be accomplished as soon as practical.

(ii) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof shall be secured and maintained in a closed position at all times except when the closure device must be open for access.

(iii) Covers on each access hatch and each gauge float well shall be bolted or fastened when secured in the closed position.

(iv) Automatic bleeder vents shall be set closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the leg supports.

(v) Rim space vents shall be set to open only at those times that the roof is being floated off the roof leg supports or when the pressure beneath the rim seal exceeds the manufacturer's recommended setting.

(vi) The cap on the end of each unslotted guide pole shall be secured in the closed position at all times except when measuring the level or collecting samples of the liquid in the tank.

(vii) The cover on each gauge hatch or sample well shall be secured in the closed position at all times except when the hatch or well must be opened for access.

(viii) Both the primary seal and the secondary seal shall completely cover the annular space between the external floating roof and the wall of the tank in a continuous fashion except during inspections.

(3) The owner or operator shall inspect the external floating roof in accordance with the procedures specified in § 63.695(b) of this subpart.

(g) The owner or operator who controls tank air emissions by venting to a control device shall meet the requirements specified in paragraphs (g)(1) through (g)(3) of this section.

(1) The tank shall be covered by a fixed roof and vented directly through a closed-vent system to a control device in accordance with the following requirements:

(i) The fixed roof and its closure devices shall be designed to form a continuous barrier over the entire surface area of the liquid in the tank.

(ii) Each opening in the fixed roof not vented to the control device shall be equipped with a closure device. If the pressure in the vapor headspace underneath the fixed roof is less than atmospheric pressure when the control device is operating, the closure devices shall be designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device. If the pressure in the vapor headspace underneath the fixed roof is equal to or greater than atmospheric pressure when the control device is operating, the closure device shall be designed to operate with no detectable organic emissions.

(iii) The fixed roof and its closure devices shall be made of suitable materials that will minimize exposure of the off-site material to the atmosphere, to the extent practical, and will maintain the integrity of the equipment throughout its intended service life. Factors to be considered when selecting the materials for and designing the fixed roof and closure devices shall include: organic vapor permeability, the effects of any contact with the liquid and its vapor managed in the tank; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the tank on which the fixed roof is installed.

(iv) The closed-vent system and control device shall be designed and operated in accordance with the requirements of § 63.693 of this subpart.

(2) Whenever an off-site material is in the tank, the fixed roof shall be installed with each closure device secured in the closed position and the vapor headspace underneath the fixed roof vented to the control device except as follows:

(i) Venting to the control device is not required, and opening of closure devices or removal of the fixed roof is allowed at the following times:

(A) To provide access to the tank for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample liquid in the tank, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the tank.

(B) To remove accumulated sludge or other residues from the bottom of separator.

(ii) Opening of a safety device, as defined in § 63.681 of this subpart, is allowed at any time conditions require it to do so to avoid an unsafe condition.

(3) The owner or operator shall inspect and monitor the air emission control equipment in accordance with the procedures specified in § 63.695 of this subpart.

(h) The owner or operator who elects to control tank air emissions by using a pressure tank shall meet the following requirements.

(1) The tank shall be designed not to vent to the atmosphere as a result of compression of the vapor headspace in the tank during filling of the tank to its design capacity.

(2) All tank openings shall be equipped with closure devices designed to operate with no detectable organic emissions as determined using the procedure specified in § 63.694(k) of this subpart.

(3) Whenever an off-site material is in the tank, the tank shall be operated as a closed system that does not vent to the atmosphere except in the event that opening of a safety device, as defined in § 63.681 of this subpart, is required to avoid an unsafe condition.

(i) The owner or operator who elects to control air emissions by using an enclosure vented through a closed-vent system to an enclosed combustion control device shall meet the requirements specified in paragraphs (i)(1) through (i)(4) of this section.

(1) The tank shall be located inside an enclosure. The enclosure shall be designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, Appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of material into or out of the enclosure by conveyor, vehicles, or other mechanical means; entry of permanent mechanical or electrical equipment; or to direct airflow into the enclosure. The owner or

operator shall perform the verification procedure for the enclosure as specified in Section 5.0 to "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" initially when the enclosure is first installed and, thereafter, annually.

(2) The enclosure shall be vented through a closed-vent system to an enclosed combustion control device that is designed and operated in accordance with the standards for either a vapor incinerator, boiler, or process heater specified in § 63.693 of this subpart.

§ 63.686 Standards: Oil-water and organic-water separators.

(a) The provisions of this section apply to the control of air emissions from oil-water separators and organic-water separators for which § 63.683(b)(1)(i) of this subpart references the use of this section for such air emission control.

(b) The owner or operator shall control air emissions from the separator subject to this section by installing and operating one of the following:

(1) A floating roof in accordance with all applicable provisions specified in 40 CFR 63 subpart VV—National Emission Standards for Oil-Water Separators and Organic-Water Separators. For portions of the separator where it is infeasible to install and operate a floating roof, such as over a weir mechanism, the owner or operator shall comply with the requirements specified in paragraph (b)(2) of this section.

(2) A fixed-roof that is vented through a closed-vent system to a control device in accordance with all applicable provisions specified in 40 CFR 63 subpart VV—National Emission Standards for Oil-Water Separators and Organic-Water Separators.

§ 63.687 Standards: Surface impoundments.

(a) The provisions of this section apply to the control of air emissions from surface impoundments for which § 63.683(b)(1)(i) of this subpart references the use of this section for such air emission control.

(b) The owner or operator shall control air emissions from each surface impoundment subject to this section by installing and operating one of the following, as relevant to the surface impoundment design and operation:

(1) A floating membrane cover in accordance with the applicable provisions specified in 40 CFR 63 subpart QQ—National Emission Standards for Surface Impoundments; or

(2) A cover that is vented through a closed-vent system to a control device in accordance with all applicable

provisions specified in 40 CFR 63 subpart QQ—National Emission Standards for Surface Impoundments.

§ 63.688 Standards: Containers.

(a) The provisions of this section apply to the control of air emissions from containers for which § 63.683(b)(1)(i) of this subpart references the use of this section for such air emission control.

(b) The owner or operator shall control air emissions from each container subject to this section in accordance with the following requirements, as applicable to the container, except when the special provisions for waste stabilization processes specified in paragraph (c) of this section apply to the container.

(1) For a container having a design capacity greater than 0.1 m³ and less than or equal to 0.46 m³, the owner or operator shall control air emissions from the container in accordance with the standards for Container Level 1 controls as specified in 40 CFR 63 subpart PP—National Emission Standards for Containers.

(2) For a container having a design capacity greater than 0.46 m³ and the container is not in light-material service as defined in § 63.681 of this subpart, the owner or operator shall control air emissions from the container in accordance with the standards for Container Level 1 controls as specified in 40 CFR 63 subpart PP—National Emission Standards for Containers.

(3) For a container having a design capacity greater than 0.46 m³ and the container is in light-material service as defined in § 63.681 of this subpart, the owner or operator shall control air emissions from the container in accordance with the standards for Container Level 2 controls as specified in 40 CFR 63 subpart PP—National Emission Standards for Containers.

(c) When a container subject to this subpart and having a design capacity greater than 0.1 m³ is used for treatment of an off-site material by a waste stabilization process as defined in § 63.681 of this subpart, the owner or operator shall control air emissions from the container at those times during the process when the off-site material in container is exposed to the atmosphere in accordance with the standards for Container Level 3 controls as specified in 40 CFR 63 subpart PP—National Emission Standards for Containers.

§ 63.689 Standards: Transfer systems.

(a) The provisions of this section apply to the control of air emissions from transfer systems for which § 63.683(b)(1)(i) of this subpart

references the use of this section for such air emission control.

(b) For each transfer system that is subject to this section and is an individual drain system, the owner or operator shall control air emissions from in accordance with the standards specified in 40 CFR 63 subpart RR—National Emission Standards for Individual Drain Systems.

(c) For each transfer system that is subject to this section but is not an individual drain system, the owner or operator shall control air emissions by installing and operating one of the following:

(1) A transfer system that uses covers in accordance with the requirements specified in paragraph (d) of this section.

(2) A transfer system that consists of continuous hard-piping. All joints or seams between the pipe sections shall be permanently or semi-permanently sealed (e.g., a welded joint between two sections of metal pipe or a bolted and gasketed flange).

(3) A transfer system that is enclosed and vented through a closed vent system to a control device in accordance with the following requirements:

(i) The transfer system is designed and operated such that an internal pressure in the vapor headspace in the system is maintained at a level less than atmospheric pressure when the control device is operating, and

(ii) The closed vent system and control device are designed and operated in accordance with the requirements of § 63.693 of this subpart.

(d) Owners and operators controlling air emissions from a transfer system using covers in accordance with the provisions of paragraph (c)(1) of this section shall meet the following requirements:

(1) The cover and its closure devices shall be designed to form a continuous barrier over the entire surface area of the off-site material as it is conveyed by the transfer system except for the openings at the inlet and outlet to the transfer system through which the off-site material passes. The inlet and outlet openings used for passage of the off-site material through the transfer system shall be the minimum size required for practical operation of the transfer system.

(2) The cover shall be installed in a manner such that there are no visible cracks, holes, gaps, or other open spaces between cover section joints or between the interface of the cover edge and its mounting.

(3) Except for the inlet and outlet openings to the transfer system through which the off-site material passes, each

opening in the cover shall be equipped with a closure device designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the opening and the closure device.

(4) The cover and its closure devices shall be made of suitable materials that will minimize exposure of the off-site material to the atmosphere, to the extent practical, and will maintain the integrity of the equipment throughout its intended service life. Factors to be considered when selecting the materials for and designing the cover and closure devices shall include: organic vapor permeability; the effects of any contact with the material or its vapors conveyed in the transfer system; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the transfer system on which the cover is installed.

(5) Whenever an off-site material is in the transfer system, the cover shall be installed with each closure device secured in the closed position except as follows:

(i) Opening of closure devices or removal of the cover is allowed to provide access to the transfer system for performing routine inspection, maintenance, repair, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a hatch or remove the cover to repair conveyance equipment mounted under the cover or to clear a blockage of material inside the system. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable.

(ii) Opening of a safety device, as defined in § 63.681 of this subpart, is allowed at any time conditions require it to do so to avoid an unsafe condition.

(6) The owner or operator shall inspect the air emission control equipment in accordance with the requirements specified in § 63.695 of this subpart.

§ 63.690 Standards: Process vents.

(a) The provisions of this section apply to the control of air emissions from process vents for which § 63.683(b)(2)(i) of this subpart references the use of this section for such air emission control.

(b) The owner or operator shall control HAP emitted from the process vent within the affected source by connecting each process vent through a closed-vent system to a control device that is designed and operated in

accordance with the standards specified in § 63.693 of this subpart with the following exceptions.

(1) Each individual control device used to comply with the requirements of this section is not required to meet the level of performance, as applicable to the particular control technology used, specified in §§ 63.693 (d)(1), (e)(1), (f)(1)(i), and (g)(1)(i) of this subpart provided that these control devices are designed and operated to achieve a total reduction of 95 weight percent or more in the quantity of HAP, listed in Table 1 of this subpart, that is emitted from all process vents within the affected source.

(2) For the purpose of complying with this section, a device for which the predominate function is the recovery or capture of solvents or other organics for use, reuse, or sale (e.g., a primary condenser or a solvent recovery unit) is not a control device.

§ 63.691 Standards: Equipment leaks.

(a) The provisions of this section apply to the control of air emissions from equipment leaks for which § 63.683(b)(3) of this subpart references the use of this section for such air emission control.

(b) The owner or operator shall control the HAP emitted from equipment leaks in accordance with the applicable provisions of either:

(1) Section 61.242 through § 61.247 in 40 CFR Part 61 subpart V—National Emission Standards for Equipment Leaks; or

(2) Section 63.162 through § 63.182 in 40 CFR Part 63 subpart H—National Emission Standards for Organic Hazardous Air Pollutants from Equipment Leaks.

§ 63.692 [Reserved]

§ 63.693 Standards: Closed-vent systems and control devices.

(a) The provisions of this section apply to closed-vent systems and control devices used to control air emissions for which another standard references the use of this section for such air emission control.

(b) For each closed-vent system and control device used to comply with this section, the owner or operator shall meet the following requirements:

(1) The closed-vent system shall be designed and operated in accordance with the requirements specified in paragraph (c) of this section.

(2) The control device shall remove, recover, or destroy HAP at a level of performance that achieves the requirements applicable to the particular control device technology as specified in paragraphs (d) through (h) of this section. The owner or operator

shall demonstrate that the control device achieves the applicable performance requirements by either conducting a performance test or preparing a design analysis for the control device in accordance with the requirements specified in this section.

(3) Whenever gases or vapors containing HAP are vented through a closed-vent system connected to a control device used to comply with this section, the control device shall be operating except at the following times:

(i) The control device may be bypassed for the purpose of performing planned routine maintenance of the closed vent system or control device in situations when the routine maintenance cannot be performed during periods that the emission point vented to the control device is shutdown. On an annual basis, the total time that the closed-vent system or control device is bypassed to perform routine maintenance shall not exceed 240 hours per each 12 month period.

(ii) The control device may be bypassed for the purpose of correcting a malfunction of the closed vent system or control device. The owner or operator shall perform the adjustments or repairs necessary to correct the malfunction as soon as practicable after the malfunction is detected.

(4) The owner or operator shall ensure that the control device is achieving the performance requirements specified in paragraph (b)(2) of this section by continuously monitoring the operation of the control device as follows:

(i) A continuous monitoring system shall be installed and operated for each control device that measures operating parameters appropriate for the control device technology as specified in paragraphs (d) through (h) of this section. This system shall include a continuous recorder that records the measured values of the selected operating parameters. The monitoring equipment shall be installed, calibrated, and maintained in accordance with the equipment manufacturer's specifications. The continuous recorder shall be a data recording device that records either an instantaneous data value at least once every 15 minutes or an average value for intervals of 15-minutes or less.

(ii) For each monitored operating parameter, the owner or operator shall establish a minimum operating parameter value or a maximum operating parameter value, as appropriate, to define the range of conditions at which the control device must be operated to continuously achieve the applicable performance requirements of this section. Each

minimum or maximum operating parameter value shall be established as follows:

(A) If the owner or operator conducts a performance test to demonstrate control device performance, then the minimum or maximum operating parameter value shall be established based on values measured during the performance test and supplemented, as necessary, by control device design analysis and manufacturer recommendations.

(B) If the owner or operator uses a control device design analysis to demonstrate control device performance, then the minimum or maximum operating parameter value shall be established based on the control device design analysis and the control device manufacturer's recommendations.

(C) When the control device is required to be operating in accordance with the provisions of paragraph (b)(3) of this section, the owner or operator shall inspect the data recorded by the continuous monitoring system on a routine basis and operate the control device such that the actual value of each monitored operating parameter is greater than the minimum operating parameter value or less than the maximum operating parameter value, as appropriate, established for the control device.

(5) The owner or operator shall inspect and monitor the closed-vent system in accordance with the requirements of § 63.695(c) of this subpart.

(6) The owner or operator shall maintain records for each closed-vent system and control device in accordance with the requirements of § 63.696 of this subpart.

(7) The owner or operator shall prepare and submit reports for each closed-vent system and control device in accordance with the requirements of § 63.697 of this subpart.

(8) The Administrator may at any time conduct or request that the owner or operator conduct a performance test to demonstrate that a closed-vent system and control device achieves the applicable performance requirements of this section. The performance test shall be conducted in accordance with the requirements of § 63.694(l) of this subpart. The Administrator may elect to have an authorized representative observe a performance test conducted by the owner or operator. Should the results of this performance test not agree with the determination of control device performance based on a design analysis, then the results of the performance test

shall be used to establish compliance with this section.

(c) Closed-vent system requirements.

(1) The vent stream required to be controlled shall be conveyed to the control device by either of the following closed-vent systems:

(i) A closed-vent system that is designed to operate with no detectable organic emissions using the procedure specified in § 63.694(k) of this subpart; or

(ii) A closed-vent system that is designed to operate at a pressure below atmospheric pressure. The system shall be equipped with at least one pressure gage or other pressure measurement device that can be read from a readily accessible location to verify that negative pressure is being maintained in the closed-vent system when the control device is operating.

(2) In situations when the closed-vent system includes bypass devices that could be used to divert the gas or vapor stream to the atmosphere before entering the control device, each bypass device shall be equipped with either a flow indicator as specified in paragraph (c)(2)(i) or a seal or locking device as specified in paragraph (c)(2)(ii) of this section. For the purpose of complying with this paragraph, low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, spring-loaded pressure relief valves, and other fittings used for safety purposes are not considered to be bypass devices.

(i) If a flow indicator is used to comply with paragraph (c)(2) of this section, the indicator shall be installed at the inlet to the bypass line used to divert gases and vapors from the closed-vent system to the atmosphere at a point upstream of the control device inlet. For this paragraph, a flow indicator means a device which indicates either the presence of gas or vapor flow in the bypass line.

(ii) If a seal or locking device is used to comply with paragraph (c)(2) of this section, the device shall be placed on the mechanism by which the bypass device position is controlled (e.g., valve handle, damper lever) when the bypass device is in the closed position such that the bypass device cannot be opened without breaking the seal or removing the lock. Examples of such devices include, but are not limited to, a car-seal or a lock-and-key configuration valve. The owner or operator shall visually inspect the seal or closure mechanism at least once every month to verify that the bypass mechanism is maintained in the closed position.

(d) Carbon adsorption control device requirements.

(1) The carbon adsorption system shall be designed and operated to achieve one of the following performance specifications:

(i) Recover 95 percent or more, on a weight-basis, of the total organic compounds (TOC), less methane and ethane, contained in the vent stream entering the carbon adsorption system; or

(ii) Recover 95 percent or more, on a weight-basis, of the total HAP listed in Table 1 of this subpart contained in the vent stream entering the carbon adsorption system.

(2) The owner or operator shall demonstrate that the carbon adsorption system achieves the performance requirements of paragraph (d)(1) of this section by one of the following methods:

(i) Conduct a performance test in accordance with the requirements of § 63.694(l) of this subpart.

(ii) Prepare a design analysis. This analysis shall address the vent stream characteristics and control device operating parameters for the applicable carbon adsorption system type as follows:

(A) For a regenerable carbon adsorption system, the design analysis shall address the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature and shall establish the design exhaust vent stream organic compound concentration, adsorption cycle time, number and capacity of carbon beds, type and working capacity of activated carbon used for carbon beds, design total regeneration steam flow over the period of each complete carbon bed regeneration cycle, design carbon bed temperature after regeneration, design carbon bed regeneration time, and design service life of the carbon.

(B) For a nonregenerable carbon adsorption system (e.g., a carbon canister), the design analysis shall address the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature and shall establish the design exhaust vent stream organic compound concentration, carbon bed capacity, activated carbon type and working capacity, and design carbon replacement interval based on the total carbon working capacity of the control device and emission point operating schedule.

(3) To meet the monitoring requirements of paragraph (b)(4) of this section, the owner or operator shall use one of the following continuous monitoring systems:

(i) For a regenerative-type carbon adsorption system, an integrating

regeneration stream flow monitoring device equipped with a continuous recorder and a carbon bed temperature monitoring device for each adsorber vessel equipped with a continuous recorder. The integrating regeneration stream flow monitoring device shall have an accuracy of ± 10 percent and measure the total regeneration stream mass flow during the carbon bed regeneration cycle. The temperature monitoring device shall measure the carbon bed temperature after regeneration and within 15 minutes of completing the cooling cycle and the duration of the carbon bed steaming cycle.

(ii) A continuous monitoring system that measures the concentration level of organic compounds in the exhaust vent stream from the control device using an organic monitoring device equipped with a continuous recorder.

(iii) A continuous monitoring system that measures other alternative operating parameters upon approval of the Administrator as specified in 40 CFR 63.8 (f)(1) through (f)(5) of this part.

(4) The owner or operator shall manage the carbon used for the carbon adsorption system, as follows:

(i) Following the initial startup of the control device, all carbon in the control device shall be replaced with fresh carbon on a regular, predetermined time interval that is no longer than the carbon service life established for the carbon adsorption system.

(ii) The spent carbon removed from the carbon adsorption system shall be managed in one of the following ways:

(A) Regenerated or reactivated in a thermal treatment unit that is designed and operated in accordance with the requirements of 40 CFR 264 subpart X and is permitted under 40 CFR part 270 of this chapter, or certified to be in compliance with the interim status requirements of 40 CFR 265 subpart P of this chapter.

(B) Burned in a hazardous waste incinerator that is designed and operated in accordance with the requirements of 40 CFR 264 subpart O and is permitted under 40 CFR part 270 of this chapter, or certified to be in compliance with the interim status requirements of 40 CFR part 265 subpart O.

(C) Burned in a boiler or industrial furnace that is designed and operated in accordance with the requirements of 40 CFR 266 subpart H and is permitted under 40 CFR part 270 of this chapter, or certified to be in compliance with the interim status requirements of 40 CFR part 266 subpart H of this chapter.

(e) Condenser control device requirements.

(1) The condenser shall be designed and operated to achieve one of the following performance specifications:

(i) Recover 95 percent or more, on a weight-basis, of the total organic compounds (TOC), less methane and ethane, contained in the vent stream entering the condenser; or

(ii) Recover 95 percent or more, on a weight-basis, of the total HAP, listed in Table 1 of this subpart, contained in the vent stream entering the condenser.

(2) The owner or operator shall demonstrate that the condenser achieves the performance requirements of paragraph (e)(1) of this section by one of the following methods:

(i) Conduct performance tests in accordance with the requirements of § 63.694(l) of this subpart.

(ii) Prepare a design analysis. This design analysis shall address the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature and shall establish the design outlet organic compound concentration level, design average temperature of the condenser exhaust vent stream, and the design average temperatures of the coolant fluid at the condenser inlet and outlet.

(3) To meet the continuous monitoring requirements of paragraph (b)(3)(ii) of this section, the owner or operator shall use one of the following continuous monitoring systems:

(i) A temperature monitoring device equipped with a continuous recorder. The temperature sensor shall be installed at a location in the exhaust vent stream from the condenser.

(ii) A continuous monitoring system that measures the concentration level of organic compounds in the exhaust vent stream from the control device using an organic monitoring device equipped with a continuous recorder.

(iii) A continuous monitoring system that measures other alternative operating parameters upon approval of the Administrator as specified in 40 CFR 63.8 (f)(1) through (f)(5) of this part.

(f) Vapor incinerator control device requirements.

(1) The vapor incinerator shall be designed and operated to achieve one of the following performance specifications:

(i) Destroy the total organic compounds (TOC), less methane and ethane, contained in the vent stream entering the vapor incinerator either:

(A) By 95 percent or more, on a weight-basis, or

(B) To achieve a total incinerator outlet concentration for the TOC, less methane and ethane, of less than or equal to 20 parts per million by volume

(ppmv) on a dry basis corrected to 3 percent oxygen.

(ii) Destroy the HAP listed in Table 1 of this subpart contained in the vent stream entering the vapor incinerator either:

(A) By 95 percent or more, on a total HAP weight-basis, or

(B) To achieve a total incinerator outlet concentration for the HAP, listed in table 1 of this subpart, of less than or equal to 20 parts per million by volume (ppmv) on a dry basis corrected to 3 percent oxygen.

(iii) Maintain the conditions in the vapor incinerator combustion chamber at a residence time of 0.5 seconds or longer and at a temperature of 760°C or higher.

(2) The owner or operator shall demonstrate that the vapor incinerator achieves the performance requirements of paragraph (f)(1) of this section by one of the following methods:

(i) Conduct performance tests in accordance with the requirements of § 63.694(l) of this subpart; or

(ii) Prepare a design analysis. The design analysis shall include analysis of the vent stream characteristics and control device operating parameters for the applicable vapor incinerator type as follows:

(A) For a thermal vapor incinerator, the design analysis shall address the vent stream composition, constituent concentrations, and flow rate and shall establish the design minimum and average temperatures in the combustion chamber and the combustion chamber residence time.

(B) For a catalytic vapor incinerator, the design analysis shall address the vent stream composition, constituent concentrations, and flow rate and shall establish the design minimum and average temperatures across the catalyst bed inlet and outlet, and the design service life of the catalyst.

(3) To meet the monitoring requirements of paragraph (b)(4) of this section, the owner or operator shall use one of the following continuous monitoring systems, as applicable:

(i) For a thermal vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The temperature sensor shall be installed at a location in the combustion chamber downstream of the combustion zone.

(ii) For a catalytic vapor incinerator, a temperature monitoring device capable of monitoring temperature at two locations equipped with a continuous recorder. One temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed inlet and a second

temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed outlet.

(iii) For either type of vapor incinerator, a continuous monitoring system that measures the concentration level of organic compounds in the exhaust vent stream from the control device using an organic monitoring device equipped with a continuous recorder.

(iv) For either type of vapor incinerator, a continuous monitoring system that measures alternative operating parameters other than those specified in paragraphs (f)(3)(i) or (f)(3)(ii) of this section upon approval of the Administrator as specified in 40 CFR 63.8 (f)(1) through (f)(5) of this part.

(g) Boilers and process heaters control device requirements.

(1) The boiler or process heater shall be designed and operated to achieve one of the following performance specifications:

(i) Destroy the total organic compounds (TOC), less methane and ethane, contained in the vent stream introduced into the flame zone of the boiler or process heater either:

(A) By 95 percent or more, on a weight-basis, or

(B) To achieve in the exhausted combustion gases a total concentration for the TOC, less methane and ethane, of less than or equal to 20 parts per million by volume (ppmv) on a dry basis corrected to 3 percent oxygen.

(ii) Destroy the HAP listed in Table 1 of this subpart contained in the vent stream entering the vapor incinerator either:

(A) By 95 percent or more, on a total HAP weight-basis, or

(B) To achieve in the exhausted combustion gases a total concentration for the HAP, listed in table 1 of the subpart, of less than or equal to 20 parts per million by volume (ppmv) on a dry basis corrected to 3 percent oxygen.

(iii) Introduce the vent stream into the flame zone of the boiler or process heater and maintain the conditions in the combustion chamber at a residence time of 0.5 seconds or longer and at a temperature of 760°C or higher.

(iv) Introduce the vent stream with the fuel that provides the predominate heat input to the boiler or process heater (i.e., the primary fuel); or

(v) Introduce the vent stream to a boiler or process heater for which the owner or operator either has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266 subpart H of this chapter; or has certified compliance with the interim status requirements of

40 CFR part 266 subpart H of this chapter.

(2) The owner or operator shall demonstrate that the boiler or process heater achieves the performance requirements of paragraph (g)(1)(i), (g)(1)(ii), or (g)(1)(iii) of this section using one of the following methods:

(i) Conduct performance tests in accordance with the requirements of § 63.694(l) of this subpart.

(ii) Prepare a design analysis. The design analysis shall address the vent stream composition, constituent concentrations, and flow rate; shall establish the design minimum and average flame zone temperatures and combustion zone residence time; and shall describe the method and location where the vent stream is introduced into the flame zone.

(3) The owner or operator shall demonstrate that the boiler or process heater achieves the performance requirements of paragraph (g)(1)(iv) or (g)(1)(v) of this section by keeping records that document that the boiler or process heater is designed and operated in accordance with the applicable requirements of this section.

(4) To meet the monitoring requirements of paragraph (b)(4) of this section, the owner or operator shall use any of the following continuous monitoring systems:

(i) A temperature monitoring device equipped with a continuous recorder. The temperature sensor shall be installed at a location in the combustion chamber downstream of the flame zone.

(ii) A continuous monitoring system that measures the concentration level of organic compounds in the exhaust vent stream from the control device using an organic monitoring device equipped with a continuous recorder.

(iii) A continuous monitoring system that measures alternative operating parameters other than those specified in paragraphs (g)(3)(i) or (g)(3)(ii) of this section upon approval of the Administrator as specified in 40 CFR 63.8 (f)(1) through (f)(5) of this part.

(h) Flare control device requirements. The flare shall be designed and operated in accordance with the requirements of 40 CFR 63.11(b). To meet the monitoring requirements of paragraph (b)(4) of this section, the owner or operator shall use a heat sensing monitoring device equipped with a continuous recorder that indicates the continuous ignition of the pilot flame.

§ 63.694 Testing methods and procedures.

(a) This section specifies the testing methods and procedures required for this subpart to perform the following:

(1) To determine the average VOHAP concentration for off-site material streams at the point-of-delivery for compliance with standards specified § 63.683 of this subpart, the testing methods and procedures are specified in paragraph (b) of this section.

(2) To determine the average VOHAP concentration for treated off-site material streams at the point-of-treatment for compliance with standards specified § 63.684 of this subpart, the testing methods and procedures are specified in paragraph (c) of this section.

(3) To determine the treatment process VOHAP concentration limit (C_R) for compliance with standards specified § 63.684 of this subpart, the testing methods and procedures are specified in paragraph (d) of this section.

(4) To determine treatment process required HAP removal rate (RMR) for compliance with standards specified § 63.684 of this subpart, the testing methods and procedures are specified in paragraph (e) of this section.

(5) To determine treatment process actual HAP removal rate (MR) for compliance with standards specified § 63.684 of this subpart, the testing methods and procedures are specified in paragraph (f) of this section.

(6) To determine treatment process required HAP reduction efficiency (R) for compliance with standards specified in § 63.684 of this subpart, the testing methods and procedures are specified in paragraph (g) of this section.

(7) To determine treatment process required HAP biodegradation efficiency (R_{bio}) for compliance with standards specified in § 63.684 of this subpart, the testing methods and procedures are specified in paragraph (h) of this section.

(8) To determine treatment process required actual HAP mass removal rate (MR_{bio}) for compliance with standards specified in § 63.684 of this subpart, the testing methods and procedures are specified in paragraph (i) of this section.

(9) To determine maximum organic HAP vapor pressure of off-site materials in tanks for compliance with the standards specified in § 63.685 of this subpart, the testing methods and procedures are specified in paragraph (j) of this section.

(10) To determine no detectable organic emissions, the testing methods and procedures are specified in paragraph (k) of this section.

(11) To determine closed-vent system and control device performance for compliance with the standards specified in § 63.693 of this subpart, the testing methods and procedures are specified in paragraph (l) of this section.

(b) Testing methods and procedures to determine average VOHAP concentration of an off-site material stream at the point-of-delivery.

(1) The average VOHAP concentration of an off-site material at the point-of-delivery shall be determined using either direct measurement as specified in paragraph (b)(2) of this section or by knowledge as specified in paragraph (b)(3) of this section.

(2) Direct measurement to determine VOHAP concentration.

(i) Sampling. Samples of the off-site material stream shall be collected from the container, pipeline, or other device used to deliver the off-site material stream to the plant site in a manner such that volatilization of organics contained in the sample is minimized and an adequately representative sample is collected and maintained for analysis by the selected method.

(A) The averaging period to be used for determining the average VOHAP concentration for the off-site material stream on a mass-weighted average basis shall be designated and recorded. The averaging period can represent any time interval that the owner or operator determines is appropriate for the off-site material stream but shall not exceed 1 year.

(B) A sufficient number of samples, but no less than four samples, shall be collected to represent the complete range of HAP compositions and HAP quantities that occur in the off-site material stream during the entire averaging period due to normal variations in the operating conditions for the source or process generating the off-site material stream. Examples of such normal variations are seasonal variations in off-site material quantity or fluctuations in ambient temperature.

(C) All samples shall be collected and handled in accordance with written procedures prepared by the owner or operator and documented in a site sampling plan. This plan shall describe the procedure by which representative samples of the off-site material stream are collected such that a minimum loss of organics occurs throughout the sample collection and handling process and by which sample integrity is maintained. A copy of the written sampling plan shall be maintained on-site in the plant site operating records. An example of an acceptable sampling plan includes a plan incorporating sample collection and handling procedures in accordance with the requirements specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW-846 or Method 25D in 40 CFR part 60, appendix A.

(ii) Analysis. Each collected sample shall be prepared and analyzed in accordance with one of the following methods:

(A) Method 25D in 40 CFR part 60, appendix A.

(B) Method 305 in 40 CFR part 63, appendix A.

(C) Method 624 in 40 CFR part 136, appendix A.

(D) Method 1624 in 40 CFR part 136, appendix A.

(E) Method 1625 in 40 CFR part 136, appendix A.

(F) Any other analysis method that has been validated in accordance with the procedures specified in Section 5.1 and Section 5.3 of Method 301 in 40 CFR part 63, appendix A.

(iii) Calculations. The average VOHAP concentration (C) on a mass-weighted basis shall be calculated by using the results for all samples analyzed in accordance with paragraph (b)(2)(ii) of this section and the following equation:

$$\bar{C} = \frac{1}{Q_T} \times \sum_{i=1}^n (Q_i \times C_i)$$

where:

C=Average VOHAP concentration of the off-site material at the point-of-delivery on a mass-weighted basis, ppmw.

i=Individual sample "i" of the off-site material.

n=Total number of samples of the off-site material collected (at least 4) for the averaging period (not to exceed 1 year).

Q_i=Mass quantity of off-site material stream represented by C_i, kg/hr.

Q_T=Total mass quantity of off-site material during the averaging period, kg/hr.

C_i=Measured VOHAP concentration of sample "i" as determined in accordance with the requirements of § 63.693(b)(2)(ii), ppmw.

(3) Knowledge of the off-site material to determine VOHAP concentration.

(i) Documentation shall be prepared that presents the information used as the basis for the owner's or operator's knowledge of the off-site material stream's average VOHAP concentration. Examples of information that may be used as the basis for knowledge include: material balances for the source or process generating the off-site material stream; species-specific chemical test data for the off-site material stream from previous testing that are still applicable to the current off-site material stream; previous test data for other locations managing the same type of off-site material stream; or other knowledge based on information included in

manifests, shipping papers, or waste certification notices.

(ii) If test data are used as the basis for knowledge, then the owner or operator shall document the test method, sampling protocol, and the means by which sampling variability and analytical variability are accounted for in the determination of the average VOHAP concentration. For example, an owner or operator may use HAP concentration test data for the off-site material stream that are validated in accordance with Method 301 in 40 CFR part 63, appendix A of this part as the basis for knowledge of the off-site material.

(iii) An owner or operator using species-specific chemical concentration test data as the basis for knowledge of the off-site material may adjust the test data to the corresponding average VOHAP concentration value which would be obtained had the off-site material samples been analyzed using Method 305. To adjust these data, the measured concentration for each individual HAP chemical species contained in the off-site material is multiplied by the appropriate species-specific adjustment factor (f_{m305}) listed in Table 1 of this subpart.

(iv) In the event that the Administrator and the owner or operator disagree on a determination of the average VOHAP concentration for an off-site material stream using knowledge, then the results from a determination of VOHAP concentration using direct measurement as specified in paragraph (b)(2) of this section shall be used to establish compliance with the applicable requirements of this subpart. The Administrator may perform or request that the owner or operator perform this determination using direct measurement.

(c) Determination of average VOHAP concentration of an off-site material stream at the point-of-treatment.

(1) Sampling. Samples of the off-site material stream shall be collected at the point-of-treatment in a manner such that volatilization of organics contained in the sample is minimized and an adequately representative sample is collected and maintained for analysis by the selected method.

(i) The averaging period to be used for determining the average VOHAP concentration for the off-site material stream on a mass-weighted average basis shall be designated and recorded. The averaging period can represent any time interval that the owner or operator determines is appropriate for the off-site material stream but shall not exceed 1 year.

(ii) A sufficient number of samples, but no less than four samples, shall be collected to represent the complete range of HAP compositions and HAP quantities that occur in the off-site material stream during the entire averaging period due to normal variations in the operating conditions for the treatment process. Examples of such normal variations are seasonal variations in off-site material quantity or fluctuations in ambient temperature.

(iii) All samples shall be collected and handled in accordance with written procedures prepared by the owner or operator and documented in a site sampling plan. This plan shall describe the procedure by which representative samples of the off-site material stream such that a minimum loss of organics occurs throughout the sample collection and handling process and by which sample integrity is maintained. A copy of the written sampling plan shall be maintained on-site in the plant site operating records. An example of an acceptable sampling plan includes a plan incorporating sample collection and handling procedures in accordance with the requirements specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW-846 or Method 25D in 40 CFR part 60, appendix A.

(2) Analysis. Each collected sample shall be prepared and analyzed in accordance with the one of the following methods:

(i) Method 25D in 40 CFR part 60, appendix A.

(ii) Method 305 in 40 CFR part 63, appendix A.

(iii) Method 624 in 40 CFR part 136, appendix A.

(iv) Method 1624 in 40 CFR part 136, appendix A.

(v) Method 1625 in 40 CFR part 136, appendix A.

(3) Calculations. The average VOHAP concentration (C) on a mass-weighted basis shall be calculated by using the results for all samples analyzed in accordance with paragraph (c)(2) of this section and the following equation:

$$\bar{C} = \frac{1}{Q_T} \times \sum_{i=1}^n (Q_i \times C_i)$$

Where:

C=Average VOHAP concentration of the off-site material on a mass-weighted basis, ppmw.

i=Individual sample "i" of the off-site material.

n=Total number of samples of the off-site material collected (at least 4) for the averaging period (not to exceed 1 year).

Q_i =Mass quantity of off-site material stream represented by C_i , kg/hr.
 Q_T =Total mass quantity of off-site material during the averaging period, kg/hr.
 C_i =Measured VOHAP concentration of sample "i" as determined in accordance with the requirements of § 63.693(c)(2), ppmw.

(d) Determination of treatment process VOHAP concentration limit (C_R).

(1) All of the off-site material streams entering the treatment process shall be identified.

(2) The average VOHAP concentration of each off-site material stream at the point-of-delivery shall be determined

using the procedures specified in paragraph (b) of this section.

(3) The VOHAP concentration limit (C_R) shall be calculated by using the results determined for each individual off-site material stream and the following equation:

$$C_R = \frac{\sum_{x=1}^m (Q_x \times \bar{C}_x) + \sum_{y=1}^n (Q_y \times 500 \text{ ppmw})}{\sum_{x=1}^m Q_x + \sum_{y=1}^n Q_y}$$

where:

C_R =VOHAP concentration limit, ppmw.

x =Individual off-site material stream "x" that has a VOHAP concentration less than 500 ppmw at the point-of-delivery.

y =Individual off-site material stream "y" that has a VOHAP concentration equal to or greater than 500 ppmw at the point-of-delivery.

m =Total number of "x" off-site material streams treated by process.

n =Total number of "y" off-site material streams treated by process.

Q_x =Total mass quantity of off-site material stream "x", kg/yr.

Q_y =Total mass quantity of off-site material stream "y", kg/yr.

$\bar{C}_x$ =VOHAP concentration of off-site material stream "x" at the point-of-delivery, ppmw.

(e) Determination of required HAP mass removal rate (RMR).

(1) All of the off-site material streams entering the treatment process shall be identified.

(2) The average VOHAP concentration of each off-site material stream at the point-of-delivery shall be determined in accordance with the requirements of paragraph (b) of this section.

(3) For each individual off-site material stream that has an average VOHAP concentration equal to or greater than 500 ppmw at the point-of-delivery, the average volumetric flow rate and the density of the off-site material stream at the point-of-delivery shall be determined.

(4) The required HAP mass removal rate (RMR) shall be calculated by using the average VOHAP concentration, average volumetric flow rate, and density determined for each off-site material stream and the following equation:

$$RMR = \sum_{y=1}^n \left[V_y \times k_y \times \frac{(\bar{C}_y - 500 \text{ ppmw})}{10^6} \right]$$

where:

RMR=Required HAP mass removal rate, kg/hr.

y =Individual off-site material stream "y" that has a VOHAP concentration equal to or greater than 500 ppmw at the point-of-delivery as determined in accordance with the requirements of § 63.693(b).

n =Total number of "y" off-site material streams treated by process.

V_y =Average volumetric flow rate of off-site material stream "y" at the point-of-delivery, m³/hr.

k_y =Density of off-site material stream "y", kg/m³

$\bar{C}_y$ =Average VOHAP concentration of off-site material stream "y" at the point-of-delivery as determined in accordance with the requirements of § 63.693(b), ppmw.

(f) Determination of actual HAP mass removal rate (MR).

(1) The actual HAP mass removal rate (MR) shall be determined based on

results for a minimum of three consecutive runs. The sampling time for each run shall be 1 hour.

(2) The off-site material HAP mass flow entering the process (E_b) and the off-site material HAP mass flow exiting the process (E_a) shall be determined in accordance with the requirements of paragraph (g)(4) of this section.

(3) The actual mass removal rate shall be calculated by using the mass flow rates determined in accordance with the requirements of paragraph (f)(2) of this section and the following equation:

$$MR = E_b - E_a$$

where:

MR=Actual HAP mass removal rate, kg/hr.

E_b =Off-site material HAP mass flow entering process as determined in accordance with the requirements of paragraph (f)(2) of this section, kg/hr.

E_a =Off-site material HAP mass flow exiting process as determined in

accordance with the requirements of paragraph (f)(2) of this section, kg/hr.

(g) Determination of treatment process HAP reduction efficiency (R).

(1) The HAP reduction efficiency (R) for a treatment process shall be determined based on results for a minimum of three consecutive runs.

(2) All off-site material streams entering the treatment process and all off-site material streams exiting the treatment process shall be identified. The owner or operator shall prepare a sampling plan for measuring these streams that accurately reflects the retention time of the off-site material in the process.

(3) For each run, information shall be determined for each off-site material stream identified in paragraph (g)(2) of this section using the following procedures:

(i) The mass quantity of each off-site material stream entering the process (Q_b) and the mass quantity of each off-

site material stream exiting the process (Q_a) shall be determined.

(ii) The average VOHAP concentration at the point-of-delivery of each off-site material stream entering the process ($\bar{C}_b$) during the run shall be determined in accordance with the requirements of

paragraph (b) of this section. The VOHAP concentration of the off-site material stream at the point-of-treatment (C_a) during the run shall be determined in accordance with the applicable requirements of paragraph (c) of this section.

$$E_b = \frac{1}{10^6} \sum_{j=1}^m (Q_{bj} \times \bar{C}_{bj})$$

$$E_a = \frac{1}{10^6} \sum_{j=1}^m (Q_{aj} \times \bar{C}_{aj})$$

where:

E_b =Off-site material HAP mass flow entering process, kg/hr.

E_a =Off-site material HAP mass flow exiting process, kg/hr.

m =Total number of runs (at least 3)

j =Individual run "j"

Q_v =Mass quantity of off-site material entering process during run "j", kg/hr.

Q_{aj} =Average mass quantity of off-site material exiting process during run "j", kg/hr.

$\bar{C}_{aj}$ =Average VOHAP concentration of off-site material exiting process during run "j" as determined in accordance with the requirements of § 63.693(b), ppmw.

$\bar{C}_v$ =Average VOHAP concentration of off-site material entering process

(4) The off-site material HAP mass flow entering the process (E_b) and the off-site material HAP mass flow exiting the process (E_a) shall be calculated by using the results determined in accordance with paragraph (g)(3) of this section and the following equations:

during run "j" as determined in accordance with the requirements of § 63.693(b), ppmw.

(5) The HAP reduction efficiency (R) shall be calculated by using the results determined in accordance with paragraph (g)(4) of this section and the following equation:

$$R = \frac{E_b - E_a}{E_b} \times 100$$

where:

R =HAP reduction efficiency, percent.

E_b =Off-site material HAP mass flow entering process as determined in accordance with the requirements of paragraph (d)(4) of this section, kg/hr.

E_a =Off-site material HAP mass flow exiting process as determined in accordance with the requirements of paragraph (d)(4) of this section, kg/hr.

(h) Determination of HAP biodegradation efficiency (R_{bio}).

(1) The fraction of HAP biodegraded (F_{bio}) shall be determined using the procedure specified in 40 CFR part 63, appendix C of this part.

(2) The HAP biodegradation efficiency (R_{bio}) shall be calculated by using the following equation:

$$R_{bio} = F_{bio} \times 100$$

where:

R_{bio} = HAP biodegradation efficiency, percent.

F_{bio} = Fraction of HAP biodegraded as determined in accordance with the requirements of paragraph (h)(1) of this section.

(i) Determination of actual HAP mass removal rate (MR_{bio}).

(1) The actual HAP mass removal rate (MR_{bio}) shall be determined based on results for a minimum of three consecutive runs. The sampling time for each run shall be 1 hour.

(2) The off-site material HAP mass flow entering the process (E_b) shall be determined in accordance with the requirements of paragraph (g)(4) of this section.

(3) The fraction of HAP biodegraded (F_{bio}) shall be determined using the procedure specified in 40 CFR part 63, appendix C of this part.

(4) The actual mass removal rate shall be calculated by using the HAP mass flow rates and fraction of HAP biodegraded determined in accordance with the requirements of paragraphs (i)(2) and (i)(3), respectively, of this section and the following equation:

$$MR_{bio} = E_b \times F_{bio}$$

where:

MR_{bio} =Actual HAP mass removal rate, kg/hr.

E_b =Off-site material HAP mass flow entering process, kg/hr.

F_{bio} =Fraction of HAP biodegraded.

(j) Determination of maximum HAP vapor pressure for off-site material in a tank.

(1) The maximum HAP vapor pressure of the off-site material composition managed in a tank shall be determined using either direct measurement as specified in paragraph (j)(2) of this section or by knowledge of the off-site material as specified by paragraph (j)(3) of this section.

(2) Direct measurement to determine the maximum HAP vapor pressure of an off-site material.

(i) Sampling. A sufficient number of samples shall be collected to be representative of the off-site material contained in the tank. All samples shall be collected and handled in accordance with written procedures prepared by the owner or operator and documented in a site sampling plan. This plan shall describe the procedure by which representative samples of the off-site material is collected such that a minimum loss of organics occurs throughout the sample collection and handling process and by which sample integrity is maintained. A copy of the written sampling plan shall be

maintained on-site in the plant site operating records. An example of an acceptable sampling plan includes a plan incorporating sample collection and handling procedures in accordance with the requirements specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW-846 or Method 25D in 40 CFR part 60, appendix A.

(ii) Analysis. Any one of the following methods may be used to analyze the samples and compute the maximum HAP vapor pressure of the off-site material:

(A) Method 25E in 40 CFR part 60 appendix A;

(B) Methods described in American Petroleum Institute Bulletin 2517, "Evaporation Loss from External Floating Roof Tanks,";

(C) Methods obtained from standard reference texts;

(D) ASTM Method 2879-83; or

(E) Any other method approved by the Administrator.

(3) Use of knowledge to determine the maximum HAP vapor pressure of the off-site material. Documentation shall be prepared and recorded that presents the information used as the basis for the owner's or operator's knowledge that the maximum HAP vapor pressure of the off-site material is less than the maximum vapor pressure limit listed in Table 3 or Table 4 of this subpart for the applicable tank design capacity category. Examples of information that may be used include: the off-site material is generated by a process for which at other locations it previously has been determined by direct measurement that the off-site material maximum HAP vapor pressure is less than the maximum vapor pressure limit for the appropriate tank design capacity category.

(k) Procedure for determining no detectable organic emissions for the purpose of complying with this subpart.

(1) The test shall be conducted in accordance with the procedures specified in Method 21 of 40 CFR part 60, appendix A. Each potential leak interface (i.e., a location where organic vapor leakage could occur) on the cover and associated closure devices shall be checked. Potential leak interfaces that are associated with covers and closure devices include, but are not limited to: the interface of the cover and its foundation mounting; the periphery of any opening on the cover and its associated closure device; and the

sealing seat interface on a spring-loaded pressure-relief valve.

(2) The test shall be performed when the unit contains a material having an organic HAP concentration representative of the range of concentrations for the off-site materials expected to be managed in the unit. During the test, the cover and closure devices shall be secured in the closed position.

(3) The detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the organic constituents in the off-site material placed in the unit, not for each individual organic constituent.

(4) The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of 40 CFR part 60, appendix A.

(5) Calibration gases shall be as follows:

(i) Zero air (less than 10 ppmv hydrocarbon in air); and

(ii) A mixture of methane in air at a concentration of approximately, but less than 10,000 ppmv.

(6) The background level shall be determined according to the procedures in Method 21 of 40 CFR part 60 appendix A.

(7) Each potential leak interface shall be checked by traversing the instrument probe around the potential leak interface as close to the interface as possible, as described in Method 21. In the case when the configuration of the cover or closure device prevents a complete traverse of the interface, all accessible portions of the interface shall be sampled. In the case when the configuration of the closure device prevents any sampling at the interface and the device is equipped with an enclosed extension or horn (e.g., some pressure relief devices), the instrument probe inlet shall be placed at approximately the center of the exhaust area to the atmosphere.

(8) The arithmetic difference between the maximum organic concentration indicated by the instrument and the background level shall be compared with the value of 500 ppmv. If the difference is less than 500 ppmv, then the potential leak interface is determined to operate with no detectable organic emissions.

(l) Control device performance test procedures.

(1) Method 1 or 1A of 40 CFR part 60, appendix A, as appropriate, shall be used for selection of the sampling sites at the inlet and outlet of the control device.

(i) To determine compliance with a control device percent reduction requirement, sampling sites shall be located at the inlet of the control device as specified in paragraphs (l)(1)(i)(A) and (l)(1)(i)(B) of this section, and at the outlet of the control device.

(A) The control device inlet sampling site shall be located after the final product recovery device.

(B) If a vent stream is introduced with the combustion air or as a auxiliary fuel into a boiler or process heater, the location of the inlet sampling sites shall be selected to ensure that the measurement of total HAP concentration or TOC concentration, as applicable, includes all vent streams and primary and secondary fuels introduced into the boiler or process heater.

(ii) To determine compliance with an enclosed combustion device concentration limit, the sampling site shall be located at the outlet of the device.

(2) The gas volumetric flow rate shall be determined using Method 2, 2A, 2C, or 2D of 40 CFR part 60, appendix A, as appropriate.

(3) To determine compliance with the control device percent reduction requirement, the owner or operator shall use Method 18 of 40 CFR part 60, appendix A of this chapter; alternatively, any other method or data that has been validated according to the applicable procedures in Method 301 in 40 CFR part 63, appendix A of this part may be used. The following procedures shall be used to calculate percent reduction efficiency:

(i) The minimum sampling time for each run shall be 1 hour in which either an integrated sample or a minimum of four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals in time such as 15 minute intervals during the run.

(ii) The mass rate of either TOC (minus methane and ethane) or total HAP (E_i and E_o , respectively) shall be computed.

(A) The following equations shall be used:

$$E_i = K_2 \left(\sum_{j=1}^n \frac{150n C_{ij} M_{ij}}{150} \right) Q_i$$

$$E_o = K_2 \left(\sum_{j=1}^n \frac{150n C_{oj} M_{oj}}{150} \right) Q_o$$

where:

C_{ij} , C_{oj} =Concentration of sample component j of the gas stream at the inlet and outlet of the control device, respectively, dry basis, parts per million by volume.

E_i , E_o =Mass rate of TOC (minus methane and ethane) or total HAP at the inlet and outlet of the control device, respectively, dry basis, kilogram per hour.

M_{ij} , M_{oj} =Molecular weight of sample component j of the gas stream at the inlet and outlet of the control device, respectively, gram/gram-mole.

Q_i , Q_o =Flow rate of gas stream at the inlet and outlet of the control device, respectively, dry standard cubic meter per minute.

K_2 =Constant, 2.494×10^{-6} (parts per million) $^{-1}$ (gram-mole per standard cubic meter) (kilogram/gram) (minute/hour), where standard temperature (gram-mole per standard cubic meter) is 20 °C.

(B) When the TOC mass rate is calculated, all organic compounds (minus methane and ethane) measured by Method 18 of 40 CFR part 60, appendix A shall be summed using the equation in paragraph (l)(3)(ii)(A) of this section.

(C) When the total HAP mass rate is calculated, only the HAP constituents shall be summed using the equation in paragraph (l)(3)(ii)(A) of this section.

(iii) The percent reduction in TOC (minus methane and ethane) or total HAP shall be calculated as follows:

$$R_{cd} = \frac{E_i - E_o}{E_i} \times 100$$

where:

R_{cd} =Control efficiency of control device, percent.

E_i =Mass rate of TOC (minus methane and ethane) or total HAP at the inlet to the control device as calculated under paragraph (l)(3)(ii) of this section, kilograms TOC per hour or kilograms HAP per hour.

E_o =Mass rate of TOC (minus methane and ethane) or total HAP at the outlet of the control device, as calculated under paragraph (l)(3)(ii) of this section, kilograms TOC per hour or kilograms HAP per hour.

(iv) If the vent stream entering a boiler or process heater is introduced with the combustion air or as a secondary fuel, the weight-percent reduction of total HAP or TOC (minus methane and ethane) across the device shall be determined by comparing the TOC (minus methane and ethane) or total HAP in all combusted vent streams and primary and secondary fuels with the TOC (minus methane and ethane) or total HAP exiting the device, respectively.

(4) To determine compliance with the enclosed combustion device total HAP concentration limit of this subpart, the owner or operator shall use Method 18 of 40 CFR part 60, appendix A to measure either TOC (minus methane and ethane) or total HAP. Alternatively, any other method or data that has been validated according to Method 301 in appendix A of this part, may be used. The following procedures shall be used to calculate parts per million by volume concentration, corrected to 3 percent oxygen:

(i) The minimum sampling time for each run shall be 1 hour in which either an integrated sample or a minimum of four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals in time, such as 15 minute intervals during the run.

(ii) The TOC concentration or total HAP concentration shall be calculated according to paragraph (m)(4)(ii)(A) or (m)(4)(ii)(B) of this section.

(A) The TOC concentration (C_{TOC}) is the sum of the concentrations of the individual components and shall be computed for each run using the following equation:

$$C_{TOC} = \sum_{i=1}^n \frac{C_{ij}}{x}$$

where:

C_{TOC} =Concentration of total organic compounds minus methane and ethane, dry basis, parts per million by volume.

C_{ji} =Concentration of sample components j of sample i, dry basis, parts per million by volume.

n=Number of components in the sample.

x=Number of samples in the sample run.

(B) The total HAP concentration (C_{HAP}) shall be computed according to the equation in paragraph (l)(4)(ii)(A) of this section except that only HAP constituents shall be summed.

(iii) The measured TOC concentration or total HAP concentration shall be corrected to 3 percent oxygen as follows:

(A) The emission rate correction factor or excess air, integrated sampling and analysis procedures of Method 3B of 40 CFR part 60, appendix A shall be used to determine the oxygen concentration (% O_{2dry}). The samples shall be collected during the same time that the samples are collected for determining TOC concentration or total HAP concentration.

(B) The concentration corrected to 3 percent oxygen (C_c) shall be computed using the following equation:

$$C_c = C_m \left(\frac{17.9}{20.9 - \%O_{2dry}} \right)$$

where:

C_c =TOC concentration or total HAP concentration corrected to 3 percent oxygen, dry basis, parts per million by volume.

C_m =Measured TOC concentration or total HAP concentration, dry basis, parts per million by volume.

% O_{2dry} =Concentration of oxygen, dry basis, percent by volume.

§ 63.695 Inspection and monitoring requirements.

(a) This section specifies the inspection and monitoring procedures required to perform the following:

(1) To inspect tank fixed-roofs and floating roofs for compliance with the Tank level 2 controls standards specified in § 63.685 of this subpart, the inspection procedures are specified in paragraph (b) of this section.

(2) To inspect and monitor closed-vent systems for compliance with the standards specified in § 63.693 of this subpart, the inspection and monitoring procedure are specified in paragraph (c) of this section.

(3) To inspect and monitor transfer system covers for compliance with the

standards specified in § 63.689(c)(1) of this subpart, the inspection and monitoring procedure are specified in paragraph (d) of this section.

(b) Tank Level 2 fixed roof and floating roof inspection requirements.

(1) Owners and operators that use a tank equipped with an internal floating roof in accordance with the provisions of § 63.685(e) of this subpart shall meet the following inspection requirements:

(i) The floating roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air emissions. Defects include, but are not limited to, the internal floating roof is not floating on the surface of the liquid inside the tank; liquid has accumulated on top of the internal floating roof; any portion of the roof seals have detached from the roof rim; holes, tears, or other openings are visible in the seal fabric; the gaskets no longer close off the waste surfaces from the atmosphere; or the slotted membrane has more than 10 percent open area.

(ii) The owner or operator shall inspect the internal floating roof components as follows except as provided for in paragraph (b)(1)(iii) of this section:

(A) Visually inspect the internal floating roof components through openings on the fixed-roof (e.g., manholes and roof hatches) at least once every 12 months after initial fill, and

(B) Visually inspect the internal floating roof, primary seal, secondary seal (if one is in service), gaskets, slotted membranes, and sleeve seals (if any) each time the tank is emptied and degassed and at least every 10 years. Prior to each inspection, the owner or operator shall notify the Administrator in accordance with the reporting requirements specified in § 63.697 of this subpart.

(iii) As an alternative to performing the inspections specified in paragraph (b)(1)(ii) of this section for an internal floating roof equipped with two continuous seals mounted one above the other, the owner or operator may visually inspect the internal floating roof, primary and secondary seals, gaskets, slotted membranes, and sleeve seals (if any) each time the tank is emptied and degassed and at least every 5 years. Prior to each inspection, the owner or operator shall notify the Administrator in accordance with the reporting requirements specified in § 63.697 of this subpart.

(iv) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (b)(4) of this section.

(v) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 63.696 of this subpart.

(2) Owners and operators that use a tank equipped with an external floating roof in accordance with the provisions of § 63.685(f) of this subpart shall meet the following requirements:

(i) The owner or operator shall measure the external floating roof seal gaps in accordance with the following requirements:

(A) The owner or operator shall perform measurements of gaps between the tank wall and the primary seal within 60 days after initial operation of the tank following installation of the floating roof and, thereafter, at least once every 5 years. Prior to each inspection, the owner or operator shall notify the Administrator in accordance with the reporting requirements specified in § 63.697 of this subpart.

(B) The owner or operator shall perform measurements of gaps between the tank wall and the secondary seal within 60 days after initial operation of the separator following installation of the floating roof and, thereafter, at least once every year. Prior to each inspection, the owner or operator shall notify the Administrator in accordance with the reporting requirements specified in § 63.697 of this subpart.

(C) If a tank ceases to hold off-site material for a period of 1 year or more, subsequent introduction of off-site material into the tank shall be considered an initial operation for the purposes of paragraphs (b)(2)(i)(A) and (b)(2)(i)(B) of this section.

(D) The owner shall determine the total surface area of gaps in the primary seal and in the secondary seal individually using the following procedure.

(1) The seal gap measurements shall be performed at one or more floating roof levels when the roof is floating off the roof supports.

(2) Seal gaps, if any, shall be measured around the entire perimeter of the floating roof in each place where a 0.32-centimeter (cm) diameter uniform probe passes freely (without forcing or binding against the seal) between the seal and the wall of the tank and measure the circumferential distance of each such location.

(3) For a seal gap measured under paragraph (b)(2) of this section, the gap surface area shall be determined by using probes of various widths to measure accurately the actual distance from the tank wall to the seal and multiplying each such width by its respective circumferential distance.

(4) The total gap area shall be calculated by adding the gap surface areas determined for each identified gap location for the primary seal and the secondary seal individually, and then dividing the sum for each seal type by the nominal perimeter of the tank. These total gap areas for the primary seal and secondary seal are then compared to the respective standards for the seal type as specified in § 63.685(f)(1) of this subpart.

(E) In the event that the seal gap measurements do not conform to the specifications in § 63.685(f)(1) of this subpart, the owner or operator shall repair the defect in accordance with the requirements of paragraph (b)(4) of this section.

(F) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 63.696 of this subpart.

(ii) The owner or operator shall visually inspect the external floating roof in accordance with the following requirements:

(A) The floating roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air emissions. Defects include, but are not limited to: holes, tears, or other openings in the rim seal or seal fabric of the floating roof; a rim seal detached from the floating roof; all or a portion of the floating roof deck being submerged below the surface of the liquid in the tank; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(B) The owner or operator shall perform the inspections following installation of the external floating roof and, thereafter, at least once every year.

(C) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (b)(4) of this section.

(D) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 63.696(d) of this subpart.

(3) Owners and operators that use a tank equipped with a fixed roof in accordance with the provisions of § 63.685(g) of this subpart shall meet the following requirements:

(i) The fixed roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the separator wall; broken, cracked,

or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(ii) The owner or operator shall perform the inspections following installation of the fixed roof and, thereafter, at least once every year.

(iii) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (b)(4) of this section.

(iv) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 63.696(e) of this subpart.

(4) The owner or operator shall repair each defect detected during an inspection performed in accordance with the requirements of paragraph (b)(1), (b)(2), or (b)(3) of this section in the following manner:

(i) The owner or operator shall within 45 calendar days of detecting the defect either repair the defect or empty the tank and remove it from service. If within this 45-day period the defect cannot be repaired or the tank cannot be removed from service without disrupting operations at the plant site, the owner or operator is allowed two 30-day extensions. In cases when an owner or operator elects to use a 30-day extension, the owner or operator shall prepare and maintain documentation describing the defect, explaining why alternative storage capacity is not available, and specify a schedule of actions that will ensure that the control equipment will be repaired or the tank emptied as soon as possible.

(ii) When a defect is detected during an inspection of a tank that has been emptied and degassed, the owner or operator shall repair the defect before refilling the tank.

(c) Owners and operators that use a closed vent system in accordance with the provisions of § 63.693 of this subpart shall meet the following inspection and monitoring requirements:

(1) Each closed-vent system that is used to comply with § 63.693(c)(1)(i) of this subpart shall be inspected and monitored in accordance with the following requirements:

(i) At initial startup, the owner or operator shall monitor the closed-vent system components and connections using the procedures specified in § 63.693(k) of this subpart to demonstrate that the closed-vent system operates with no organic detectable emissions.

(ii) After initial startup, the owner or operator shall inspect and monitor the closed-vent system as follows:

(A) Closed-vent system joints, seams, or other connections that are permanently or semi-permanently sealed (e.g., a welded joint between two sections of hard piping or a bolted and gasketed ducting flange) shall be visually inspected at least once per year to check for defects that could result in air emissions. The owner or operator shall monitor a component or connection using the procedures specified in § 63.693(k) of this subpart to demonstrate that it operates with no detectable organic emissions following any time the component is repaired or replaced (e.g., a section of damaged hard piping is replaced with new hard piping) or the connection is unsealed (e.g., a flange is unbolted).

(B) Closed-vent system components or connections other than those specified in paragraph (c)(1)(ii)(A) of this section, shall be monitored at least once per year using the procedures specified in § 63.693(k) of this subpart to demonstrate that components or connections operate with no detectable organic emissions.

(iii) In the event that a defect or leak is detected, the owner or operator shall repair the defect or leak in accordance with the requirements of paragraph (3) of this section.

(iv) The owner or operator shall maintain a record of the inspection and monitoring in accordance with the requirements specified in § 63.696 of this subpart.

(2) Each closed-vent system that is used to comply with § 63.693(c)(1)(ii) of this subpart shall be inspected and monitored in accordance with the following requirements:

(i) The closed-vent system shall be visually inspected by the owner or operator to check for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in ductwork or piping; loose connections; or broken or missing caps or other closure devices.

(ii) The owner or operator shall perform the inspections following installation of the closed-vent system and, thereafter, at least once every year.

(iii) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (3) of this section.

(iv) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 63.696 of this subpart.

(3) The owner or operator shall repair all detected defects as follows:

(i) The owner or operator shall make first efforts at repair of the defect no later than 5 calendar days after

detection and repair shall be completed as soon as possible but no later than 45 calendar days after detection.

(ii) The owner or operator shall maintain a record of the defect repair in accordance with the requirements specified in § 63.696 of this subpart.

(d) Owners and operators that use a transfer system equipped with a cover in accordance with the provisions of § 63.689(c)(1) of this subpart shall meet the following inspection requirements:

(1) The cover and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the cover sections or between the cover and its mounting; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(2) The owner or operator shall perform the inspections following installation of the cover and, thereafter, at least once every year.

(3) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (5) of this section.

(4) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 63.696 of this subpart.

(5) The owner or operator shall repair all detected defects as follows:

(i) The owner or operator shall make first efforts at repair of the defect no later than 5 calendar days after detection and repair shall be completed as soon as possible but no later than 45 calendar days after detection except as provided in paragraph (c)(5)(ii) of this section.

(ii) The owner or operator shall maintain a record of the defect repair in accordance with the requirements specified in § 63.696 of this subpart.

§ 63.696 Recordkeeping requirements.

(a) The owner or operator subject to this subpart shall comply with the recordkeeping requirements in § 63.10 under 40 CFR 63 subpart A—General Provisions that are applicable to this subpart as specified in Table 2 of this subpart.

(b) The owner or operator of a control device subject to this subpart shall maintain the records in accordance with the requirements of 40 CFR 63.10 of this part.

(c) [Reserved]

(d) Each owner or operator using an internal floating roof to comply with the tank control requirements specified in

§ 63.685(e) of this subpart or using an external floating roof to comply with the tank control requirements specified in § 63.685(f) of this subpart shall prepare and maintain the following records:

(1) Documentation describing the floating roof design and the dimensions of the tank.

(2) A record for each inspection required by § 63.695(b) of this subpart, as applicable to the tank, that includes the following information: a tank identification number (or other unique identification description as selected by the owner or operator) and the date of inspection.

(3) The owner or operator shall record for each defect detected during inspections required by § 63.695(b) of this subpart the following information: the location of the defect, a description of the defect, the date of detection, and corrective action taken to repair the defect. In the event that repair of the defect is delayed in accordance with the provisions of § 63.695(b)(4) of this section, the owner or operator shall also record the reason for the delay and the date that completion of repair of the defect is expected.

(4) Owners and operators that use a tank equipped with an external floating roof in accordance with the provisions of § 63.685(f) of this subpart shall prepare and maintain records for each seal gap inspection required by § 63.695(b) describing the results of the seal gap measurements. The records shall include the date of that the measurements are performed, the raw data obtained for the measurements, and the calculations of the total gap surface area. In the event that the seal gap measurements do not conform to the specifications in § 63.695(b) of this subpart, the records shall include a description of the repairs that were made, the date the repairs were made, and the date the separator was emptied, if necessary.

(e) Each owner or operator using a fixed roof to comply with the tank control requirements specified in § 63.685(g) of this subpart shall prepare and maintain the following records:

(1) A record for each inspection required by § 63.695(b) of this subpart, as applicable to the tank, that includes the following information: a tank identification number (or other unique identification description as selected by the owner or operator) and the date of inspection.

(2) The owner or operator shall record for each defect detected during inspections required by § 63.695(b) of this subpart the following information: the location of the defect, a description of the defect, the date of detection, and

corrective action taken to repair the defect. In the event that repair of the defect is delayed in accordance with the provisions of § 63.695(b)(4) of this section, the owner or operator shall also record the reason for the delay and the date that completion of repair of the defect is expected.

(f) Each owner or operator using an enclosure to comply with the tank control requirements specified in § 63.685(i) of this subpart shall prepare and maintain records for the most recent set of calculations and measurements performed by the owner or operator to verify that the enclosure meets the criteria of a permanent total enclosure as specified in "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, Appendix B.

(g) An owner or operator shall record, on a semiannual basis, the information specified in paragraphs (g)(1) and (g)(2) of this section for those planned routine maintenance operations that would require the control device not to meet the requirements of § 63.693(d) through (h) of this subpart, as applicable.

(1) A description of the planned routine maintenance that is anticipated to be performed for the control device during the next 6 months. This description shall include the type of maintenance necessary, planned frequency of maintenance, and lengths of maintenance periods.

(2) A description of the planned routine maintenance that was performed for the control device during the previous 6 months. This description shall include the type of maintenance performed and the total number of hours during these 6 months that the control device did not meet the requirement of § 63.693 (d) through (h) of this subpart, as applicable, due to planned routine maintenance.

(h) An owner or operator shall record the information specified in paragraphs (h)(1) through (h)(3) of this section for those unexpected control device system malfunctions that would require the control device not to meet the requirements of § 63.693 (d) through (h) of this subpart, as applicable.

(1) The occurrence and duration of each malfunction of the control device system.

(2) The duration of each period during a malfunction when gases, vapors, or fumes are vented from the waste management unit through the closed-vent system to the control device while the control device is not properly functioning.

(3) Actions taken during periods of malfunction to restore a malfunctioning

control device to its normal or usual manner of operation.

§ 63.697 Reporting requirements.

(a) The owner or operator subject to this subpart shall comply with the notification requirements in § 63.9 and the reporting requirements in § 63.10 under 40 CFR 63 subpart A—General Provisions that are applicable to this subpart as specified in Table 2 of this subpart.

(b) The owner or operator of a control device used to meet the requirements of § 63.693 of this subpart shall submit the following reports to the Administrator:

(1) A Notification of Performance Tests specified in § 63.7 and § 63.9(g) of this part,

(2) Performance test reports specified in § 63.10(d)(2) of this part

(3) Startup, shutdown, and malfunction reports specified in § 63.10(d)(5) of this part,

(i) If actions taken by an owner or operator during a startup, shutdown, or malfunction of an affected source (including actions taken to correct a malfunction) are not completely consistent with the procedures specified in the source's startup, shutdown, and malfunction plan specified in § 63.6(e)(3) of this part, the owner or operator shall state such information in the report. The startup, shutdown, or malfunction report shall consist of a letter, containing the name, title, and signature of the responsible official who is certifying its accuracy, that shall be submitted to the Administrator, and

(ii) Separate startup, shutdown, or malfunction reports are not required if the information is included in the report specified in paragraph (b)(6) of this section.

(4) A summary report specified in § 63.10(e)(3) of this part shall be submitted on a semi-annual basis (i.e., once every 6-month period).

(c) Each owner or operator using an internal floating roof or external floating roof to comply with the Tank Level 2 control requirements specified in § 63.685(d) of this subpart shall notify the Administrator in advance of each inspection required under § 63.695(b) of this subpart to provide the Administrator with the opportunity to have an observer present during the inspection. The owner or operator shall notify the Administrator of the date and location of the inspection as follows:

(1) Prior to each inspection to measure external floating roof seal gaps as required under § 63.695(b) of this subpart, written notification shall be prepared and sent by the owner or operator so that it is received by the Administrator at least 30 calendar days

before the date the measurements are scheduled to be performed.

(2) Prior to each visual inspection of an internal floating roof or external floating roof in a tank that has been emptied and degassed, written notification shall be prepared and sent by the owner or operator so that it is received by the Administrator at least 30 calendar days before refilling the tank except when an inspection is not planned as provided for in paragraph (c)(3) of this section.

(3) When a visual inspection is not planned and the owner or operator could not have known about the inspection 30 calendar days before refilling the tank, the owner or operator shall notify the Administrator as soon as possible, but no later than 7 calendar days before refilling of the tank. This notification may be made by telephone and immediately followed by a written explanation for why the inspection is unplanned. Alternatively, written notification, including the explanation

for the unplanned inspection, may be sent so that it is received by the Administrator at least 7 calendar days before refilling the tank.

§ 63.698 Delegation of Authority.

(a) In delegating implementation and enforcement authority to a State under section 112(d) of the Act, the authority listed in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authority will not be delegated to States for § 63.694 of this subpart.

TABLE 1 TO SUBPART DD.—LIST OF HAZARDOUS AIR POLLUTANTS (HAP) FOR SUBPART DD

CAS No. ^a	Chemical name	f _m 305
75070	Acetaldehyde	1.000
75058	Acetonitrile	0.989
98862	Acetophenone	0.314
107028	Acrolein	1.000
107131	Acrylonitrile	0.999
107051	Allyl chloride	1.000
71432	Benzene (includes benzene in gasoline)	1.000
98077	Benzotrachloride (isomers and mixture)	0.958
100447	Benzyl chloride	1.000
92524	Biphenyl	0.864
542881	Bis(chloromethyl)ether ^b	0.999
75252	Bromoform	0.998
106990	1,3-Butadiene	1.000
75150	Carbon disulfide	1.000
56235	Carbon tetrachloride	1.000
43581	Carbonyl sulfide	1.000
133904	Chloramben	0.633
108907	Chlorobenzene	1.000
67663	Chloroform	1.000
107302	Chloromethyl methyl ether ^b	1.000
126998	Chloroprene	1.000
98828	Cumene	1.000
94757	2,4-D, salts and esters	0.167
334883	Diazomethane ^c	0.999
132649	Dibenzofurans	0.967
96128	1,2-Dibromo-3-chloropropane	1.000
106467	1,4-Dichlorobenzene(p)	1.000
107062	Dichloroethane (Ethylene dichloride)	1.000
111444	Dichloroethyl ether (Bis(2-chloroethyl ether)	0.757
542756	1,3-Dichloropropene	1.000
79447	Dimethyl carbamoyl chloride ^c	0.150
57147	1,1-Dimethyl hydrazine	0.383
64675	Diethyl sulfate	0.0025
77781	Dimethyl sulfate	0.086
121697	N,N-Dimethylaniline	0.0008
51285	2,4-Dinitrophenol	0.0077
121142	2,4-Dinitrotoluene	0.0848
123911	1,4-Dioxane (1,4-Diethyleneoxide)	0.869
106898	Epichlorohydrin (1-Chloro-2,3-epoxypropane)	0.939
106887	1,2-Epoxybutane	1.000
140885	Ethyl acrylate	1.000
100414	Ethyl benzene	1.000
75003	Ethyl chloride (Chloroethane)	1.000
106934	Ethylene dibromide (Dibromoethane)	0.999
107062	Ethylene dichloride (1,2-Dichloroethane)	1.000
151564	Ethylene imine (Aziridine)	0.867
75218	Ethylene oxide	1.000
75343	Ethylidene dichloride (1,1-Dichloroethane)	1.000
	Glycol ethers ^d	(^e)
118741	Hexachlorobenzene	0.97
87683	Hexachlorobutadiene	0.88
67721	Hexachloroethane	0.499
110543	Hexane	1.000
78591	Isophorone	0.506
58899	Lindane (all isomers)	1.000
67561	Methanol	0.855

TABLE 1 TO SUBPART DD.—LIST OF HAZARDOUS AIR POLLUTANTS (HAP) FOR SUBPART DD—Continued

CAS No. ^a	Chemical name	f _{m 305}
74839	Methyl bromide (Bromomethane)	1.000
74873	Methyl chloride (Chloromethane)	1.000
71556	Methyl chloroform (1,1,1-Trichloroethane)	1.000
78933	Methyl ethyl ketone (2-Butanone)	0.990
74884	Methyl iodide (Iodomethane)	1.000
108101	Methyl isobutyl ketone (Hexone)	0.979
624839	Methyl isocyanate	1.000
80626	Methyl methacrylate	0.999
1634044	Methyl tert butyl ether	1.000
75092	Methylene chloride (Dichloromethane)	1.000
91203	Naphthalene	0.994
98953	Nitrobenzene	0.394
79469	2-Nitropropane	0.989
82688	Pentachloronitrobenzene (Quintobenzene)	0.839
87865	Pentachlorophenol	0.0898
75445	Phosgene ^c	1.000
123386	Propionaldehyde	0.999
78875	Propylene dichloride (1,2-Dichloropropane)	1.000
75569	Propylene oxide	1.000
75558	1,2-Propylenimine (2-Methyl aziridine)	0.945
100425	Styrene	1.000
96093	Styrene oxide	0.830
79345	1,1,2,2-Tetrachloroethane	0.999
127184	Tetrachloroethylene (Perchloroethylene)	1.000
108883	Toluene	1.000
95534	o-Toluidine	0.152
120821	1,2,4-Trichlorobenzene	1.000
71556	1,1,1-Trichloroethane (Methyl chlorform)	1.000
79005	1,1,2-Trichloroethane (Vinyl trichloride)	1.000
79016	Trichloroethylene	1.000
95954	2,4,5-Trichlorophenol	0.108
88062	2,4,6-Trichlorophenol	0.132
121448	Triethylamine	1.000
540841	2,2,4-Trimethylpentane	1.000
108054	Vinyl acetate	1.000
593602	Vinyl bromide	1.000
75014	Vinyl chloride	1.000
75354	Vinylidene chloride (1,1-Dichloroethylene)	1.000
1330207	Xylenes (isomers and mixture)	1.000
95476	o-Xylenes	1.000
108383	m-Xylenes	1.000
106423	p-Xylenes	1.000

Notes:f_{m 305}=Method 305 fraction measure factor

a. CAS numbers refer to the Chemical Abstracts Services registry number assigned to specific compounds, isomers, or mixtures of compounds.

b. Denotes a HAP that hydrolyzes quickly in water, but the hydrolysis products are also HAP chemicals.

c. Denotes a HAP that may react violently with water, exercise caustic is an expected analyte.

d. Denotes a HAP that hydrolyzes slowly in water.

e. Several glycol ethers meet the criteria used to select HAP for the purposes of this subpart. The f_{m 305} factors for some of the more common glycol ethers are listed below:Ethylene glycol dimethyl ether (f_{m 305}=0.861)Ethylene glycol monoethyl ether acetate (f_{m 305}=0.0887)Ethylene glycol monomethyl ether acetate (f_{m 305}=0.0926)Diethylene glycol diethyl ether (f_{m 305}=0.216)

TABLE 2 TO SUBPART DD.—APPLICABILITY OF PARAGRAPHS IN 40 CFR 63 SUBPART A, GENERAL PROVISIONS, TO SUBPART DD

Subpart A reference	Applies to subpart DD	Comment
63.1(a)(1)	Yes.	Subpart DD (this table) specifies applicability of each paragraph in subpart A to subpart DD.
63.1(a)(2)	Yes.	
63.1(a)(3)	Yes.	
63.1(a)(4)	No	
63.1(a)(5)–63.1(a)(9)	No.	
63.1(a)(10)	Yes.	
63.1(a)(11)	Yes.	
63.1(a)(12)	Yes.	
63.1(a)(13)	Yes.	

TABLE 2 TO SUBPART DD.—APPLICABILITY OF PARAGRAPHS IN 40 CFR 63 SUBPART A, GENERAL PROVISIONS, TO SUBPART DD—Continued

Subpart A reference	Applies to subpart DD	Comment
63.1(a)(14)	Yes.	Subpart DD specifies its own applicability.
63.1(b)(1)	No	
63.1(b)(2)	Yes.	
63.1(b)(3)	No.	Subpart DD explicitly specifies requirements that apply. Area sources are not subject to subpart DD.
63.1(c)(1)	No	
63.1(c)(2)	No	
63.1(c)(3)	No.	Except that sources are not required to submit notifications overridden by this table.
63.1(c)(4)	Yes.	
63.1(c)(5)	Yes	
63.1(d)	No.	§ 63.681 of subpart DD specifies that if the same term is defined in subparts A and DD, it shall have the meaning given in subpart DD.
63.1(e)	No.	
63.2	Yes	
63.3	Yes.	Reserved.
63.4(a)(1)–63.4(a)(3)	Yes.	
63.4(a)(4)	No	
63.4(a)(5)	Yes.	Except replace term “source” and “stationary source” in § 63.5(a)(1) of subpart A with “affected source.”
63.4(b)	Yes.	
63.4(c)	Yes.	
63.5(a)(1)	Yes	Reserved.
63.5(a)(2)	Yes.	
63.5(b)(1)	Yes.	
63.5(b)(2)	No	Except the cross-reference to § 63.9(b) is changed to § 63.9(b)(4) and (5). Subpart DD overrides § 63.9(b)(2) and (b)(3).
63.5(b)(3)	Yes.	
63.5(b)(4)	Yes	
63.5(b)(5)	Yes.	Reserved.
63.5(b)(6)	Yes.	
63.5(c)	No	
63.5(d)(1)(i)	Yes.	
63.5(d)(1)(ii)	Yes.	
63.5(d)(1)(iii)	Yes.	
63.5(d)(2)	No.	
63.5(d)(3)	Yes.	
63.5(d)(4)	Yes.	
63.5(e)	Yes.	
63.5(f)(1)	Yes.	
63.5(f)(2)	Yes.	
63.6(a)	Yes.	Subpart DD specifies compliance dates for sources subject to subpart DD.
63.6(b)(1)	No	
63.6(b)(2)	No.	
63.6(b)(3)	Yes.	May apply when standards are proposed under section 112(f) of the Clean Air Act. § 63.697 of subpart DD includes notification requirements.
63.6(b)(4)	No	
63.6(b)(5)	No	
63.6(b)(6)	No.	§ 63.680 of subpart DD specifies the compliance date.
63.6(b)(7)	No.	
63.6(c)(1)	No	
63.6(c)(2)–63.6(c)(4)	No.	
63.6(c)(5)	Yes.	
63.6(d)	No.	
63.6(e)	Yes.	
63.6(f)(1)	Yes.	
63.6(f)(2)(i)	Yes.	
63.6(f)(2)(ii)	Yes	Subpart DD specifies the use of monitoring data in determining compliance with subpart DD.
63.6(f)(2)(iii) (A), (B), and (C)	Yes.	
63.6(f)(2)(iii) (D)	No.	
63.6(f)(2)(iv)	Yes.	
63.6(f)(2)(v)	Yes.	
63.6(f)(3)	Yes.	
63.6(g)	Yes.	Subpart DD does not require opacity and visible emission standards. Except for § 63.6(i)(15), which is reserved.
63.6(h)	No	
63.6(i)	Yes	
63.6(j)	Yes.	Subpart DD specifies required testing and compliance demonstration procedures.
63.7(a)(1)	No	
63.7(a)(2)	Yes.	
63.7(a)(3)	Yes.	
63.7(b)	No.	
63.7(c)	No.	

TABLE 2 TO SUBPART DD.—APPLICABILITY OF PARAGRAPHS IN 40 CFR 63 SUBPART A, GENERAL PROVISIONS, TO SUBPART DD—Continued

Subpart A reference	Applies to subpart DD	Comment
63.7(d)	Yes.	
63.7(e)(1)	Yes.	
63.7(e)(2)	Yes.	
63.7(e)(3)	No	Subpart DD specifies test methods and procedures.
63.7(e)(4)	Yes.	
63.7(f)	No	Subpart DD specifies applicable methods and provides alternatives.
63.7(g)	Yes.	
63.7(h)(1)	Yes.	
63.7(h)(2)	Yes.	
63.7(h)(3)	Yes.	
63.7(h)(4)	No.	
63.7(h)(5)	Yes.	
63.8(a)	No.	
63.8(b)(1)	Yes.	
63.8(b)(2)	No	Subpart DD specifies locations to conduct monitoring.
63.8(b)(3)	Yes.	
63.8(c)(1)(i)	Yes.	
63.8(c)(1)(ii)	Yes.	
63.8(c)(1)(iii)	Yes.	
63.8(c)(2)	Yes.	
63.8(c)(3)	Yes.	
63.8(c)(4)	No	Subpart DD specifies monitoring frequency
63.8(c)(5)—63.8(c)(8)	No.	
63.8(d)	No.	
63.8(e)	No.	
63.8(f)(1)	Yes.	
63.8(f)(2)	Yes.	
63.8(f)(3)	Yes.	
63.8(f)(4)(i)	Yes.	
63.8(f)(4)(ii)	Yes.	
63.8(f)(4)(iii)	No.	
63.8(f)(5)(i)	Yes.	
63.8(f)(5)(ii)	No.	
63.8(f)(5)(iii)	Yes.	
63.8(f)(6)	Yes.	
63.8(g)	Yes.	
63.9(a)	Yes.	
63.9(b)(1)(i)	Yes.	
63.9(b)(1)(ii)	No.	
63.9(b)(2)	Yes.	
63.9(b)(3)	No.	
63.9(b)(4)	Yes.	
63.9(b)(5)	Yes.	
63.9(c)	Yes.	
63.9(d)	Yes.	
63.9(e)	No.	
63.9(f)	No.	
63.9(g)	No.	
63.9(h)	Yes.	
63.9(i)	Yes.	
63.9(j)	No.	
63.10(a)	Yes.	
63.10(b)(1)	Yes.	
63.10(b)(2)(i)	Yes.	
63.10(b)(2)(ii)	Yes.	
63.10(b)(2)(iii)	No.	
63.10(b)(2)(iv)	Yes.	
63.10(b)(2)(v)	Yes.	
63.10(b)(2)(vi)—(ix)	No.	
63.10(b)(2)(x)	Yes.	
63.10(b)(2)(xii)—(xiv)	No.	
63.10(b)(3)	No.	
63.10(c)	No.	
63.10(d)(1)	No.	
63.10(d)(2)	Yes.	
63.10(d)(3)	No.	
63.10(d)(4)	Yes.	
63.10(d)(5)(i)	Yes.	
63.10(d)(5)(ii)	Yes.	
63.10(e)	No.	

TABLE 2 TO SUBPART DD.—APPLICABILITY OF PARAGRAPHS IN 40 CFR 63 SUBPART A, GENERAL PROVISIONS, TO SUBPART DD—Continued

Subpart A reference	Applies to subpart DD	Comment
63.10(f)	Yes.	
63.11–63.15	Yes.	

Note: Wherever subpart A specifies “postmark” dates, submittals may be sent by methods other than the U.S. Mail (e.g., by fax or courier). Submittals shall be sent by the specified dates, but a postmark is not required.

TABLE 3 TO SUBPART DD.—TANK CONTROL LEVELS FOR TANKS AT EXISTING AFFECTED SOURCES AS REQUIRED BY 40 CFR 63.685(b)(1)

Tank design capacity (cubic meters)	Maximum HAP vapor pressure of off-site material managed in tank (kilopascals)	Tank control level
Design capacity less than 75 m ³	Maximum HAP vapor pressure less than 76.6 kPa	Level 1.
Design capacity equal to or greater than 75 m ³ and less than 151 m ³ .	Maximum HAP vapor pressure less than 27.6 kPa	Level 1.
	Maximum HAP vapor pressure equal to or greater than 27.6 kPa.	Level 2.
Design capacity equal to or greater than 151 m ³	Maximum HAP vapor pressures less than 5.2 kPa	Level 1.
	Maximum HAP vapor pressure equal to or greater than 5.2 kPa	Level 2.

TABLE 4 TO SUBPART DD.—TANK CONTROL LEVELS FOR TANKS AT NEW AFFECTED SOURCES AS REQUIRED BY 40 CFR 63.685(b)(2)

Tank design capacity (cubic meters)	Maximum HAP vapor pressure of off-site material managed in tank (kilopascals)	Tank control level
Design capacity less than 38 m ³	Maximum HAP vapor pressure less than 76.6 kPa	Level 1.
Design capacity equal to or greater than 38 m ³ and less than 151 m ³ .	Maximum HAP vapor pressure less than 13.1 kPa	Level 1.
	Maximum HAP vapor pressure equal to or greater than 13.1 kPa.	Level 2.
Design capacity equal to or greater than 151 m ³	Maximum HAP vapor pressure less than 0.7 kPa	Level 1.
	Maximum HAP vapor pressure equal to or greater than 0.7 kPa	Level 2.

5. Part 63 is amended by adding subpart OO consisting of §§ 63.900 through 63.907 to read as follows:

Subpart OO—National Emission Standards for Tanks—Level 1

- Sec.
 63.900 Applicability.
 63.901 Definitions.
 63.902 Standards—Tank fixed roof.
 63.903 [Reserved]
 63.904 [Reserved]
 63.905 Test methods and procedures.
 63.906 Inspection and monitoring requirements.
 63.907 Recordkeeping requirements.

Subpart OO—National Emission Standards for Tanks—Level 1

§ 63.900 Applicability.

The provisions of this subpart apply to the control of air emissions from tanks for which another subpart of 40 CFR parts 60, 61, or 63 references the use of this subpart for such air emission control. These air emission standards for tanks are placed here for administrative convenience and only apply to those owners and operators of facilities subject to the other subparts

that reference this subpart. The provisions of 40 CFR part 63, subpart A—General Provisions do not apply to this subpart except as noted in the subpart that references this subpart.

§ 63.901 Definitions.

All terms used in this subpart shall have the meaning given to them in the Act and in this section. If a term is defined in both this section and in another subpart that references the use of this subpart, then the definition in this subpart shall take precedence when implementing this subpart.

Closure device means a cap, hatch, lid, plug, seal, valve, or other type of fitting that, when the device is secured in the closed position, prevents or reduces air emissions to the atmosphere by blocking an opening in a fixed roof. Closure devices include devices that are detachable from the cover (e.g., a sampling port cap), manually operated (e.g., a hinged access lid or hatch), or automatically operated (e.g., a spring-loaded pressure relief valve).

Fixed roof means a cover that is mounted on a tank in a stationary position and does not move with

fluctuations in the level of the liquid managed in the tank.

No detectable organic emissions means no escape of organics to the atmosphere as determined using the procedure specified in § 63.905(a) of this subpart.

Regulated-material means the material (e.g. waste, wastewater, off-site material) required to be managed in tanks using air emission controls in accordance with the standards specified in this subpart.

Safety device means a closure device such as a pressure relief valve, frangible disc, fusible plug, or any other type of device which functions exclusively to prevent physical damage or permanent deformation to the tank air emission control equipment by venting gases or vapors directly to the atmosphere during unsafe conditions resulting from an unplanned, accidental, or emergency event. For the purpose of this subpart, a safety device is not used for routine venting of gases or vapors from the vapor headspace underneath the tank cover. A safety device is designed to remain in a closed position during normal operations and open only when

the internal pressure, or another relevant parameter, exceeds the device threshold setting applicable to the air emission control equipment as determined by the owner or operator based on manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials.

Tank means a stationary unit that is constructed primarily of nonearthen materials (such as wood, concrete, steel, fiberglass, or plastic) which provide structural support and is designed to hold an accumulation of liquids or other materials.

§ 63.902 Standards—Tank fixed roof.

(a) This section applies to owners and operators subject to this subpart and controlling air emissions from a tank using a fixed roof.

(b) The tank shall be equipped with a fixed roof designed to meet the following specifications:

(1) The fixed roof and its closure devices shall be designed to form a continuous barrier over the entire surface area of the liquid in the tank. The fixed roof may be a separate cover installed on the tank (e.g., a removable cover mounted on an open-top tank) or may be an integral part of the tank structural design (e.g., a horizontal cylindrical tank equipped with a hatch).

(2) The fixed roof shall be installed in a manner such that there are no visible cracks, holes, gaps, or other open spaces between roof section joints or between the interface of the roof edge and the tank wall.

(3) Each opening in the fixed roof shall be either:

(i) equipped with a closure device designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the opening and the closure device; or

(ii) connected by a closed-vent system that is vented to a control device. The control device shall remove or destroy organics in the vent stream, and shall be operating whenever regulated material is managed in the tank.

(4) The fixed roof and its closure devices shall be made of suitable materials that will minimize exposure of the regulated-material to the atmosphere, to the extent practical, and will maintain the integrity of the equipment throughout its intended service life. Factors to be considered

when selecting the materials for and designing the fixed roof and closure devices shall include: organic vapor permeability, the effects of any contact with the liquid or its vapors managed in the tank; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the tank on which the fixed roof is installed.

(c) Whenever a regulated-material is in the tank, the fixed roof shall be installed with each closure device secured in the closed position except as follows:

(1) Opening of closure devices or removal of the fixed roof is allowed at the following times:

(i) To provide access to the tank for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample the liquid in the tank, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the tank.

(ii) To remove accumulated sludge or other residues from the bottom of tank.

(2) Opening of a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the tank internal pressure in accordance with the tank design specifications. The device shall be designed to operate with no detectable organic emissions when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the tank internal pressure is within the internal pressure operating range determined by the owner or operator based on the tank manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, combustible, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the container internal pressure exceeds the internal pressure operating range for the tank as a result of loading operations or diurnal ambient temperature fluctuations.

(3) Opening of a safety device, as defined in § 63.901 of this subpart, is

allowed at any time conditions require it to do so to avoid an unsafe condition.

(d) The owner or operator shall inspect the air emission control equipment in accordance with the requirements specified in § 63.906(a) of this subpart.

§ 63.903 [Reserved]

§ 63.904 [Reserved]

§ 63.905 Test methods and procedures.

(a) Procedure for determining no detectable organic emissions for the purpose of complying with this subpart.

(1) The test shall be conducted in accordance with the procedures specified in Method 21 of 40 CFR part 60, appendix A. Each potential leak interface (i.e., a location where organic vapor leakage could occur) on the cover and associated closure devices shall be checked. Potential leak interfaces that are associated with covers and closure devices include, but are not limited to: the interface of the cover and its foundation mounting; the periphery of any opening on the cover and its associated closure device; and the sealing seat interface on a spring-loaded pressure-relief valve.

(2) The test shall be performed when the tank contains a material having an organic HAP concentration representative of the range of concentrations for the regulated-materials expected to be managed in the tank. During the test, the cover and closure devices shall be secured in the closed position.

(3) The detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the organic constituents in the regulated-material placed in the tank, not for each individual organic constituent.

(4) The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of 40 CFR part 60, appendix A.

(5) Calibration gases shall be as follows:

(i) Zero air (less than 10 ppmv hydrocarbon in air); and

(ii) A mixture of methane in air at a concentration less than 10,000 ppmv.

(6) The background level shall be determined according to the procedures in Method 21 of 40 CFR part 60 appendix A.

(7) Each potential leak interface shall be checked by traversing the instrument probe around the potential leak interface as close to the interface as

possible, as described in Method 21. In the case when the configuration of the cover or closure device prevents a complete traverse of the interface, all accessible portions of the interface shall be sampled. In the case when the configuration of the closure device prevents any sampling at the interface and the device is equipped with an enclosed extension or horn (e.g., some pressure relief devices), the instrument probe inlet shall be placed at approximately the center of the exhaust area to the atmosphere.

(8) The arithmetic difference between the maximum organic concentration indicated by the instrument and the background level shall be compared with the value of 500 ppmv. If the difference is less than 500 ppmv, then the potential leak interface is determined to operate with no detectable organic emissions.

§ 63.906 Inspection and monitoring requirements.

(a) Owners and operators that use a tank equipped with a fixed roof in accordance with the provisions of § 63.902 of this subpart shall meet the following requirements:

(1) The fixed roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the tank wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(2) The owner or operator shall perform the inspections following installation of the fixed roof and, thereafter, at least once every year.

(3) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (b) of this section.

(4) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 63.907 (a) of this subpart.

(b) The owner or operator shall repair all detected defects as follows:

(1) The owner or operator shall make first efforts at repair of the defect no later than 5 calendar days after detection and repair shall be completed as soon as possible but no later than 45 calendar days after detection except as provided in paragraph (b)(2) of this section.

(2) Repair of a defect may be delayed beyond 45 calendar days if the owner or operator determines that repair of the

defect requires emptying or temporary removal from service of the tank and no alternative tank capacity is available at the site to accept the regulated-material normally managed in the tank. In this case, the owner or operator shall repair the defect the next time the process or unit that is generating the regulated-material managed in the tank stops operation. Repair of the defect shall be completed before the process or unit resumes operation.

(c) The owner or operator shall maintain a record of the defect repair in accordance with the requirements specified in § 63.907(b) of this subpart.

§ 63.907 Recordkeeping requirements.

(a) Each owner or operator shall prepare and maintain a record for each tank that includes the following information:

(1) A tank identification number (or other unique identification description as selected by the owner or operator).

(2) A description of the tank dimensions and the tank design capacity.

(3) The date that each inspection required by § 63.906 of this subpart is performed.

(b) The owner or operator shall record the following information for each defect detected during inspections required by § 63.906 of this subpart: the location of the defect, a description of the defect, the date of detection, and corrective action taken to repair the defect. In the event that repair of the defect is delayed in accordance with the provisions of § 63.907(b)(2) of this section, the owner or operator shall also record the reason for the delay and the date that completion of repair of the defect is expected.

6. Part 63 is amended by adding subpart PP consisting of §§ 63.920 through 63.928 to read as follows:

Subpart PP—National Emission Standards for Containers

Sec.

63.920 Applicability.

63.921 Definitions.

63.922 Standards—Container Level 1 controls.

63.923 Standards—Container Level 2 controls.

63.924 Standards—Container Level 3 controls.

63.925 Test methods and procedures.

63.926 Inspection and monitoring requirements.

63.927 Recordkeeping requirements.

63.928 Reporting requirements.

Subpart PP—National Emission Standards for Containers

§ 63.920 Applicability.

The provisions of this subpart apply to the control of air emissions from containers for which another subpart of 40 CFR parts 60, 61, or 63 references the use of this subpart for such air emission control. These air emission standards for containers are placed here for administrative convenience and only apply to those owners and operators of facilities subject to the other subparts that reference this subpart. The provisions of 40 CFR Part 63, subpart A—General Provisions do not apply to this subpart except as noted in the subpart that references this subpart.

§ 63.921 Definitions.

All terms used in this subpart shall have the meaning given to them in the Act and in this section. If a term is defined in both this section and in another subpart that references the use of this subpart, then the definition in this subpart shall take precedence when implementing this subpart.

Container means a portable unit in which a material can be stored, transported, treated, disposed of, or otherwise handled. Examples of containers include but are not limited to drums, dumpsters, roll-off boxes, bulk cargo containers commonly known as "portable tanks" or "totes," cargo tank trucks, and tank railcars.

Closure device means a cover, cap, hatch, lid, plug, seal, valve, or other type of fitting that prevents or reduces air emissions to the atmosphere by blocking an opening in a container or its cover when the device is secured in the closed position. Closure devices include devices that are detachable from the container (e.g., a drum head, a threaded plug), manually operated (e.g., a hinged dumpster lid, a truck tank hatch), or automatically operated (e.g., a spring loaded pressure relief valve).

Empty container means a container for which either of the following conditions exists, as applicable: the regulated-material is a hazardous waste and the container meets the conditions for an empty container specified in 40 CFR 261.7(b); or all regulated-material has been removed from the container except for any regulated-material that remains on the interior surfaces of the container as clingage or in pools on the container bottom due to irregularities in the container.

No detectable organic emissions means no escape of organics to the atmosphere as determined using the procedure specified in § 63.925(a) of this subpart.

Regulated-material means the material (e.g. waste, wastewater, off-site material) required to be managed in containers using air emission controls in accordance with the standards specified in this subpart.

Safety device means a closure device such as a pressure relief valve, frangible disc, fusible plug, or any other type of device which functions exclusively to prevent physical damage or permanent deformation to a container or its air emission control equipment by venting gases or vapors directly to the atmosphere during unsafe conditions resulting from an unplanned, accidental, or emergency event. For the purpose of this subpart, a safety device is not used for routine venting of gases or vapors from the container such as during filling of the container or to adjust the internal pressure of the container in response to normal daily diurnal ambient temperature fluctuations. A safety device is designed to remain in a closed position during normal operations and open only when the internal pressure, or another relevant parameter, exceeds the device threshold setting applicable to the container and its air emission control equipment as determined by the owner or operator based on manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials.

§ 63.922 Standards—Container Level 1 controls.

(a) This section applies to owners and operators subject to this subpart and required to control air emissions from containers using Container Level 1 controls.

(b) A container using Container Level 1 controls is one of the following:

(1) A container that meets the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as specified in paragraph (f) of this section.

(2) A container equipped with a cover and closure devices that form a continuous barrier over the container openings such that when the cover and closure devices are secured in the closed position there are no visible holes, gaps, or other open spaces into the interior of the container. The cover may be a separate cover installed on the container (e.g., a lid on a drum, a suitably secured tarp on a roll-off box) or may be an integral part of the container structural design (e.g., a bulk

cargo container equipped with a screw-type cap).

(3) An open-top container in which an organic vapor-suppressing barrier is placed on or over the regulated-material in the container such that no regulated-material is exposed to the atmosphere. One example of such a barrier is application of a suitable organic-vapor suppressing foam.

(c) A container used to meet the requirements of either paragraph (b)(2) or (b)(3) of this section shall be equipped with covers and closure devices, as applicable to the container, that are composed of suitable materials to minimize exposure of the regulated-material to the atmosphere and to maintain the equipment integrity for as long as it is in service. Factors to be considered when selecting the materials for and designing the cover and closure devices shall include: organic vapor permeability, the effects of contact with the material or its vapor managed in the container; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for container on which the cover is installed.

(d) Whenever a regulated-material is in a container using Container Level 1 controls, the owner or operator shall install all covers and closure devices for the container, and secure and maintain each closure device in the closed position except as follows:

(1) Opening of a closure device or cover is allowed for the purpose of adding material to the container as follows:

(i) In the case when the container is filled to the intended final level in one continuous operation, the owner or operator shall promptly secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation.

(ii) In the case when discrete quantities or batches of material intermittently are added to the container over a period of time, the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon either: the container being filled to the intended final level; the completion of a batch loading after which no additional material will be added to the container within 15 minutes; the person performing the loading operation leaves the immediate vicinity of the container; or the shutdown of the process generating the material being added to the container, whichever condition occurs first.

(2) Opening of a closure device or cover is allowed for the purpose of

removing material from the container as follows:

(i) For the purpose of meeting the requirements of this section, an empty container as defined in § 63.921 of this subpart may be open to the atmosphere at any time (e.g., covers and closure devices are not required to be secured in the closed position on an empty container).

(ii) In the case when discrete quantities or batches of material are removed from the container but the container does not meet the conditions to be an empty container as defined in § 63.921 of this subpart, the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional material will be removed from the container within 15 minutes, or the person performing the unloading operation leaves the immediate vicinity of the container, whichever condition occurs first.

(3) Opening of a closure device or cover is allowed when access inside the container is needed to perform routine activities other than transfer of regulated-material. Examples of such activities include those times when a worker needs to open a port to measure the depth of or sample the material in the container, or when a worker needs to open a manhole hatch to access equipment inside the container. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable to the container.

(4) Opening of a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the container internal pressure in accordance with the container design specifications. The device shall be designed to operate with no detectable organic emissions when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the container internal pressure is within the internal pressure operating range determined by the owner or operator based on container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive,

reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the container internal pressure exceeds the internal pressure operating range for the container as a result of loading operations or diurnal ambient temperature fluctuations.

(5) Opening of a safety device, as defined in § 63.921 of this subpart, is allowed at any time conditions require it to do so to avoid an unsafe condition.

(e) The owner or operator shall inspect containers using Container Level 1 controls in accordance with the procedures specified in § 63.926(a) of this subpart.

(f) For the purpose of compliance with paragraph (b)(1) of this section, containers shall be used that meet the applicable U.S. DOT regulations on packaging hazardous materials for transportation as follows:

(1) The container meets the applicable requirements specified in 49 CFR part 178—Specifications for Packagings or 49 CFR part 179—Specifications for Tank Cars.

(2) Regulated-material is managed in the container in accordance with the applicable requirements specified in 49 CFR part 107 subpart B—Exemptions; 49 CFR part 172—Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements; 49 CFR part 173—Shippers—General Requirements for Shipments and Packaging; and 49 CFR part 180—Continuing Qualification and Maintenance of Packagings.

(3) For the purpose of complying with this subpart, no exceptions to the 49 CFR part 178 or part 179 regulations are allowed except as provided for in paragraph (f)(4) of this section.

(4) For a lab pack that is managed in accordance with the requirements of 49 CFR part 178 for the purpose of complying with this subpart, an owner or operator may comply with the exceptions for those packagings specified in 49 CFR 173.12(b).

§ 63.923 Standards—Container Level 2 controls.

(a) This section applies to owners and operators subject to this subpart and required to control air emissions from containers using Container Level 2 controls.

(b) A container using Container Level 2 controls is one of the following:

(1) A container that meets the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for

transportation as specified in paragraph (f) of this section.

(2) A container that has been demonstrated to operate with no detectable organic emissions as defined in § 63.921 of this subpart.

(3) A container that has been demonstrated within the preceding 12 months to be vapor-tight by using Method 27 in Appendix A of 40 CFR part 60 in accordance with the procedure specified in § 63.925(b) of this subpart.

(c) Transfer of regulated-material in to or out of a container using Container Level 2 controls shall be conducted in such a manner as to minimize exposure of the regulated-material to the atmosphere, to the extent practical, considering the physical properties of the regulated-material and good engineering and safety practices for handling flammable, ignitable, explosive, or other hazardous materials. Examples of container loading procedures that meet the requirements of this paragraph include using any one of the following: a submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the regulated-material is filled, with subsequent purging of the transfer line before removing it from the container opening.

(d) Whenever a regulated-material is in a container using Container Level 2 controls, the owner or operator shall install all covers and closure devices for the container, and secure and maintain each closure device in the closed position except as follows:

(1) Opening of a closure device or cover is allowed for the purpose of adding material to the container as follows:

(i) In the case when the container is filled to the intended final level in one continuous operation, the owner or operator shall promptly secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation.

(ii) In the case when discrete quantities or batches of material intermittently are added to the container over a period of time, the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon either the container being filled to the intended final level, the completion of a batch loading after which no additional material will be

added to the container within 15 minutes, the person performing the loading operation leaves the immediate vicinity of the container, or the shutdown of the process generating the material being added to the container, whichever condition occurs first.

(2) Opening of a closure device or cover is allowed for the purpose of removing material from the container as follows:

(i) For the purpose of meeting the requirements of this section, an empty container as defined in § 63.921 of this subpart may be open to the atmosphere at any time (e.g., covers and closure devices are not required to be secured in the closed position on an empty container).

(ii) In the case when discrete quantities or batches of material are removed from the container but the container does not meet the conditions to be an empty container as defined in § 63.921 of this subpart, the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional material will be removed from the container within 15 minutes or the person performing the unloading operation leaves the immediate vicinity of the container, whichever condition occurs first.

(3) Opening of a closure device or cover is allowed when access inside the container is needed to perform routine activities other than transfer of regulated-material. Examples of such activities include those times when a worker needs to open a port to measure the depth of or sample the material in the container, or when a worker needs to open a manhole hatch to access equipment inside the container.

Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable to the container.

(4) Opening of a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the container internal pressure in accordance with the container design specifications. The device shall be designed to operate with no detectable organic emissions when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the container internal pressure is within the internal

pressure operating range determined by the owner or operator based on container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, combustible, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the container internal pressure exceeds the internal pressure operating range for the container as a result of loading operations or diurnal ambient temperature fluctuations.

(5) Opening of a safety device, as defined in § 63.921 of this subpart, is allowed at any time conditions require it to do so to avoid an unsafe condition.

(e) The owner or operator shall inspect containers using Container Level 2 controls in accordance with the procedures specified in § 63.926(a) of this subpart.

(f) For the purpose of compliance with paragraph (b)(1) of this section, containers shall be used that meet the applicable U.S. DOT regulations on packaging hazardous materials for transportation as follows:

(1) The container meets the applicable requirements specified in 49 CFR part 178—Specifications for Packagings or 49 CFR part 179—Specifications for Tank Cars.

(2) Regulated-material is managed in the container in accordance with the applicable requirements specified in 49 CFR part 107 subpart B—Exemptions; 49 CFR part 172—Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements; 49 CFR part 173—Shippers—General Requirements for Shipments and Packaging; and 49 CFR part 180—Continuing Qualification and Maintenance of Packagings.

(3) For the purpose of complying with this subpart, no exceptions to the 49 CFR part 178 or part 179 regulations are allowed except as provided for in paragraph (f)(4) of this section.

(4) For a lab pack that is managed in accordance with the requirements of 49 CFR part 178 for the purpose of complying with this subpart, an owner or operator may comply with the exceptions for those packagings specified in 49 CFR 173.12(b).

§ 63.924 Standards—Container Level 3 controls.

(a) This section applies to owners and operators subject to this subpart and required to control air emissions from

containers using Container Level 3 controls.

(b) A container using Container Level 3 controls is one of the following:

(1) A container that is vented directly through a closed-vent system to a control device in accordance with the requirements of paragraphs (c)(2) of this section.

(2) A container that is vented inside an enclosure which is exhausted through a closed-vent system to a control device in accordance with the requirements of paragraphs (c)(1) and (c)(2) of this section.

(c) The owner or operator shall meet the following requirements as applicable to the type of air emission control equipment selected by the owner or operator:

(1) The enclosure shall be designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, Appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of containers through the enclosure by conveyor or other mechanical means; entry of permanent mechanical or electrical equipment; or to direct airflow into the enclosure. The owner or operator shall perform the verification procedure for the enclosure as specified in Section 5.0 to "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" initially when the enclosure is first installed and, thereafter, annually.

(2) The closed-vent system and control device shall be designed and operated in accordance with the requirements of 40 CFR 63.692.

(d) Safety devices, as defined in § 63.921 of this subpart, may be installed and operated as necessary on any container, enclosure, closed-vent system, or control device used to comply with this section.

§ 63.925 Test methods and procedures.

(a) Procedure for determining no detectable organic emissions for the purpose of complying with of this subpart.

(1) The test shall be conducted in accordance with the procedures specified in Method 21 of 40 CFR part 60, appendix A. Each potential leak interface (i.e., a location where organic vapor leakage could occur) on the container, its cover, and associated closure devices, as applicable to the container, shall be checked. Potential leak interfaces that are associated with containers include, but are not limited

to: the interface of the cover rim and the container wall; the periphery of any opening on the container or container cover and its associated closure device; and the sealing seat interface on a spring-loaded pressure-relief valve.

(2) The test shall be performed when the container filled with a material having an organic HAP concentration representative of the range of concentrations for the regulated materials expected to be managed in this type of container. During the test, the container cover and closure devices shall be secured in the closed position.

(3) The detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the organic constituents in the material placed in the container, not for each individual organic constituent.

(4) The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of 40 CFR part 60, appendix A.

(5) Calibration gases shall be as follows:

(i) Zero air (less than 10 ppmv hydrocarbon in air); and

(ii) A mixture of methane in air at a concentration of approximately, but less than 10,000 ppmv.

(6) The background level shall be determined according to the procedures in Method 21 of 40 CFR part 60 appendix A.

(7) Each potential leak interface shall be checked by traversing the instrument probe around the potential leak interface as close to the interface as possible, as described in Method 21. In the case when the configuration of the cover or closure device prevents a complete traverse of the interface, all accessible portions of the interface shall be sampled. In the case when the configuration of the closure device prevents any sampling at the interface and the device is equipped with an enclosed extension or horn (e.g., some pressure relief devices), the instrument probe inlet shall be placed at approximately the center of the exhaust area to the atmosphere.

(8) The arithmetic difference between the maximum organic concentration indicated by the instrument and the background level shall be compared with the value of 500 ppmv. If the difference is less than 500 ppmv, then the potential leak interface is determined to operate with no detectable organic emissions.

(b) Procedure for determining a container to be vapor-tight for the purpose of complying with this subpart.

(1) The test shall be performed in accordance with Method 27 of 40 CFR part 60, appendix A of this chapter.

(2) A pressure measurement device shall be used that has a precision of ± 2.5 mm water and that is capable of measuring above the pressure at which the container is to be tested for vapor tightness.

(3) If the test results determined by Method 27 indicate that the container sustains a pressure change less than or equal to 750 Pascals within 5 minutes after it is pressurized to a minimum of 4,500 Pascals, then the container is determined to be vapor-tight.

§ 63.926 Inspection and monitoring requirements.

(a) Owners and operators of containers using either Container Level 1 or Container Level 2 controls in accordance with the provisions of §§ 63.922 and 63.923 of this subpart, respectively, shall inspect the container and its cover and closure devices as follows:

(1) In the case when a regulated-material already is in the container at the time the owner or operator first accepts possession of the container at the facility site and the container is not emptied (i.e., does not meet the conditions for an empty container) within 24 hours after the container arrives at the facility site, the container and its cover and closure devices shall be visually inspected by the owner or operator to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (a)(3) of this section.

(2) In the case when a container used for managing regulated-material remains at the facility site for a period of 1 year or more, the container and its cover and closure devices shall be visually inspected by the owner or operator initially and thereafter, at least once every 12 months, to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (a)(3) of this section.

(3) When a defect is detected for the container, cover, or closure devices, the owner or operator shall make first

efforts at repair of the defect no later than 24 hours after detection and repair shall be completed as soon as possible but no later than 5 calendar days after detection. If repair of a defect cannot be completed within 5 calendar days, then the regulated-material shall be removed from the container and the container shall not be used to manage regulated-material until the defect is repaired.

(b) Owners and operators using Container Level 3 controls in accordance with the provisions of § 63.924 of this subpart shall inspect and monitor the closed-vent systems and control devices in accordance with the requirements of § 63.693 in 40 CFR Part 63, subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.

§ 63.927 Recordkeeping requirements.

(a) Owners and operators that use Container Level 3 controls in accordance with the provisions of § 63.924 of this subpart shall prepare and maintain the following records:

(1) Records for the most recent set of calculations and measurements performed by the owner or operator to verify that the enclosure meets the criteria of a permanent total enclosure as specified in "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, Appendix B.

(2) Records required for the closed-vent system and control device in accordance with the requirements of § 63.693 in 40 CFR Part 63, subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.

§ 63.928 Reporting requirements.

(a) For owners and operators that use Container Level 3 controls in accordance with the provisions of § 63.924 of this subpart, the owner or operator shall prepare and submit to the Administrator the reports required for closed-vent systems and control devices in accordance with the requirements of § 63.693 in 40 CFR Part 63, subpart DD—National Emission Standards for Hazardous Air Pollutant Standards from Off-Site Waste and Recovery Operations.

7. Part 63 is amended by adding subpart QQ consisting of §§ 63.940 through 63.948 to read as follows:

Subpart QQ—National Emission Standards for Surface Impoundments

Sec.

63.940 Applicability.

63.941 Definitions.

63.942 Standards—Surface impoundment floating membrane cover.

63.943 Standards—Surface impoundment cover vented to control device.

63.944 [Reserved]

63.945 Test methods and procedures.

63.946 Inspection and monitoring requirements.

63.947 Recordkeeping requirements.

63.948 Reporting requirements.

Subpart QQ—National Emission Standards for Surface Impoundments

§ 63.940 Applicability.

The provisions of this subpart apply to the control of air emissions from surface impoundments for which another subpart of 40 CFR parts 60, 61, or 63 references the use of this subpart for such air emission control. These air emission standards for surface impoundments are placed here for administrative convenience and only apply to those owners and operators of facilities subject to the other subparts that reference this subpart. The provisions of 40 CFR part 63, subpart AA—General Provisions do not apply to this subpart except as noted in the subpart that references this subpart.

§ 63.941 Definitions.

All terms used in this subpart shall have the meaning given to them in the Act and in this section. If a term is defined in both this section and in another subpart that references the use of this subpart, then the definition in this subpart shall take precedence when implementing this subpart.

Closure device means a cap, hatch, lid, plug, seal, valve, or other type of fitting that prevents or reduces air emissions to the atmosphere by blocking an opening in a surface impoundment cover when the device is secured in the closed position. Closure devices include devices that are detachable from the cover (e.g., a sampling port cap), manually operated (e.g., a hinged access lid or hatch), or automatically operated (e.g., a spring loaded pressure relief valve).

Cover means an air-supported structure, rigid roof, or other device that prevents or reduces air pollutant emissions to the atmosphere by forming a continuous barrier over the material managed in a surface impoundment. A cover may have openings (such as access hatches) that are necessary for operation, inspection, maintenance, and repair of equipment in the surface impoundment on which the cover is used.

No detectable organic emissions means no escape of organics to the atmosphere as determined using the procedure specified in § 63.944(a) of this subpart.

Regulated-material means the material (e.g. waste, wastewater, off-site material) required to be managed in containers using air emission controls in accordance with the standards specified in this subpart.

Safety device means a closure device such as a pressure relief valve, frangible disc, fusible plug, or any other type of device which functions exclusively to prevent physical damage or permanent deformation to the surface impoundment air emission control equipment by venting gases or vapors directly to the atmosphere during unsafe conditions resulting from an unplanned, accidental, or emergency event. For the purpose of this subpart, a safety device is not used for routine venting of gases or vapors from the vapor headspace underneath the surface impoundment cover such as during filling of the surface impoundment or to adjust the pressure in this vapor headspace in response to normal daily diurnal ambient temperature fluctuations. A safety device is designed to remain in a closed position during normal operations and open only when the internal pressure, or another relevant parameter, exceeds the device threshold setting applicable to the air emission control equipment as determined by the owner or operator based on manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials.

Surface impoundment means a unit that is a natural topographical depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquids. Examples of surface impoundments include holding, storage, settling, and aeration pits, ponds, and lagoons.

§ 63.942 Standards—Surface impoundment floating membrane cover.

(a) This section applies to owners and operators subject to this subpart and controlling air emissions from a surface impoundment using a floating membrane cover.

(b) The surface impoundment shall be equipped with a floating membrane cover designed to meet the following specifications:

(1) The floating membrane cover shall be designed to float on the liquid surface during normal operations, and form a continuous barrier over the entire surface area of the liquid.

(2) The cover shall be fabricated from a synthetic membrane material that is either:

(i) High density polyethylene (HDPE) with a thickness no less than 2.5 millimeters (mm); or

(ii) A material or a composite of different materials determined to have both organic permeability properties that are equivalent to those of the material listed in paragraph (b)(2)(i) of this section; and chemical and physical properties that maintain the material integrity for the intended service life of the material.

(3) The cover shall be installed in a manner such that there are no visible cracks, holes, gaps, or other open spaces between cover section seams or between the interface of the cover edge and its foundation mountings.

(4) Except as provided for in paragraph (b)(5) of this section, each opening in the floating membrane cover shall be equipped with a closure device designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device.

(5) The floating membrane cover may be equipped with one or more emergency cover drains for removal of stormwater. Each emergency cover drain shall be equipped with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening or a flexible fabric sleeve seal.

(6) The closure devices shall be made of suitable materials that will minimize exposure of the regulated-material to the atmosphere, to the extent practical, and will maintain the integrity of the equipment throughout its intended service life. Factors to be considered when selecting the materials for and designing the cover and closure devices shall include: organic vapor permeability; the effects of any contact with the liquid and its vapor managed in the surface impoundment; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the surface impoundment on which the floating membrane cover is installed.

(c) Whenever a regulated-material is in the surface impoundment, the floating membrane cover shall float on the liquid and each closure device shall be secured in the closed position except as follows:

(1) Opening of closure devices or removal of the cover is allowed at the following times:

(i) To provide access to the surface impoundment for performing routine

inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample the liquid in the surface impoundment, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator shall promptly replace the cover and secure the closure device in the closed position, as applicable.

(ii) To remove accumulated sludge or other residues from the bottom of surface impoundment.

(2) Opening of a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the pressure in the vapor headspace underneath the cover in accordance with the cover design specifications. The device shall be designed to operate with no detectable organic emissions as defined in § 63.941 of this subpart when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the cover vapor headspace pressure is within the pressure operating range determined by the owner or operator based on the cover manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials.

(3) Opening of a safety device, as defined in § 63.941 of this subpart, is allowed at any time conditions require it to do so to avoid an unsafe condition.

(d) The owner or operator shall inspect the floating membrane cover in accordance with the procedures specified in § 63.946(a) of this subpart.

§ 63.943 Standards—Surface impoundment vented to control device.

(a) This section applies to owners and operators subject to this subpart and controlling air emissions from a surface impoundment using a cover and venting the vapor headspace underneath the cover through a closed-vent system to a control device.

(b) The surface impoundment shall be covered by a cover and vented directly through a closed-vent system to a control device in accordance with the following requirements:

(1) The cover and its closure devices shall be designed to form a continuous

barrier over the entire surface area of the liquid in the surface impoundment.

(2) Each opening in the cover not vented to the control device shall be equipped with a closure device. If the pressure in the vapor headspace underneath the cover is less than atmospheric pressure when the control device is operating, the closure devices shall be designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device. If the pressure in the vapor headspace underneath the cover is equal to or greater than atmospheric pressure when the control device is operating, the closure device shall be designed to operate with no detectable organic emissions using the procedure specified in § 63.945(a) of this subpart.

(3) The cover and its closure devices shall be made of suitable materials that will minimize exposure of the regulated-material to the atmosphere, to the extent practical, and will maintain the integrity of the equipment throughout its intended service life. Factors to be considered when selecting the materials for and designing the cover and closure devices shall include: organic vapor permeability; the effects of any contact with the liquid or its vapors managed in the surface impoundment; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the surface impoundment on which the cover is installed.

(4) The closed-vent system and control device shall be designed and operated in accordance with the requirements of § 63.693 in 40 CFR part 63, subpart DD—National Emission Standards for Hazardous Air Pollutant Standards from Off-Site Waste and Recovery Operations.

(c) Whenever a regulated-material is in the surface impoundment, the cover shall be installed with each closure device secured in the closed position and the vapor headspace underneath the cover vented to the control device except as follows:

(1) Venting to the control device is not required, and opening of closure devices or removal of the cover is allowed at the following times:

(i) To provide access to the surface impoundment for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample liquid in the surface impoundment, or when a worker needs to open a hatch to

maintain or repair equipment.

Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the surface impoundment.

(ii) To remove accumulated sludge or other residues from the bottom of surface impoundment.

(2) Opening of a safety device, as defined in § 63.941 of this subpart, is allowed at any time conditions require it to do so to avoid an unsafe condition.

(d) The owner or operator shall inspect and monitor the air emission control equipment in accordance with the procedures specified in § 63.946(b) of this subpart.

§ 63.944 [Reserved]

§ 63.945 Test methods and procedures.

(a) Procedure for determining no detectable organic emissions for the purpose of complying with this subpart.

(1) The test shall be conducted in accordance with the procedures specified in Method 21 of 40 CFR part 60, appendix A. Each potential leak interface (i.e., a location where organic vapor leakage could occur) on the cover and associated closure devices shall be checked. Potential leak interfaces that are associated with covers and closure devices include, but are not limited to: the interface of the cover and its foundation mounting; the periphery of any opening on the cover and its associated closure device; and the sealing seat interface on a spring-loaded pressure-relief valve.

(2) The test shall be performed when the surface impoundment contains a material having an organic HAP concentration representative of the range of concentrations for the regulated-materials expected to be managed in the surface impoundment. During the test, the cover and closure devices shall be secured in the closed position.

(3) The detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the organic constituents in the regulated-material placed in the surface impoundment, not for each individual organic constituent.

(4) The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of 40 CFR part 60, appendix A.

(5) Calibration gases shall be as follows:

(i) Zero air (less than 10 ppmv hydrocarbon in air); and

(ii) A mixture of methane in air at a concentration of approximately, but less than 10,000 ppmv.

(6) The background level shall be determined according to the procedures in Method 21 of 40 CFR part 60, appendix A.

(7) Each potential leak interface shall be checked by traversing the instrument probe around the potential leak interface as close to the interface as possible, as described in Method 21. In the case when the configuration of the cover or closure device prevents a complete traverse of the interface, all accessible portions of the interface shall be sampled. In the case when the configuration of the closure device prevents any sampling at the interface and the device is equipped with an enclosed extension or horn (e.g., some pressure relief devices), the instrument probe inlet shall be placed at approximately the center of the exhaust area to the atmosphere.

(8) The arithmetic difference between the maximum organic concentration indicated by the instrument and the background level shall be compared with the value of 500 ppmv. If the difference is less than 500 ppmv, then the potential leak interface is determined to operate with no detectable organic emissions.

§ 63.946 Inspection and monitoring requirements.

(a) Owners and operators that use a surface impoundment equipped with a floating membrane cover in accordance with the provisions of § 63.942 of this subpart shall meet the following requirements:

(1) The floating membrane cover and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the cover section seams or between the interface of the cover edge and its foundation mountings; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(2) The owner or operator shall perform the inspections following installation of the floating membrane cover and, thereafter, at least once every year.

(3) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (c) of this section.

(4) The owner or operator shall maintain a record of the inspection in accordance with the requirements

specified in § 63.947(a)(2) of this subpart.

(b) Owners and operators that use a surface impoundment equipped with a cover and vented through a closed-vent system to a control device in accordance with the provisions of § 63.943 of this subpart shall inspect the air emission control equipment as follows:

(1) The owner or operator shall visually inspect the cover in accordance with the following requirements:

(i) The cover and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the interface of the roof edge and its foundation mountings; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(ii) The owner or operator shall perform the inspections following installation of the cover and, thereafter, at least once every year.

(iii) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (c) of this section.

(iv) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 63.947(a)(2) of this subpart.

(2) The owner or operator shall inspect and monitor the closed-vent system and the control device in accordance with the requirements specified in § 63.693 in 40 CFR part 63 subpart DD—National Emission Standards for Hazardous Air Pollutant Standards from Off-Site Waste and Recovery Operations.

(c) The owner or operator shall repair all detected defects as follows:

(1) The owner or operator shall make first efforts at repair of the defect no later than 5 calendar days after detection and repair shall be completed as soon as possible but no later than 45 calendar days after detection except as provided in paragraph (c)(2) of this section.

(2) Repair of a defect may be delayed beyond 45 calendar days if the owner or operator determines that repair of the defect requires emptying or temporary removal from service of the surface impoundment and no alternative surface impoundment or tank capacity is available at the site to accept the regulated-material normally managed in the surface impoundment. In this case, the owner or operator shall repair the defect at the next time the process or

unit that is generating the regulated-material managed in the surface impoundment stops operation. Repair of the defect shall be completed before the process or unit resumes operation.

(3) The owner or operator shall maintain a record of the defect repair in accordance with the requirements specified in § 63.947 of this subpart.

§ 63.947 Recordkeeping requirements.

(a) Each owner or operator shall prepare and maintain the following records:

(1) Documentation describing the floating membrane cover or cover design, as applicable to the surface impoundment.

(2) A record for each inspection required by § 63.946 of this subpart that includes the following information: a surface impoundment identification number (or other unique identification description as selected by the owner or operator) and the date of inspection.

(3) The owner or operator shall record for each defect detected during inspections required by § 63.946 of this subpart the following information: the location of the defect, a description of the defect, the date of detection, and corrective action taken to repair the defect. In the event that repair of the defect is delayed in accordance with the provisions of § 63.946(c)(2) of this section, the owner or operator shall also record the reason for the delay and the date that completion of repair of the defect is expected.

(b) Owners and operators that use a surface impoundment equipped with a fixed-roof and vented through a closed-vent system to a control device in accordance with the provisions of § 63.943 of this subpart shall prepare and maintain the records required for the closed-vent system and control device in accordance with the requirements of § 63.693 in 40 CFR part 63, subpart DD—National Emission Standards for Hazardous Air Pollutant Standards from Off-Site Waste and Recovery Operations.

§ 63.948 Reporting requirements.

Owners and operators that use a surface impoundment equipped with a fixed-roof and vented through a closed-vent system to a control device in accordance with the provisions of § 63.943 of this subpart shall prepare and submit to the Administrator the reports required for closed-vent systems and control devices in accordance with the requirements of § 63.693 in 40 CFR part 63, subpart DD—National Emission Standards for Hazardous Air Pollutant Standards from Off-Site Waste and Recovery Operations.

8. Part 63 is amended by adding subpart RR consisting of §§ 63.960 through 63.966 to read as follows:

Subpart RR—National Emission Standards for Individual Drain Systems

Sec.

63.960 Applicability.

63.961 Definitions.

63.962 Standards.

63.963 [Reserved]

63.964 Inspection and monitoring requirements.

63.965 Recordkeeping requirements.

63.966 Reporting requirements.

Subpart RR—National Emission Standards for Individual Drain Systems

§ 63.960 Applicability.

(a) The provisions of this subpart apply to the control of air emissions from individual drain systems for which another subpart of 40 CFR parts 60, 61, or 63 references the use of this subpart for such air emission control. These air emission standards for individual drain systems are placed here for administrative convenience and only apply to those owners and operators of facilities subject to the other subparts that reference this subpart. The provisions of 40 CFR part 63, subpart A—General Provisions do not apply to this subpart except as noted in the subpart that references this subpart.

§ 63.961 Definitions.

All terms used in this subpart shall have the meaning given to them in the Act and in this section. If a term is defined in both this section and in another subpart that references the use of this subpart, then the definition in this subpart shall take precedence when implementing this subpart.

Closure device means a cap, cover, hatch, lid, plug, seal, valve, or other type of fitting that, when the device is secured in the closed position, prevents or reduces air emissions to the atmosphere by blocking an opening to the individual drain system. Closure devices include devices that are detachable (e.g., a plug or manhole cover), manually operated (e.g., a hinged access lid or hatch), or automatically operated (e.g., a spring-loaded pressure relief valve).

Hard-piping means pipe or tubing that is manufactured and properly installed in accordance with relevant standards (e.g., ANSI B31-3) and good engineering practices.

Individual drain system means a stationary system used to convey wastewater streams or residuals to a waste management unit or to discharge or disposal. The term includes hard-piping, all drains and junction boxes, together with their associated sewer

lines and other junction boxes (e.g., manholes, sumps, and lift stations) conveying wastewater streams or residuals. For the purpose of this subpart, an individual drain system is not a drain and collection system that is designed and operated for the sole purpose of collecting rainfall runoff (e.g., stormwater sewer system) and is segregated from all other individual drain systems.

Junction box means a sump, manhole, or access point to a sewer line or a lift station.

Sewer line means a lateral, trunk line, branch line, or other conduit used to convey wastewater to a downstream waste management unit. Sewer lines include pipes, grates, and trenches.

Waste management unit means the equipment, structure, or device used to convey, store, treat, or dispose of wastewater streams or residuals. Examples of waste management units include: wastewater tanks, surface impoundments, individual drain systems, and biological wastewater treatment units. Examples of equipment that may be waste management units include containers, air flotation units, oil-water separators or organic-water separators, or organic removal devices such as decanters, strippers, or thin-film evaporation units.

Water seal means a seal pot, p-leg trap, or other type of trap filled with water (e.g., flooded sewers that maintain liquid levels adequate to prevent air flow through the system) that creates a liquid barrier between the sewer line and the atmosphere. The liquid level of the seal must be maintained in the vertical leg of a drain in order to be considered a water seal.

§ 63.962 Standards.

(a) The owner or operator subject to this subpart shall control air emissions from the individual drain system using one or a combination of the following:

(1) Covers, water seals, and other air emission control equipment as specified in paragraph (b) of this section.

(2) Hard-piping.

(3) Venting of the individual drain system through a closed vent system to a control device in accordance with the following requirements:

(i) The individual drain system is designed and operated such that an internal pressure in the vapor headspace in the system is maintained at a level less than atmospheric pressure when the control device is operating, and

(ii) The closed vent system and control device are designed and operated in accordance with the requirements of § 63.693 in 40 CFR part 63, subpart DD—National Emission

Standards for Hazardous Air Pollutant Standards from Off-Site Waste and Recovery Operations.

(b) Owners and operators controlling air emissions from an individual drain system in accordance with paragraph (a)(1) of this section shall meet the following requirements:

(1) The individual drain system shall be designed to segregate the organic vapors from wastewater managed in the controlled individual drain system from entering any other individual drain system that is not controlled for air emissions in accordance with the standards specified in this subpart.

(2) *Drain control requirements.* Each drain shall be equipped with either a water seal or a closure device in accordance with the following requirements:

(i) When a water seal is used, the water seal shall be designed such that either:

(A) The outlet to the pipe discharging the wastewater extends below the liquid surface in the water seal of the drain; or

(B) A flexible shield or other device is installed which restricts wind motion across the open space between the outlet of the pipe discharging the wastewater and the drain.

(ii) When a closure device is used (e.g., securing a cap or plug on a drain that is not receiving wastewater), the closure device shall be designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the drain opening and the closure device.

(3) *Junction box control requirements.* Each junction box shall be equipped with controls as follows:

(i) The junction box shall be equipped with a closure device (e.g., manhole cover, access hatch) that is designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the junction box opening and the closure device.

(ii) If the junction box is vented, the junction box shall be vented in accordance with the following requirements:

(A) The junction box shall be vented through a closed vent system to a control device except as provided for in paragraph (b)(3)(ii)(B) of this section. The closed vent system and control device shall be designed and operated in accordance with the standards specified in § 63.693 in 40 CFR part 63, subpart DD—National Emission Standards for Hazardous Air

Pollutant Standards from Off-Site Waste and Recovery Operations.

(B) As an alternative to paragraph (b)(3)(ii)(A) of this section, the owner or operator may vent the junction box directly to the atmosphere when all of the following conditions are met:

(1) The junction box is filled and emptied by gravity flow (i.e., there is no pump) or is operated with no more than slight fluctuations in the liquid level. Large changes in the size of the junction box vapor headspace created by using a pump to repeatedly empty and then refill the junction box do not meet this condition.

(2) The vent pipe installed on the junction box shall be at least 90 centimeters in length and no greater than 10.2 centimeter in diameter.

(3) Water seals are installed at the liquid entrance(s) to or exit from the junction box to restrict ventilation in the individual drain system and between components in the individual drain system. The owner or operator shall demonstrate (e.g., by visual inspection or smoke test) upon request by the Administrator that the junction box water seal is properly designed and restricts ventilation.

(4) *Sewer line control requirements.* Each sewer line shall not be open to the atmosphere and shall be covered or closed in a manner such that there are no visible cracks, holes, gaps, or other open spaces in the sewer line joints, seals, or other emission interfaces.

(5) *Operating requirements.* The owner or operator shall operate the air emission controls required by paragraphs (b)(2) through (b)(4) of this section in accordance with the following requirements:

(i) Each closure device shall be maintained in a closed position whenever wastewater is in the individual drain system except when it is necessary to remove or open the closure device for sampling or removing material in the individual drain system, or for equipment inspection, maintenance, or repair.

(ii) Each drain equipped with a water seal and open to the atmosphere shall be operated to ensure that the liquid in the water seal is maintained at the appropriate level. Examples of acceptable means for complying with this provision include but are not limited to using a flow-monitoring device indicating positive flow from a main to a branch water line supplying a trap; continuously dripping water into the trap using a hose; or regular visual observations.

(iii) Each closed-vent system and the control device used to comply with paragraph (b)(3)(ii)(A) of this section

shall be operated in accordance with the standards specified in 40 CFR 63.693.

§ 63.963 [Reserved].

§ 63.964 Inspection and monitoring requirements.

(a) The owner or operator shall inspect the individual drain system in accordance with the following requirements:

(1) The individual drain system shall be visually inspected by the owner or operator as follows to check for defects that could result in air emissions to the atmosphere.

(i) The owner or operator shall visually inspect each drain as follows:

(A) In the case when the drain is using a water seal to control air emissions, the owner or operator shall verify appropriate liquid levels are being maintained and identify any other defects that could reduce water seal control effectiveness.

(B) In the case when the drain is using a closure device to control air emissions, the owner or operator shall visually inspect each drain to verify that the closure device is in place and there are no defects. Defects include, but are not limited to, visible cracks, holes, or gaps in the closure devices; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing plugs, caps, or other closure devices.

(ii) The owner or operator shall visually inspect each junction box to verify that closure devices are in place and there are no defects. Defects include, but are not limited to, visible cracks, holes, or gaps in the closure devices; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(iii) The owner or operator shall visually inspect the unburied portion of each sewer line to verify that all closure devices are in place and there are no defects. Defects include, but are not limited to, visible cracks, holes, gaps, or other open spaces in the sewer line joints, seals, or other emission interfaces.

(iv) The owner or operator shall perform the inspections initially at the time of installation of the water seals and closure devices for the individual drain system and, thereafter, at least once every year.

(v) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (b) of this section.

(vi) The owner or operator shall maintain a record of the inspection in

accordance with the requirements specified in § 63.965(a) of this subpart.

(2) The owner or operator shall inspect and monitor the closed-vent system and the control device in accordance with the requirements specified in § 63.693 in 40 CFR 63 subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.

(b) The owner or operator shall repair all detected defects as follows:

(1) The owner or operator shall make first efforts at repair of the defect no later than 5 calendar days after detection and repair shall be completed as soon as possible but no later than 15 calendar days after detection except as provided in paragraph (b)(2) of this section.

(2) Repair of a defect may be delayed beyond 15 calendar days if the owner or operator determines that repair of the defect requires emptying or temporary removal from service of the individual drain system and no alternative capacity is available at the facility site to accept the wastewater normally managed in the individual drain system. In this case, the owner or operator shall repair the defect at the next time the process or unit that is generating the wastewater managed in the individual drain system stops operation. Repair of the defect shall be completed before the process or unit resumes operation.

(3) The owner or operator shall maintain a record of the defect repair in accordance with the requirements specified in § 63.965(a)(3) of this subpart.

§ 63.965 Recordkeeping requirements.

(a) Each owner or operator complying with § 63.962(a)(1) of this subpart shall prepare and maintain the following records:

(1) A written site-specific individual drain system inspection plan that includes a drawing or schematic of the individual drain system and identifies each drain, junction box, and sewer line location.

(2) A record of the date that each inspection required by § 63.964(a) of this subpart is performed.

(3) When applicable, a record for each defect detected during inspections required by § 63.964(a) of this subpart that includes the following information: the location of the defect, a description of the defect, the date of detection, the corrective action taken to repair the defect, and the date that the corrective action was completed. In the event that repair of the defect is delayed in accordance with the provisions of § 63.964(b)(2) of this section, the owner

or operator shall also record the reason for the delay and the date that completion of repair of the defect is expected.

(b) Owners and operators that use a closed-vent system and a control device in accordance with the provisions of § 63.962(a)(3) or § 63.692(b)(3)(ii)(A) of this subpart shall prepare and maintain the records required for the closed-vent system and control device in accordance with the requirements of § 63.693 in 40 CFR part 63, subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.

§ 63.966 Reporting requirements.

Owners and operators that use a closed-vent system and a control device in accordance with the provisions of § 63.962(a)(3) or § 63.962(b)(3)(ii)(A) of this subpart shall prepare and submit to the Administrator the reports required for closed-vent systems and control devices in accordance with the requirements of § 63.693 in 40 CFR part 63, subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.

9. Part 63 is amended by adding subpart VV consisting of §§ 63.1040 through 63.1049 to read as follows:

Subpart VV—National Emission Standards for Oil-Water Separators and Organic-Water Separators

Sec.

- 63.1040 Applicability.
- 63.1041 Definitions.
- 63.1042 Standards—Separator fixed roof.
- 63.1043 Standards—Separator floating roof.
- 63.1044 Standards—Separator vented to control device.
- 63.1045 [Reserved]
- 63.1046 Test methods and procedures.
- 63.1047 Inspection and monitoring requirements.
- 63.1048 Recordkeeping requirements.
- 63.1049 Reporting requirements.

Subpart VV—National Emission Standards for Oil-Water Separators and Organic-Water Separators

63.1040 Applicability.

The provisions of this subpart apply to the control of air emissions from oil-water separators and organic-water separators for which another subpart of 40 CFR parts 60, 61, or 63 references the use of this subpart for such air emission control. These air emission standards for oil-water separators and organic-water separators are placed here for administrative convenience and only apply to those owners and operators of facilities subject to the other subparts that reference this subpart. The provisions of 40 CFR part 63, subpart

A—General Provisions do not apply to this subpart except as noted in the subpart that references this subpart.

§ 63.1041 Definitions.

All terms used in this subpart shall have the meaning given to them in the Act and in this section. If a term is defined in both this section and in another subpart that references the use of this subpart, then the definition in this subpart shall take precedence when implementing this subpart.

Closure device means a cap, hatch, lid, plug, seal, valve, or other type of fitting that, when the device is secured in the closed position, prevents or reduces air emissions to the atmosphere by blocking an opening in a fixed roof or floating roof. Closure devices include devices that are detachable from the cover (e.g., a sampling port cap), manually operated (e.g., a hinged access lid or hatch), or automatically operated (e.g., a spring-loaded pressure relief valve).

Continuous seal means a seal that forms a continuous closure that completely covers the space between the edge of the floating roof and the wall of a separator. A continuous seal may be constructed of fastened segments so as to form a continuous seal.

Fixed roof means a cover that is mounted on a separator in a stationary position and does not move with fluctuations in the level of the liquid managed in the separator.

Floating roof means a pontoon-type or double-deck type cover that rests upon and is supported by the liquid managed in a separator.

Liquid-mounted seal means a foam- or liquid-filled continuous seal that is mounted between the wall of the separator and the floating roof, and the seal is in contact with the liquid in a separator.

Oil-water separator means a separator as defined for this subpart that is used to separate oil from water.

Organic-water separator means a separator as defined for this subpart that is used to separate organics from water.

Metallic shoe seal means a continuous seal that is constructed of metal sheets which are held vertically against the wall of the separator by springs, weighted levers, or other mechanisms and is connected to the floating roof by braces or other means. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

No detectable organic emissions means no escape of organics to the atmosphere as determined using the procedure specified in § 63.1046(a) of this subpart.

Regulated-material means the material (e.g. waste, wastewater, off-site material) required to be managed in separators using air emission controls in accordance with the standards specified in this subpart.

Safety device means a closure device such as a pressure relief valve, frangible disc, fusible plug, or any other type of device which functions exclusively to prevent physical damage or permanent deformation to the separator air emission control equipment by venting gases or vapors directly to the atmosphere during unsafe conditions resulting from an unplanned, accidental, or emergency event. For the purpose of this subpart, a safety device is not used for routine venting of gases or vapors from the vapor headspace underneath the separator cover. A safety device is designed to remain in a closed position during normal operations and open only when the internal pressure, or another relevant parameter, exceeds the device threshold setting applicable to the air emission control equipment as determined by the owner or operator based on manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials.

Separator means a waste management unit, generally a tank, that is used to separate oil or organics from water. A separator consists of not only the separation unit but also the forebay and other separator basins, skimmers, weirs, grit chambers, sludge hoppers, and bar screens that are located directly after the individual drain system and prior to any additional treatment units such as an air flotation unit clarifier or biological treatment unit. Examples of a separator include an API separator, parallel-plate interceptor, and corrugated-plate interceptor with the associated ancillary equipment.

§ 63.1042 Standards—Separator fixed roof.

(a) This section applies to owners and operators subject to this subpart and controlling air emissions from an oil-water separator or organic-water separator using a fixed roof.

(b) The separator shall be equipped with a fixed roof designed to meet the following specifications:

(1) The fixed roof and its closure devices shall be designed to form a continuous barrier over the entire surface area of the liquid in the separator.

(2) The fixed roof shall be installed in a manner such that there are no visible

cracks, holes, gaps, or other open spaces between roof section joints or between the interface of the roof edge and the separator wall.

(3) Each opening in the fixed roof shall be equipped with a closure device designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the opening and the closure device.

(4) The fixed roof and its closure devices shall be made of suitable materials that will minimize exposure of the regulated-material to the atmosphere, to the extent practical, and will maintain the integrity of the equipment throughout its intended service life. Factors to be considered when selecting the materials for and designing the fixed roof and closure devices shall include: organic vapor permeability; the effects of any contact with the liquid and its vapors managed in the separator; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the separator on which the fixed roof is installed.

(c) Whenever a regulated-material is in the separator, the fixed roof shall be installed with each closure device secured in the closed position except as follows:

(1) Opening of closure devices or removal of the fixed roof is allowed at the following times:

(i) To provide access to the separator for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample the liquid in the separator, or when a worker needs to open a hatch to maintain or repair equipment.

Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the separator.

(ii) To remove accumulated sludge or other residues from the bottom of separator.

(2) Opening of a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the pressure in vapor headspace underneath the fixed roof in accordance with the separator design specifications. The device shall be designed to operate with no detectable organic emissions, as determined using the procedure specified in § 63.1046(a) of this subpart, when the device is

secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the pressure in the vapor headspace underneath the fixed roof is within the pressure operating range determined by the owner or operator based on the cover manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials.

(3) Opening of a safety device, as defined in § 63.1041 of this subpart, is allowed at any time conditions require it to do so to avoid an unsafe condition.

(d) The owner or operator shall inspect the fixed roof and any closure devices in accordance with the requirements specified in § 63.1047(a) of this subpart.

§ 63.1043 Standards—Separator floating roof.

(a) This section applies to owners and operators subject to this subpart and controlling air emissions from an oil-water separator or organic-water separator using a floating roof.

(b) The separator shall be equipped with a floating roof designed to meet the following specifications:

(1) The floating roof shall be designed to float on the liquid surface during normal operations.

(2) The floating roof shall be equipped with two continuous seals, one above the other, between the wall of the separator and the roof edge. The lower seal is referred to as the primary seal, and the upper seal is referred to as the secondary seal.

(i) The primary seal shall be a liquid-mounted seal or a metallic shoe seal, as defined in § 63.1041 of this subpart. The total area of the gaps between the separator wall and the primary seal shall not exceed 67 square centimeters (cm²) per meter of separator wall perimeter, and the width of any portion of these gaps shall not exceed 3.8 centimeters (cm).

(ii) The secondary seal shall be mounted above the primary seal and cover the annular space between the floating roof and the wall of the separator. The total area of the gaps between the separator wall and the secondary seal shall not exceed 6.7 square centimeters (cm²) per meter of separator wall perimeter, and the width of any portion of these gaps shall not exceed 1.3 centimeters (cm).

(3) Except as provided for in paragraph (b)(4) of this section, each opening in the floating roof shall be

equipped with a closure device designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device.

(4) The floating roof may be equipped with one or more emergency roof drains for removal of stormwater. Each emergency roof drain shall be equipped with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening or a flexible fabric sleeve seal.

(c) Whenever a regulated-material is in the separator, the floating roof shall float on the liquid (i.e., off the roof supports) and each closure device shall be secured in the closed position except as follows:

(1) Opening of closure devices is allowed at the following times:

(i) To provide access to the separator for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample the liquid in the separator, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position.

(ii) To remove accumulated sludge or other residues from the bottom of separator.

(2) Opening of a safety device, as defined in § 63.1041 of this subpart, is allowed at any time conditions require it to do so to avoid an unsafe condition.

(d) The owner or operator shall inspect the floating roof in accordance with the procedures specified in § 63.1047(b) of this subpart.

§ 63.1044 Standards—Separator vented to control device.

(a) This section applies to owners and operators controlling air emissions from an oil-water or organic-water separator using a fixed roof and venting the vapor headspace underneath the fixed roof through a closed-vent system to a control device.

(b) The separator shall be covered by a fixed roof and vented directly through a closed-vent system to a control device in accordance with the following requirements:

(1) The fixed roof and its closure devices shall be designed to form a continuous barrier over the entire surface area of the liquid in the separator.

(2) Each opening in the fixed roof not vented to the control device shall be equipped with a closure device. If the pressure in the vapor headspace underneath the fixed roof is less than atmospheric pressure when the control device is operating, the closure devices shall be designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device. If the pressure in the vapor headspace underneath the fixed roof is equal to or greater than atmospheric pressure when the control device is operating, the closure device shall be designed to operate with no detectable organic emissions, as determined using the procedure specified in § 63.1046(a) of this subpart.

(3) The fixed roof and its closure devices shall be made of suitable materials that will minimize exposure of the regulated-material to the atmosphere, to the extent practical, and will maintain the integrity of the equipment throughout its intended service life. Factors to be considered when selecting the materials for and designing the fixed roof and closure devices shall include: organic vapor permeability; the effects of any contact with the liquid or its vapors managed in the separator; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the separator on which the fixed roof is installed.

(4) The closed-vent system and control device shall be designed and operated in accordance with the requirements of § 63.693 in 40 CFR part 63, subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.

(c) Whenever a regulated-material is in the separator, the fixed roof shall be installed with each closure device secured in the closed position and the vapor headspace underneath the fixed roof vented to the control device except as follows:

(1) Venting to the control device is not required, and opening of closure devices or removal of the fixed roof is allowed at the following times:

(i) To provide access to the separator for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample liquid in the separator, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity,

the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the separator.

(ii) To remove accumulated sludge or other residues from the bottom of separator.

(2) Opening of a safety device, as defined in § 63.1041 of this subpart, is allowed at any time conditions require it to do so to avoid an unsafe condition.

(d) The owner or operator shall inspect and monitor the air emission control equipment in accordance with the procedures specified in § 63.1047(c) of this subpart.

§ 63.1045 [Reserved]

§ 63.1046 Test methods and procedures.

(a) Procedure for determining no detectable organic emissions for the purpose of complying with this subpart.

(1) The test shall be conducted in accordance with the procedures specified in Method 21 of 40 CFR part 60, appendix A. Each potential leak interface (i.e., a location where organic vapor leakage could occur) on the cover and associated closure devices shall be checked. Potential leak interfaces that are associated with covers and closure devices include, but are not limited to: the interface of the cover and its foundation mounting; the periphery of any opening on the cover and its associated closure device; and the sealing seat interface on a spring-loaded pressure-relief valve.

(2) The test shall be performed when the separator contains a material having an organic HAP concentration representative of the range of concentrations for the regulated-materials expected to be managed in the separator. During the test, the cover and closure devices shall be secured in the closed position.

(3) The detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the organic constituents in the regulated-material placed in the separator, not for each individual organic constituent.

(4) The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of 40 CFR part 60, appendix A.

(5) Calibration gases shall be as follows:

(i) Zero air (less than 10 ppmv hydrocarbon in air); and

(ii) A mixture of methane in air at a concentration of approximately, but less than, 10,000 ppmv.

(6) The background level shall be determined according to the procedures in Method 21 of 40 CFR part 60 appendix A.

(7) Each potential leak interface shall be checked by traversing the instrument probe around the potential leak interface as close to the interface as possible, as described in Method 21. In the case when the configuration of the cover or closure device prevents a complete traverse of the interface, all accessible portions of the interface shall be sampled. In the case when the configuration of the closure device prevents any sampling at the interface and the device is equipped with an enclosed extension or horn (e.g., some pressure relief devices), the instrument probe inlet shall be placed at approximately the center of the exhaust area to the atmosphere.

(8) The arithmetic difference between the maximum organic concentration indicated by the instrument and the background level shall be compared with the value of 500 ppmv. If the difference is less than 500 ppmv, then the potential leak interface is determined to operate with no detectable organic emissions.

(b) Procedure for performing floating roof seal gap measurements for the purpose of complying with this subpart.

(1) The owner or operator shall determine the total surface area of gaps in the primary seal and in the secondary seal individually.

(2) The seal gap measurements shall be performed at one or more floating roof levels when the roof is floating off the roof supports.

(3) Seal gaps, if any, shall be measured around the entire perimeter of the floating roof in each place where a 0.32-centimeter (cm) diameter uniform probe passes freely (without forcing or binding against the seal) between the seal and the wall of the separator and measure the circumferential distance of each such location.

(4) For a seal gap measured under paragraph (b)(2) of this section, the gap surface area shall be determined by using probes of various widths to measure accurately the actual distance from the separator wall to the seal and multiplying each such width by its respective circumferential distance.

(5) The total gap area shall be calculated by adding the gap surface areas determined for each identified gap location for the primary seal and the secondary seal individually, and then dividing the sum for each seal type by the nominal perimeter of the separator basin. These total gap areas for the primary seal and secondary seal then are compared to the respective

standards for the seal type as specified in § 63.1043(b)(2) of this subpart.

§ 63.1047 Inspection and monitoring requirements.

(a) Owners and operators that use a separator equipped with a fixed roof in accordance with the provisions of § 63.1042 of this subpart shall meet the following requirements:

(1) The fixed roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air emissions to the atmosphere. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the separator wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(2) The owner or operator shall perform the inspections following installation of the fixed roof and, thereafter, at least once every year.

(3) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (d) of this section.

(4) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 63.1048(a)(2) of this subpart.

(b) Owners and operators that use a separator equipped with a floating roof in accordance with the provisions of § 63.1043 of this subpart shall meet the following requirements:

(1) The owner or operator shall measure the floating roof seal gaps using the procedure specified in § 63.1046(b) of this subpart in accordance with the following requirements:

(i) The owner or operator shall perform measurements of gaps between the separator wall and the primary seal within 60 days after initial operation of the separator following installation of the floating roof and, thereafter, at least once every 5 years.

(ii) The owner or operator shall perform measurements of gaps between the separator wall and the secondary seal within 60 days after initial operation of the separator following installation of the floating roof and, thereafter, at least once every year.

(iii) If a separator ceases to hold regulated-material for a period of 1 year or more, subsequent introduction of regulated-material into the separator shall be considered an initial operation for the purpose of complying with paragraphs (b)(1)(i) and (b)(1)(ii) of this section.

(iv) In the event that the seal gap measurements do not conform to the specifications in § 63.1043(b)(2) of this subpart, the owner or operator shall repair the defect in accordance with the requirements of paragraph (d) of this section.

(v) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 63.1048 (a)(2) and (b) of this subpart.

(2) The owner or operator shall visually inspect the floating roof in accordance with the following requirements:

(i) The floating roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air emissions to the atmosphere. Defects include, but are not limited to: holes, tears, or other openings in the rim seal or seal fabric of the floating roof; a rim seal detached from the floating roof; all or a portion of the floating roof deck being submerged below the surface of the liquid in the separator; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(ii) The owner or operator shall perform the inspections following installation of the floating roof and, thereafter, at least once every year.

(iii) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (d) of this section.

(iv) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 63.1048(a)(2) of this subpart.

(c) Owners and operators that use a separator equipped with a fixed roof and vented through a closed-vent system to a control device in accordance with the provisions of § 63.1044 of this subpart shall inspect the air emission control equipment as follows:

(1) The owner or operator shall visually inspect the fixed roof in accordance with the following requirements:

(i) The fixed roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the separator wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(ii) The owner or operator shall perform the inspections following installation of the fixed roof and, thereafter, at least once every year.

(iii) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (d) of this section.

(iv) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 63.1048(a)(2) of this subpart.

(2) The owner or operator shall inspect and monitor the closed-vent system and the control device in accordance with the requirements specified in § 63.693 in 40 CFR 63 subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.

(d) The owner or operator shall repair all detected defects as follows:

(1) The owner or operator shall make first efforts at repair of the defect no later than 5 calendar days after detection and repair shall be completed as soon as possible but no later than 45 calendar days after detection except as provided in paragraph (d)(2) of this section.

(2) Repair of a defect may be delayed beyond 45 calendar days if the owner or operator determines that repair of the defect requires emptying or temporary removal from service of the separator and no alternative treatment capacity is available at the facility site to accept the regulated-material normally treated in the separator. In this case, the owner or operator shall repair the defect at the next time the process or unit that is generating the regulated-material managed in the separator stops operation. Repair of the defect shall be completed before the process or unit resumes operation.

(3) The owner or operator shall maintain a record of the defect repair in accordance with the requirements specified in § 63.1048(a)(3) of this subpart.

§ 63.1048 Recordkeeping requirements.

(a) Each owner or operator shall prepare and maintain the following records:

(1) Documentation describing the design of each floating roof and fixed roof installed on a separator, as applicable to the separator. When a floating roof is used, the documentation shall include the dimensions of the separator bay or section in which the floating roof is installed.

(2) A record for each inspection required by § 63.1047 of this subpart

that includes the following information: a separator identification number (or other unique identification description as selected by the owner or operator) and the date of inspection.

(3) The owner or operator shall record for each defect detected during inspections required by § 63.1047 of this subpart the following information: the location of the defect, a description of the defect, the date of detection, and corrective action taken to repair the defect. In the event that repair of the defect is delayed in accordance with the provisions of § 63.1047(d)(2) of this section, the owner or operator shall also record the reason for the delay and the date that completion of repair of the defect is expected.

(b) Owners and operators that use a separator equipped with a floating roof in accordance with the provisions of § 63.1043 of this subpart shall prepare and maintain records for each inspection required by § 63.1047(b)(1) describing the results of the seal gap measurements. The records shall include the date of the measurements performed, the raw data obtained for the measurements, and the calculations of the total gap surface area. In the event that the seal gap measurements do not conform to the specifications in § 63.1043(b)(2) of this subpart, the records shall include a description of the repairs that were made, the date the repairs were made, and the date the separator was emptied, if necessary.

(c) Owners and operators that use a separator equipped with a fixed-roof and vented through a closed-vent system to a control device in accordance with the provisions of § 63.1044 of this subpart shall prepare and maintain the records required for the closed-vent system and control device in accordance with the requirements of § 63.693 in 40 CFR 63 subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.

§ 63.1049 Reporting requirements.

(a) Owners and operators that use a separator equipped with a floating roof in accordance with the provisions of § 63.1043 of this subpart shall notify the Administrator at least 30 calendar days prior to each seal gap measurement inspection performed to comply with the requirements in § 63.1047(b)(1) of this subpart.

(b) Owners and operators that use a separator equipped with a fixed-roof and vented through a closed-vent system to a control device in accordance with the provisions of § 63.1044 of this subpart shall prepare and submit to the Administrator the reports required for

closed-vent systems and control devices in accordance with the requirements of § 63.693 in 40 CFR 63 subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.

10. Part 63 is amended by adding appendix D to read as follows:

Appendix D to Part 63—Alternative Validation Procedure for EPA Waste and Wastewater Methods

1. Applicability

This procedure is to be applied exclusively to Environmental Protection Agency methods developed by the Office of Water and the Office of Solid Waste. Alternative methods developed by any other group or agency shall be validated according to the procedures in Sections 5.1 and 5.3 of Test Method 301, 40 CFR Part 63, Appendix A. For the purposes of this appendix, “waste” means waste and wastewater.

2. Procedure

This procedure shall be applied once for each waste matrix. Waste matrix in the context of this procedure refers to the target compound mixture in the waste as well as the formulation of the medium in which the target compounds are suspended. The owner or operator shall prepare a sampling plan. Wastewater samples shall be collected using sampling procedures which minimize loss of

organic compounds during sample collection and analysis and maintain sample integrity. The sample plan shall include procedures for determining recovery efficiency of the relevant compounds regulated in the applicable subpart. An example of an acceptable sampling plan would be one that incorporates similar sampling and sample handling requirements to those of Method 25D of 40 CFR part 60, appendix A.

2.1. Sampling and Analysis

2.1.1. For each waste matrix, collect twice the number of samples required by the applicable regulation. Designate and label half the sample vials the “spiked” sample set, and the other half the “unspiked” sample set. Immediately before or immediately after sampling (immediately after in the context of this procedure means after placing the sample into the sample vial, but before the sample is capped, cooled, and shipped to the laboratory for analysis), inject, either individually or as a solution, all the target compounds into each spiked sample.

2.1.2. The mass of each spiked compound shall be 40 to 60 percent of the mass expected to be present in the waste matrix. If the concentration of the target compounds in the waste are not known, the mass of each spiked compound shall be 40 to 60 percent of the limit allowed in the applicable regulation. Analyze both sets of samples (spiked and unspiked) with the chosen method.

3. Calculations

For each pair of spiked and unspiked samples, determine the fraction of spiked compound recovered (R) using the following equations.

where:

m_r = mass spiked compound measured (μg).

m_s = total mass of compound measured in spiked sample (μg).

m_u = total mass of compound measured in unspiked sample (μg).

where:

S = theoretical mass of compound spiked into spiked sample (μg).

3.1. Method Evaluation

In order for the chosen method to be acceptable for a compound, $0.70 \leq R \leq 1.30$ (R in this case is an average value of all the spiked and unspiked sample set R values). If the average R value does not meet this criterion for a target compound, the chosen method is not acceptable for that compound, and therefore another method shall be evaluated for acceptance (by repeating the procedures outlined above with another method).

3.2. Records and Reports

Report the average R value in the test report and correct all reported measurements made with the method with the calculated R value for that compound by using the following equation:

$$\text{Reported Result} = \frac{\text{Measured Mass of Compound}}{R \text{ for that compound}}$$

3.3. Optional Correction Step

If the applicable regulation allows for correction of the mass of the compound in

the waste by a published f_m value, multiply

the reported result calculated above with the appropriate f_m value for that compound.

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Part IV

**Environmental
Protection Agency**

40 CFR Parts 9, 55 and 71
Federal Operating Permits Program; Final
Rule

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 9, 55 and 71****[FRL-5526-7]****RIN 2060-AD68****Federal Operating Permits Program****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: This action promulgates regulations setting forth the procedures and terms under which the Administrator will administer programs for issuing operating permits to covered stationary sources, pursuant to title V of the Clean Air Act as amended in 1990 (Act). Although the primary responsibility for issuing operating permits to such sources rests with State, local, and Tribal air agencies, EPA will remedy gaps in air quality protection by administering a Federal operating permits program in areas lacking an EPA-approved or adequately administered operating permits program. Federally issued permits will clarify which requirements apply to sources and will enhance understanding of and compliance with air quality regulations.

EFFECTIVE DATE: July 31, 1996.

FOR FURTHER INFORMATION CONTACT: Candace Carraway (telephone 919-541-3189) or Kirt Cox (telephone 919-541-5399), U. S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Information Transfer and Program Integration Division, Mail Drop 12, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:**Docket**

Supporting information used in developing the promulgated rules is contained in Docket No. A-93-51. Supporting information used in developing 40 CFR part 70 is contained in Dockets No. A-90-33 and No. A-93-50. These dockets are available for public inspection and copying between 8:30 a.m. and 3:30 p.m. Monday through Friday at EPA's Air Docket, Room M-1500, Waterside Mall, 401 M Street SW, Washington, D.C. 20460. A reasonable fee may be charged for copying.

Background Information Document

A background information document (BID) for the promulgated rule may be obtained from the docket. Please refer to "Federal Operating Permits Program - Response to Comments." The BID

contains a summary of the public comments made on the proposed Federal Operating Permits Program rule and EPA responses to the comments.

Regulated Entities

Entities potentially regulated by this action are major sources, affected sources under title IV of the Act (acid rain sources), solid waste incineration units required to obtain a permit under section 129 of the Act, and those areas sources subject to a standard under section 111 or 112 of the Act which have not been exempted or deferred from title V permitting requirements. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Major sources under title I or section 112 of the Act; affected sources under title IV of the Act (acid rain sources); solid waste incineration units required to obtain a permit under section 129 of the Act; area sources subject to new source performance standards or national emission standards for hazardous air pollutants that are not exempted or deferred from permitting requirements under title V.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in section 71.3(a) of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section or the EPA Regional Office that is administering the part 71 permit program for the State or area in which the relevant source or facility is located.

Outline. The information presented in this preamble is organized as follows:

- I. Background
- II. Summary of Promulgated Rule
- III. Significant Changes to the Proposed Rule
- IV. Administrative Requirements
 - A. Docket
 - B. Executive Order 12286
 - C. Regulatory Flexibility Act
 - D. Paperwork Reduction Act
 - E. Unfunded Mandates Reform Act

I. Background**A. Background of EPA's Development of the Proposed Part 71 Rule**

Title V of the Act requires that if a permits program meeting the requirements of title V has not been approved for any State by November 15, 1995, EPA must promulgate, administer, and enforce a Federal title V program for that State (42 U.S.C. section 7661a(d)(3)). Thus, from the date of enactment of the 1990 Amendments to the Act, EPA was subject to a 5-year deadline to establish a Federal program for States that do not obtain EPA approval of their State programs within that time. The Act had also placed EPA under a 1-year deadline to promulgate regulations establishing the minimum elements of approvable State permit programs (42 U.S.C. section 7661a(b)). The EPA promulgated its regulations establishing these criteria, codified at 40 CFR part 70 (the part 70 rule), on July 21, 1992 (57 FR 32250). States were then to submit their title V programs for EPA review by November 15, 1993, and EPA was to approve or disapprove those submitted programs within 1 year of receiving them (42 U.S.C. section 7661a(d)(1)). Thus, under the temporal scheme of title V, EPA was to approve or disapprove timely submitted State title V programs by November 15, 1994, exactly 1 year before EPA's duty to establish a Federal program for unapproved States would ripen.

Almost immediately upon promulgation of part 70, numerous industry, State and local government, and environmentalist petitioners challenged EPA's final rule in litigation in the Court of Appeals. See *Clean Air Implementation Project v. EPA*, No. 92-1303 (D.C. Cir.). Petitioners identified dozens of issues to which they objected in the part 70 rule, and EPA decided to conduct broad-based settlement discussions with all petitioners concerning these issues. These discussions occurred for over a year following the commencement of the litigation, and resulted in EPA, with the consultation of all of the litigants, developing proposed revisions to many provisions in the part 70 rule. These provisions mainly concerned the flexibility provisions of part 70, which governed when permits would need to be revised to reflect changes in operation at sources, and the procedures by which permits would be revised. On August 29, 1994, EPA published proposed substantial revisions to part 70 reflecting the outcome of these discussions (59 FR 44460) (hereafter "August 1994 proposed revisions to part 70"). That proposal reflected EPA's

most current thinking at the time concerning the proper implementation of title V, and departed in numerous respects from positions taken in the existing promulgated part 70 rule.

When EPA began developing part 71 in the fall of 1993, settlement discussions concerning part 70 were still ongoing and were yielding what appeared to be fruitful results. The Agency believed at the time that any needed revisions to part 70 would be finalized well in advance of the deadline for establishing any necessary Federal programs, and so decided to develop part 71 based on contemplated proposed revisions to part 70, as EPA wished to model part 71 on its long-term implementation goals for title V, rather than on provisions of a part 70 rule that EPA did not believe would remain as promulgated in the current rule.

When EPA published its proposed revisions to part 70 in August 1994, the Agency still believed that the revisions would be finalized in time for EPA to base its part 71 Federal program rule on the revised part 70. Consequently, when EPA published its proposed part 71 regulations on April 27, 1995, the proposal was based on the August 1994 proposed revisions to part 70 (60 FR 20804; hereafter, "part 71 proposal"). The part 71 proposal thus contained provisions concerning critical definitions under title V, the scope of applicability of the program to sources, requirements governing applications and permit content, and, most significantly, operational flexibility and permit revisions that departed from the current part 70 rule's corresponding provisions. In the proposal notice, the Agency specifically solicited comment on whether the Agency had appropriately based part 71 upon the relevant provision of the existing part 70 rule and the recently proposed revision to part 70. See 60 FR at 20805.

At the time of proposal of part 71, the Agency was aware of many adverse comments on the August 1994 proposed revisions to part 70, and EPA had engaged in discussions with stakeholders to obtain recommendations for publishing a supplemental proposal to revise the flexibility provisions of part 70. See 60 FR at 20805, 20817. The part 71 proposal notice indicated that the Agency believed it might not be possible to promulgate final permit revision procedures for part 71, in light of the ongoing discussions to develop part 70 permit revision procedures in time to meet the statutory deadline for establishing Federal programs in States lacking approved part 70 programs. As a result, the notice suggested that EPA

may have to finalize the part 71 rule in two phases, the first without any provisions for revising permits, which would be addressed in a later supplemental proposal. *Id.* Indeed, EPA's supplemental proposal for both parts 70 and 71, published on August 31, 1995, described how part 71's future permit revision procedures would be modelled upon the part 70 procedures for permit revisions proposed in that notice (60 FR 45530; hereafter, "August 1995 supplemental proposal").

B. The Need for Part 71 To Facilitate Transition

In the part 71 proposal notice, EPA stressed the need for implementation of part 71 to facilitate a smooth transition to State implementation of title V through approved part 70 programs. See 60 FR at 20805, 20816. The EPA continues to believe that Congress envisioned that States would have primary responsibility for implementing title V, just as they do for implementing much of the rest of the Act. See, for example, section 101(a)(3) of the Act, in which Congress found that air pollution prevention and air pollution control at its source is the primary responsibility of States and local governments (42 U.S.C. section 7401(a)(3)). Note also that under title V of the Act, Congress gave States the initial opportunity to develop and administer title V programs, while directing EPA to function as a backstop if States are unable to adopt provisions under State law to take on title V responsibilities, rather than directing EPA to establish the Federal program first and then allowing States to apply to take over title V administration, as under prior permitting programs such as the prevention of significant deterioration (PSD) and the national pollutant discharge elimination system (NPDES) under the Clean Water Act.

The EPA believes that granting States primary responsibility to implement title V makes good policy sense. States are far better positioned than EPA to administer permitting programs covering their resident sources for several reasons. First, States are more familiar with the operational characteristics of resident sources, and with the applicable requirements to which they are subject. In having had the lead on developing State implementation plans (SIP's) and implementing other provisions of the Act that apply to these sources, States have developed substantial expertise in, among other things, running air permit programs that govern new construction and changes in emissions of air pollutants such as the new source review (NSR) and PSD programs. States

have developed enforcement programs based on this structure, and are able to coordinate their permitting programs with the goals and needs of their overall air pollution control programs. Finally, compared to EPA Regional offices, States are simply closer to their sources, have greater resources, and are better able to respond to the regulated community and its needs for expeditious permit processing.

In light of this, EPA has repeatedly stated its belief that federally-implemented part 71 programs would be of short duration, lasting only until the few remaining States that have not developed approvable part 70 programs are able to submit title V programs that meet the requirements of the Act. Rather than viewing part 71 only as a means of exerting leverage in States that have not yet adopted adequate part 70 programs, EPA has also viewed part 71 as an opportunity to aid States in taking up responsibility to implement title V. To this end, EPA has attempted to structure the rule so that States in which part 71 programs are established will be able to use the program as an aid to adopting and implementing their own part 70 programs. For example, today's rule provides that States can take delegation of administration of the Federal program in their States. If a State that for whatever reason has not been successful in developing its own statutes and regulations to implement title V is nevertheless capable of running a Federal program, EPA sees no reason not to offer the State the opportunity to more efficiently run the permit program than EPA believes the Agency could. The EPA also believes that the experience of running the Federal program may assist States in overcoming any remaining hurdles that have so far prevented them from adopting adequate title V programs under State law.

C. Basing Part 71 on the Part 70 Program

In the part 71 proposal notice, EPA stated its view that it is appropriate to model part 71 procedures on those required by part 70, in order to promote national consistency between title V programs that are administered throughout the country. See 60 FR at 20816. Such national consistency would ensure that sources are not faced with substantially different programs simply because EPA, as opposed to State agencies, is the relevant title V permitting authority, would promote uniformity in affected State and public participation, and would provide a level playing field for sources. Basing part 71 on part 70 would also encourage States

that are still developing their title V programs to take delegation of the part 71 program, as it would be more consistent with the programs they are preparing to implement under State law. States taking delegation would in turn ensure smoother transition to State administration of part 70 programs, as sources would have already become familiar with the State as the title V permitting authority and would not need to restart their permit application process anew when the State program receives EPA approval.

Since at the time the part 71 proposal was being developed it appeared to EPA that part 70 would soon be revised in many significant respects, EPA chose to base the proposal upon the recent proposed revisions to part 70, rather than on the existing promulgated rule. This was due in part to the fact that the August 1994 proposed revisions to part 70 addressed a number of basic issues under title V that necessarily would govern how those issues are addressed in part 71 (such as the definition of major source and the necessary provisions to implement section 502(b)(10) of the Act), and in part to the Agency's wish to provide in the Federal rule many of the benefits of the August 1994 proposed revisions to part 70. As noted above, however, EPA specifically asked commenters to address whether EPA had inappropriately either followed or departed from the approaches taken in both the current part 70 rule and its proposed revisions.

Echoing their comments on the August 1994 proposed revisions to part 70, industry commenters unanimously argued that the permit revisions procedures contained in the part 71 proposal were too complex and confusing and would hinder sources' abilities to make rapid changes in response to market needs. In addition, most industry commenters presented three general arguments in response to EPA's proposal to establish a uniform national part 71 rule based on the August 1994 proposed revisions to part 70. The first type of argument was that EPA should not promulgate a uniform national part 71 rule at all, but rather should develop part 71 programs case-by-case, taking into account the specific characteristics of the State's existing air program, and basing the State's part 71 program as much as possible on the State's part 70 program that it has developed to date and that EPA had not found to be inadequate. According to this argument, the best way to facilitate transition from Federal to State implementation of title V is to make sure the Federal and State programs are virtually identical in each relevant

State, even if that means the Federal programs would differ from State to State. It would follow that EPA should approve whatever adequate elements a State had adopted for its title V program, and then only fill the remaining gaps with Federal provisions as necessary. This argument also held that section 502 of the Act actually requires a case-by-case approach to developing part 71 programs for States, and that the Act does not authorize EPA to promulgate a nationally uniform rule.

While EPA agrees that in theory the smoothest transition from Federal to State implementation might occur where the Federal program is identical to the State's, the Agency does not agree that it is inappropriate to promulgate a nationally uniform rule for part 71. At the outset, EPA disagrees with the assertion that the Agency lacks legal authority to establish a nationally uniform rule for part 71. While section 502(d)(3) of the Act does require EPA to promulgate, administer and enforce a title V program "for" any State that does not obtain part 70 approval, 42 U.S.C. section 7661a(d)(3), that language does not compel a separate State-by-State approach to establishing a Federal title V program; nor does it compel a Federal program that is based on the State's existing but as yet unapproved State program. Indeed, EPA would be hard-pressed to base a Federal program on a State program where no State program has ever been adopted or submitted for EPA evaluation. Even if a State had adopted and submitted a program, EPA stresses that the Agency can only evaluate the adequacy of State programs through notice and comment rulemaking, which might not occur before a Federal program is due. The EPA believes Congress must have recognized the possibility that EPA would be called upon to establish a Federal program even where a State has never adopted any State program of its own or where a program had not been submitted in time for EPA to find it adequate; in such situations, it would be impossible for EPA to base the Federal program on the State's. The EPA also believes that the resource burden of establishing and implementing different case-by-case programs for States would overwhelm EPA Regional offices and establishing a generic template for part 71 is a far more efficient use of Agency resources to get the Federal program up and running. The EPA has consequently concluded that a nationally uniform regulation is necessary for purposes of carrying out the Agency's functions under title V. Section 301(a)(1) of the Act authorizes EPA to prescribe such

regulations as are necessary to carry out the Administrator's functions under the Act (42 U.S.C. section 7601(a)(1)). Thus, EPA believes it has ample statutory authority to establish the most efficient and nationally consistent part 71 regulation possible. Finally, EPA notes that EPA's other permitting programs under its environmental statutes, such as the NPDES program and the PSD program, are governed by nationally uniform regulations, implementation of which have been very successful. The EPA sees no reason to depart from this established approach for purposes of running Federal title V programs, especially since Congress clearly did anticipate that EPA would first address title V through establishing regulations that would govern the minimum elements of title V programs to be administered by any air pollution control agency. See section 502(b) of the Act, 42 U.S.C. section 7661a(b).

The second type of industry argument in response to basing the part 71 proposal on the proposed revisions to part 70 stressed that EPA should delay promulgation of any part 71 rule until the revisions to part 70 are finalized. This argument pointed out that promulgating part 71 based on the August 1994 proposed revisions to part 70 would result in the part 71 rule being based on an approach that the Agency itself had begun to revise in developing the supplemental proposed revisions to part 70 (which were eventually published just 4 months after the date of the part 71 proposal). The argument noted that since EPA is envisioning substantial changes to the part 70 rule, the part 71 rule should not finalize title V issues that will remain in transition until the part 70 rule is finally revised. This argument also specifically responded adversely to EPA's statement in the proposal that it may be necessary to split finalization of part 71 into two phases in which the operational flexibility and permit revision procedures would remain reserved until a second phase. In the view of these commenters, such provisions are critical components of any part 71 rule that is adopted, and it would not be appropriate to leave them out of part 71 for any unspecified time. This argument also stated that finalizing part 71 now based upon the proposed revisions to part 70 would actually impede transition to approved State part 70 programs, since the Federal program, and the approved State program based on the current part 70 that replaces it, would take very different approaches to such fundamental issues as applicability of the program, operational flexibility

and permit revision procedures. Finally, this argument offered a theory that title V actually does not require EPA to adopt part 71 programs for States until May 15, 1997; under this theory, a commenter argued that the Act actually gives States until May 15, 1995, rather than November 15, 1993, to submit initial title V programs, since States have 18 months following the first "due date" to submit any remedies to deficient programs and avoid sanctions that would fall after that 18-month period. The commenter would interpret the date on which the 18-month period expires as the date referred to in section 502(d)(3) and argues that EPA is not required to promulgate a Federal program until 2 years after the expiration of the 18-month period.

First, EPA is not persuaded by the commenter's argument that part 71 programs are not due until May 15, 1997. Section 502(d)(1) of the Act clearly provides that States are to submit their title V programs "[n]ot later than 3 years after the date of enactment of the Clean Air Act Amendments of 1990," 42 U.S.C. section 7661a(d)(1), which occurred on November 15, 1990. Moreover, section 502(d)(3) clearly refers to "the date required for submission of such a program under paragraph (1) (of section 502)," 42 U.S.C. section 7661a(d)(3), as the trigger for the 2-year period after which EPA must establish Federal programs. There is no reference to any 18-month grace-period in section 502(d)(3), and EPA disputes the assertion that the date on which a sanctions clock expires under section 502(d)(2) can be viewed as the "real" deadline for submission of State programs in the face of the plain language of section 502(d)(1) and section 502(d)(3)'s reference to the deadline in section 502(d)(1). Thus, while EPA is sympathetic to concerns that finalizing part 71 in advance of the Agency finally revising part 70 could result in the Agency promulgating provisions that are essentially moving targets in the Federal rule, EPA does not believe it has the authority to delay issuance of part 71 beyond the deadline prescribed by Congress. Moreover, as a policy matter, EPA believes it is necessary to put part 71 in place to aid States that to date have unsuccessfully struggled to develop approvable title V programs, as it is a potential vehicle for State administration of title V (through delegation of part 71) even where obstacles remain that block certain States from obtaining part 70 approval. The EPA does not believe that the environmental benefits of title V should be delayed simply due to the fact that

some States have not been successful at developing title V programs. Moreover, EPA does not feel it would be appropriate to attempt to justify delaying promulgation and implementation of the Federal program because of the continuing difficulties in revising the part 70 rule. However, EPA is persuaded by commenters that the part 71 rule should not contain gaps to be filled in at a second stage for provisions for operational flexibility and permit revisions, and is sympathetic to concerns that basing these provisions on the August 1994 proposed revisions to part 70 might even interfere with transition to State programs approved under the current part 70 rule. These latter points are discussed in more detail below.

The third general type of industry argument in response to basing part 71 on the August 1994 proposal was that if EPA must establish a Federal program now, it should do so based on the existing part 70 rule, and revise the program later when part 70 is revised. This argument recognized that EPA may simply be unable in certain cases to base a State-specific part 71 program on an existing State program, but stressed the fact that any program that the State is still struggling to adopt would be based on the existing part 70 rule, rather than on the proposed revisions thereto. The argument pointed out the fact that under the August 1994 proposed revisions to part 70, EPA planned to allow States several years following final promulgation before States would be expected to implement new part 70 programs based on the revised rule. Thus, commenters observed, States would likely be developing and implementing part 70 programs based on the July 1992 rule for considerable time. In light of this, it would actually interfere with smooth transition from Federal to State implementation to base part 71 on the future part 70 rule, especially in light of the fact that at this point how part 70 will be ultimately revised is only speculative; rather, transition could be facilitated only where the Federal rule resembles the model that the State rule is expected to follow. States might be less inclined to take delegation of a Federal rule that does not resemble existing part 70 and the State analogues that are being developed, and thus sources would be more likely to be faced with different permitting authorities under part 71 and part 70 programs. Moreover, the relevant guidance that EPA had issued to date to aid implementation of the current rule, such as the Agency's "White Paper for Streamlined

Development of Part 70 Permit Applications" (herein referred to as the "first white paper") and the March 5, 1996 guidance document entitled "White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program, could be less valuable as an aid in implementing a Federal rule that is not based on the current part 70, and both sources and part 71 permitting authorities could be forced to start somewhat from scratch in implementing the program.

The EPA agrees that the most appropriate course of action is to promulgate, on an interim basis, part 71 based on the current part 70 rule. In reaching this conclusion, EPA was persuaded by concerns about impeding transition to part 70 approval under the current rule and by industry concerns about issuing a rule containing gaps regarding operational flexibility and permit revisions. Moreover, as many issues in part 70 are still outstanding following the August 1994 and August 1995 proposals, and as many of those issues concern key definitions and procedures under title V, it would be premature for EPA to finalize part 71 based upon the proposed revisions to part 70 until it makes final decisions on these issues in part 70. Thus, the only way EPA can fulfill its mandate to step in as the title V permitting authority for States that have not obtained part 70 approval at this time, and to do so by establishing a complete part 71 program that provides the flexibility needed by industry and mandated by title V, is to promulgate the rule based upon the current part 70 regulation. The EPA stresses, however, that by finalizing this interim approach in part 71, the Agency does not preclude itself from revising part 71 in the future as based on appropriate aspects of either the August 1994, April 1995, or August 1995 proposals for parts 70 and 71. In fact, EPA intends to issue a second round of final rulemaking for part 71 (hereafter "phase II rulemaking") in the future once the Agency has resolved with relevant stakeholders the outstanding issues and is prepared to promulgate final revisions to part 70. As a general matter, EPA stresses that the most current reflection of the Agency's intended policy regarding many of these provisions is the August 31, 1995 supplemental proposal. Consequently, while the provisions adopted today in part 71 that relate to outstanding issues under the definitions, applicability, permit application, permit content, permit revisions and reopenings, and affected State and EPA review sections are consistent with the corresponding

provisions in the existing part 70 rule, rather than with provisions in the proposals mentioned above, it should be expected that EPA will issue a second final rulemaking, without a second round of proposal, to conform part 71 to the revised part 70 rule when the Agency is prepared to issue it.

The EPA believes that this approach is a logical outgrowth of the part 71 proposal issued in April 1995. While that proposal only contained regulatory provisions based on the August 1994 proposed revisions to part 70, EPA explicitly solicited comment on whether the proposal was in any way inappropriately inconsistent with the current part 70 rule. Clearly, the commenters noted such inconsistencies, and the proposal facilitated meaningful comment on what approach the Agency should take in promulgating part 71 vis-a-vis the outstanding issues in the part 70 revision process. As discussed above, the proposal enabled industry commenters to fall into three basic categories in response to the proposal—in fact, many commenters advanced more than one of the basic types of arguments in their comments, realizing that the different arguments might have different force depending upon the extent to which States had actually developed and submitted their own programs. The approach adopted today was urged by numerous industry commenters as the most reasonable in light of the need to issue a part 71 program now, as opposed to leaving gaps to be filled in later at a second stage of final rulemaking. In addition, today's rule is consistent with the existing part 70 rule under which States continue to submit programs, and under which EPA continues to approve those programs. Thus, EPA does not believe that a second round of proposed rulemaking is necessary before finalizing part 71 to conform to the Agency's currently effective regulation implementing title V, part 70.

In the following sections of this notice, the specific provisions that are being finalized based upon current part 70 rather than upon the provisions of the part 71 proposal are identified and further discussed. For each of them, the general governing principle is that while the Agency has proposed to revise part 70 to modify many of the provisions corresponding to the part 71 provisions adopted today, EPA is not yet prepared to adopt final positions on those issues and so, in the interests of promoting smooth transition from Federal to State implementation of title V, is choosing to issue, on an interim basis, a part 71 rule that matches as closely as possible the existing part 70 rule. The EPA's

finalization of those provisions today in no way reflects the Agency's ultimate decision to renounce any of the positions articulated in the proposed revisions to part 70 or the corresponding proposals for part 71.

II. Summary of Promulgated Rule

A. Applicability

The Federal operating permits program requires all part 71 sources to submit permit applications to the permitting authority no later than within 1 year of the effective date of the program. The operating permit program applies to the following sources:

1. Major sources, defined as follows:
 - a. Air toxics sources, as defined in section 112 of the Act, with the potential to emit 10 tons per year (tpy), or more, of any hazardous air pollutant (HAP) listed pursuant to 112(b); 25 tpy, or more, of any combination of HAP listed pursuant to 112(b); or a lesser quantity of a given pollutant, if the Administrator so specifies (501(2)(A)).
 - b. Sources of air pollutants, as defined in section 302, with the potential to emit 100 tpy, or more, of any pollutant (501(2)(B)).
 - c. Sources subject to the nonattainment area provisions of title I, part D, with the potential to emit, depending on the nonattainment area designation 10 or more tpy of volatile organic compound (VOC) or oxides of nitrogen, 50 or more tpy of carbon monoxide, and seventy or more tpy of particulate matter (501(2)(B)).
2. Any other sources subject to a standard under section 111 or 112.
3. Sources subject to the acid rain program (501(1)).
4. Any source subject to the PSD program or the NSR program under title I, part C or D.
5. Any other stationary source in a category EPA designates, in whole or in part, by regulation, after notice and comment.

For purposes of determining applicability, a source's total emissions of a pollutant are found by summing the potential emissions of that pollutant from all emissions units under common control at the same plant site. If a source is a major source, even if only due to the total emissions from one pollutant, then a source must submit (with few exceptions) a permit application that includes all emissions of all regulated air pollutants from all emissions units located at the plant.

Part 71 follows the approach of part 70 in deferring nonmajor sources from permitting requirements. The permitting requirements for nonmajor sources subject to a standard under section 111

or 112 of the Act prior to July 21, 1992 are deferred for 5 years from the effective date of the first approved part 70 program that deferred nonmajor sources. The EPA may determine on a case-by-case basis permitting requirements for nonmajor sources when they become subject to new section 111 or 112 standards. Sources subject to the new source performance standard for new residential wood heaters or the national emission standards for hazardous air pollutants for asbestos as it applies to demolition and renovation activities are permanently exempt from permitting requirements.

B. Program Implementation

The EPA will administer a part 71 program for those portions of a State that lack EPA approval for its operating permits program or for a State that fails to adequately administer and enforce an approved program. However, the requirement that EPA establish a Federal program for States lacking a fully approved program is suspended if a State program is granted interim approval. The EPA will also administer part 71 programs in Tribal areas. Should a part 71 program become effective prior to the issuance of part 70 permits to all sources (under an approved part 70 program), EPA will require part 71 permit applications from sources that have not received part 70 permits. Applications shall be due within a year of the effective date of the part 71 program. The EPA will take final action on at least one-third of the applications annually.

Section 71.4 also establishes procedures that would be used for issuing permits to certain sources located on the Outer Continental Shelf (OCS) and after EPA objects to a proposed or issued State permit.

The EPA may also delegate the responsibility for administering the part 71 program to the State or eligible Tribe if the requirements of section 71.10 have been met. However, delegation will not constitute approval of a State or Tribal operating permits program under part 70.

The EPA will suspend the issuance of part 71 permits upon publication of notice of approval of a State or Tribal operating permits program under part 70. The EPA or the delegate agency will continue to administer and enforce part 71 permits until they are replaced by permits issued under the approved part 70 program.

The EPA will publish a notice in the Federal Register informing the public of the effective dates or delegation of any part 71 programs for States, Tribal areas,

and OCS sources. Where practicable, EPA will also publish notice in a newspaper of general circulation within the area subject to the part 71 program and will notify the affected government.

C. Permit Applications

Each source meeting the applicability criteria of this part is required to submit timely and complete information on standard application forms provided by the permitting authority. Streamlined forms for electronic formats may be provided.

An initial part 71 permit application is required within 12 months of the later of:

1. The effective date of this part in a State, Tribal area, or OCS area where a source is located, unless the source has an existing part 70 permit;

2. The expiration of any deferral for a nonmajor source;

3. The date a source commences operation; or

4. The date a source meets any of the applicability criteria of section 71.3.

Sources with part 70 permits in force at the time part 71 becomes effective in the area where they are located would not have to apply for a part 71 permit until their part 70 permit expires. Prior to its expiration, the part 70 permit may be modified by EPA.

Sources would be notified of the requirement to submit an application at least 180 days prior to when the application is due.

The permitting authority will perform a completeness determination within 60 days of receipt of an application, or the application will be deemed complete by default. A complete application would contain all the information needed to begin processing the permit application, including, at a minimum, a completed standard application form (or forms) and a compliance plan.

The compliance plan describes how the source plans to maintain or to achieve compliance with all applicable air quality requirements under the Act. This plan must include a schedule of compliance and a schedule for the source to submit progress reports to the permitting authority. Each source must submit a compliance certification report in which it certifies its status with respect to each requirement, and the method used to determine the status.

Each operating permit application, report, or compliance certification submitted pursuant to part 71 must include a certification signed by a responsible official attesting to the truth, accuracy, and completeness of the information submitted.

Applicants may be required to update information in the application after the

filing date and prior to the release of the draft permit.

D. Permit Content

Part 71 permits must meet all applicable requirements of the Act and, among other things, must contain:

1. A 5-year term for acid rain sources, up to a 12-year term for certain municipal waste combustors, and up to a 5-year term for all other sources.

2. Limits and conditions to assure compliance with all applicable requirements under the Act.

3. A schedule of compliance, where applicable.

4. Inspection, entry, monitoring, compliance certification, recordkeeping, and reporting requirements to assure compliance with the permit terms and conditions.

5. A provision describing permit reopening conditions.

6. Provisions under which the permit can be revised, terminated, modified, or reissued for cause.

7. Provisions ensuring operational flexibility so that certain changes can be made within a permitted facility without a permit revision.

8. A provision that nothing in the permit or compliance plan affects allowances under the acid rain program.

All terms and conditions in a part 71 permit, including any provisions designed to limit a source's potential to emit, are enforceable by the Administrator and citizens under the Act.

Like part 70, part 71 would allow sources to apply for a permit shield, i.e., a provision in the permit that states that if the source complies with terms and conditions of the permit, the source shall be deemed in compliance with any applicable requirements reflected in the permit as of the date of permit issuance.

E. Permit Issuance and Review

Regulations concerning the processes for permit issuance, review, renewal, revision, and reopening are found in sections 71.7 and 71.11. Briefly, these include:

1. Action on Applications for Permit Issuance and Permit Renewal

Section 71.7(a) describes the conditions that must be satisfied before EPA or a delegate agency may issue a permit. These include receipt of a complete application, compliance with public participation requirements, and notification of affected States, Indian Tribes, and EPA (if the program has been delegated). Except during the initial phase-in of the program, the permitting authority is required to act on permit applications within 18

months after receiving a complete application.

The timely submittal of a complete application and any additional required information creates a "shield" against enforcement for failure to have a part 70 or part 71 permit. Permits being renewed are subject to the same procedural requirements that apply to initial permit issuance, as provided in section 71.7(c). The administrative procedures for permit issuance are contained in section 71.11 and are generally based on analogous provisions governing other EPA permitting programs at 40 CFR part 124.

2. Permit Revisions

Sections 71.7 (d) and (e) outline the mechanisms for permit modification and administrative amendments that are needed to revise part 71 permits to accommodate changes that would otherwise violate terms and conditions of the permit.

Administrative amendments can be accomplished by the permitting authority without public or EPA review. These permit revisions include correction of typographical errors, changes in address or source ownership, as well as incorporation of requirements established under State preconstruction review that meet certain procedural and compliance requirements.

If a change is not prohibited or addressed by the permit, the permittee may make the change after submitting a notice, and the permit is revised at renewal.

The regulations establish minor and significant permit modification procedures for changes that go beyond the activities allowed in the original permit or that increase the total emissions allowed under the permit.

Minor permit modifications reflect increases in permitted emissions that do not amount to modifications under any requirement of title I and that do not meet certain other requirements. Minor permit modification procedures require a source to provide advance notice of the proposed change, but allow a change to take effect prior to the conclusion of the revision procedures.

A source that makes a change before the minor permit modification has been issued does so at its own risk. It is not protected from underlying applicable requirements by any shield. It is only afforded a temporary exemption from the formal requirement that it operate in accordance with the permit terms that it seeks to change in its modification application. Should the proposed permit modification be rejected, the source would be subject to enforcement

proceedings for any violation of these requirements.

Significant permit modifications are inherently more complex, and will require additional time to accomplish. Permitting authorities will initiate their review of the proposed changes after receipt of an application.

Sources subject to requirements of the acid rain program must hold allowances to cover their emissions of sulfur dioxide (SO₂). Allowance transactions registered by the Administrator will be incorporated into the source's permit as a matter of law, without following either the permit modification or amendment procedures described above.

3. Reopening for Cause

The permitting authority may terminate, modify, or revoke and reissue a permit for cause. Reopening and reissuing procedures follow the same procedures as apply to initial issuance. Advance notice is required before permit reopenings may be initiated.

Section 71.7(f) requires that permits issued to major sources with 3 or more years remaining in the permit's term be reopened to incorporate applicable requirements which are promulgated after the issuance of the permit. Revisions must be made as expeditiously as practicable, but no later than 18 months after the promulgation of such additional requirements.

4. Permit Notification to EPA and Affected States

Consistent with 40 CFR section 70.8(b), EPA or the delegate agency would be required to provide notice of draft permits to all affected States and to certain Indian Tribes.

Affected States are those whose air quality may be affected and that are contiguous to the State in which the source is located, or that are within 50 miles of the source. The permitting authority must give affected States an opportunity to submit written recommendations for the permit and notify any affected State in writing of any refusal to accept all of its recommendations.

Although Indian Tribes are not considered affected States unless they establish their compliance with criteria for being treated in the same manner as States pursuant to section 301(d) of the Act, the Agency believes federally recognized Tribes should be given notice of draft permits that may be issued to sources that could affect Tribal air quality. The regulation requires that the permitting authority send such notices.

The Act authorizes EPA to object to any permit that would not be in

compliance with the applicable requirements of the Act. In the case of a delegated program, the permitting authority may not issue a part 71 permit if the Administrator has objected to its issuance in writing within 45 days of receipt of the proposed permit.

5. Administrative and Judicial Review

After the close of the public comment period on a draft permit, the permitting authority will issue a final permit decision. Within 30 days of the final permit decision, anyone who filed comments on the draft permit or participated in the public hearing may petition the Environmental Appeals Board (EAB) to review any condition of the permit. In general, the objections in the petition must have been raised during the public participation period on the permit. The petition will stay the effectiveness of the specific terms of the permit which are the subject of the request for review, pending conclusion of the appeal proceedings.

The EAB will issue an order either granting or denying the petition for review. To the extent review is denied, the conditions of the final permit decision become final agency action and are subject to judicial review in the United States Court of Appeals under section 307(b) of the Act. The decision of the EAB to issue or deny the permit is also subject to judicial review.

Interested persons (including permittees) are authorized to petition the Administrator to reopen an already issued permit for cause. Petitions would be required to be in writing and to contain facts or reasons supporting the request.

F. Permit Fees

Section 71.9 establishes the Federal operating permits program fee requirements for owners or operators of part 71 sources. The fees must be sufficient to cover the permits program costs, including the following:

1. Reviewing and acting on any permit, permit revision, or permit renewal, and processing permit reopenings.
2. Administering the permit program.
3. Implementing and enforcing the terms of any part 71 permit.
4. Monitoring, modeling, manipulating, and tracking emissions.
5. Providing support to small business stationary sources.

Consistent with the two-phased approach to part 71 promulgation described in this notice, EPA is today implementing a two-phased approach to part 71 fee requirements. Phase I fee collection will be sufficient to cover Phase I costs. Since Phase II fee

collection is associated with permit revision procedures, a fee amount for Phase II cannot be finalized in today's rule. The Phase II fee will add the costs for the permit revision procedures that are finalized in that rulemaking.

The dollar per ton fee will vary depending on the implementation mechanism EPA uses to administer a part 71 program. A program that is administered completely by EPA would charge \$32 per ton per year (ton/yr). Permit fees for a program for which EPA relies on contractor assistance to the greatest extent possible would be approximately \$57 per ton/yr. Program costs (and fees) would vary among part 71 programs depending on the hourly rate paid to the contractor for its work on the particular State's part 71 program. The costs of a program that is staffed in part by EPA employees and in part by contractors or by the delegate agency would vary in accordance with the percentage of personnel time allocated to non-EPA staff and the hourly rate paid to the contractor for its work on the State's part 71 program.

The EPA may suspend collection of part 71 fees for part 71 programs which are fully delegated to States and for which EPA incurs no administrative costs.

The EPA may promulgate a separate fee schedule for a particular part 71 program if the Administrator determines that the fee schedule in the rule does not adequately reflect the cost of administering the program.

Sources are required to submit fee calculation worksheets and fees at the same time as their initial permit applications are due and thereafter on an annual basis.

Part 71 program costs and permit fees will be reviewed by the Administrator at least every 2 years, and changes will be made to the fee schedule as necessary to reflect permit program costs.

G. Federal Oversight of Delegated Programs

Section 71.10 establishes the procedures EPA would follow when delegating the authority to administer a part 71 program to a State, eligible Indian Tribe, or other air pollution control agency. The EPA will delegate authority to run the program where possible in order to take advantage of existing expertise of the delegate agency or where it seems probable that the delegate agency's submitted part 70 program will be approved within a short time by EPA, provided in both cases that the delegate agency has the authority to administer the program that would be delegated.

A delegate agency must submit a formal request for delegation and other documentation that shows the agency or eligible Tribe has adequate legal authority and capacity to administer and enforce the part 71 program. If the request for delegation is accepted, EPA and the delegate agency will enter into an agreement that sets forth the terms and conditions of the delegation.

As part of its oversight of delegated programs, EPA would review copies of applications, compliance plans, proposed permits and final permits that the delegate agency would be required to send to EPA. The EPA would have 45 days in which to review proposed permits. If EPA objects to the issuance of a permit within that time, the delegate agency would be required to revise and resubmit the proposed permit to EPA.

Delegation of a part 71 program would not relieve a State of its obligation to submit an approvable part 70 program, nor from any sanctions that the Administrator may apply for the State's failure to have an approved part 70 program.

H. Enforcement

The Federal enforcement authority available under section 113 of the Act for violations of title V and the regulations thereunder provides broader enforcement authority than States are required to have under the part 70 regulations. Examples of the Federal enforcement authorities available under the Act include, but are not limited to, the authority to: (1) restrain or enjoin immediately any person by order or by suit in court from engaging in any activity in violation of the Act that is presenting an imminent and substantial endangerment to the public health or welfare, or the environment; (2) seek injunctive relief in court to enjoin any violation of the Act; (3) issue administrative orders that assess civil administrative penalties; (4) assess and recover civil penalties; and (5) assess criminal fines.

III. Significant Changes to the Proposed Regulations

A. Section 71.2—Definitions

The Agency has adopted definitions in today's rulemaking that are consistent with and are mainly modelled on corresponding definitions in the current part 70 rule, rather than on the part 71 proposal. Consequently, many of the definitions adopted today differ from those contained in the part 71 proposal which were largely based upon the August 1994 proposed revisions to corresponding definitions in part 70

which the Agency is not yet prepared to finalize.

Several definitions found in the proposed section 71.2 have been revised to conform more closely to the definitions used in the current part 70 rule. These include "affected State," "applicable requirements," "final permit," "major source," "permit revision," "permitting authority," and "responsible official," each of which is discussed briefly below. Similarly, EPA adopted definitions for "permit modification" and "section 502(b)(10) change" from the current part 70 rule, because these terms are integral parts of today's rulemaking, which is based on the existing part 70 regulations. Also, several definitions in the part 71 proposal describe terms and concepts that the Agency has concluded are either not necessary or are not ready to be finalized in today's rulemaking. The terms for which EPA has not adopted a definition include "insignificant activity or emissions," "major new source review," "minor new source review," "potential to emit," "title I modification," and "Tribal area." To the extent these proposed terms were based on the August 1994 proposed revisions to part 70, EPA will finally address them in the Phase II rulemaking.

In addition, the Agency has retained several definitions found in the part 71 proposal that are not found in the current part 70 rule, but are needed for part 71. These include definitions for "delegate agency," "part 71 permit," "part 71 program," and "part 71 source." The Agency has also adopted definitions for "eligible Indian Tribe," "Federal Indian reservation," and "Indian Tribe," which were added to clarify which Tribes would be eligible to receive delegation of the part 71 program and to be considered "affected States."

The part 71 proposal and the August 1995 supplemental proposal reflect the Agency's position on what definitions would be appropriate in conjunction with the permit revision procedures, operational flexibility provisions, and other provisions that have been proposed for finalization in the Phase II rulemaking. Subsequent to reviewing all of the comments on both of these proposals, EPA may finalize definitions that differ from those adopted today.

1. Affected States

a. *Indian Tribes.* The EPA received numerous comments from Indian Tribes suggesting that federally recognized Indian Tribes should be considered to be "affected States" if their air quality may be affected or the Tribal area is contiguous to the State in which the

permittee is located or is within 50 miles of the permittee. They contended that Tribes should not have to meet any type of eligibility criteria in order to be considered an "affected State." Contrary to the view of these commenters, the EPA interprets section 301(d)(2) of the Act as authorizing the Agency to treat Indian Tribes in the same manner as a State for purposes of being an "affected State" only when EPA has determined that the Indian Tribe has demonstrated that it has met the eligibility criteria of section 301(d)(2) of the Act. The second paragraph of the proposed definition of "affected State" was inconsistent with this interpretation in that it would have treated Tribes in the same manner as States if the permitting action concerned a source located in a Tribal area, regardless of the Tribe's eligibility status. Therefore, EPA has amended this paragraph to include the same eligibility requirement as the first paragraph. That is, that the Indian Tribe must have demonstrated that it has met the eligibility criteria of section 301(d)(2). However, in the interest of furthering government-to-government relationships with Tribes, EPA has adopted a provision in section 71.8 that requires the part 71 permitting authority to provide notice of draft permits to any federally recognized Indian Tribe whose air quality may be affected by the permitting actions and whose reservation or Tribal area is contiguous to the jurisdiction in which the part 71 permit is proposed or is within 50 miles of the permitted source. (See discussion at section III.G. of this notice.)

b. *Local agencies.* The proposed definition of "affected State" in the part 71 proposal added language not found in the current part 70 definition of "affected State" to the effect that, when a part 71 permit, permit modification, or permit renewal is proposed for a source located within the jurisdiction of a local agency, that agency would be considered an affected State. Today's rulemaking retains this approach because it pertains to a situation which is unique to part 71, i.e., when EPA administers a part 71 program in an area where the local agency would normally be the permitting authority of record under an approved part 70 program. The proposal also differed from today's rulemaking in that under the proposal, local agencies would not otherwise be considered affected States. Since the approach taken to such jurisdictions is an issue for both parts 70 and 71, it will be addressed in the Phase II rulemaking. In the interim, the proposed language has been deleted to comport with the current part 70 definition.

2. Applicable Requirements

The part 71 proposal expanded the part 70 definition of "applicable requirement" to include the provision that any requirement enforceable by the Administrator and by citizens under the Act which limits emissions for the purpose of creating offset credits or avoiding any applicability requirement is itself an applicable requirement. This addition, while helpful for understanding what constitutes an applicable requirement, was based on the August 1994 proposed revisions to part 70, which EPA is not yet prepared to finally promulgate. As such, EPA believes it is not appropriate to finalize this change for purposes of part 71 at this time, but intends to address this issue in the Phase II rulemaking. It was therefore deleted to comport with the current part 70 definition.

The definition of "applicable requirement" in the part 71 proposal also differed from the definition in the current part 70 rule in that it limited the title VI requirements that would have to be included in a title V permit. This proposed language, while consistent with the August 1994 proposed revisions to part 70, which, again, EPA is not yet prepared to finalize, was removed so that the definition would conform to the definition in the current part 70 regulation.

3. Final Permit

The proposal contained a proposed definition of "final action or final permit action." The final rule changes this term to "final permit" in order to better harmonize the definition with the term "final permit" in the current part 70 regulation promulgated at section 70.2.

4. Major Source

The proposed part 71 rule contained a definition of "major source" that was based on the proposed change to the term contained in the August 1994 proposed revisions to part 70. Since publication of the part 71 proposal, EPA has also proposed additional changes to the term in the August 1995 supplemental proposal for parts 70 and 71. The EPA is currently in the process of reviewing, evaluating and developing positions in response to comments on this very important term and other issues raised in the August 1995 proposal. Consequently, EPA is not yet prepared to promulgate part 71 in general, or the major source definition in particular, as based on the August 1994, April 1995 or August 1995 proposals. The only exception to this approach is in regard to source

categories for which fugitive emissions are to be counted in determining whether a source is a major source under section 302 of the Act.

Consistent with PSD and nonattainment NSR, current part 70 requires the counting of fugitive emissions from source categories which have been listed pursuant to section 302(j) in major source applicability determinations. See the definition of "major source" at 40 CFR section 70.2. The one difference, however, between the list of source categories under PSD and nonattainment NSR and current part 70 is in regard to the 27th category of sources that are required to count fugitive emissions. In parts 51 and 52, the 27th category is stated as follows:

Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.

In current part 70, the 27th category reads as follows:

All other stationary source categories regulated by a standard promulgated under section 111 or 112 of the Act, but only with respect to those air pollutants that have been regulated for that category;

As can be seen from the above, one of the principal differences between these two paragraphs is the date of August 7, 1980, which is specified in the PSD and nonattainment NSR regulations, but is absent from the current part 70 regulation. The result of this difference is that part 70 literally requires sources to count fugitives even where those sources are not required to do so in determining whether they are major for purposes of PSD or nonattainment NSR. As stated in the preamble to the August 1994 part 70 proposal, EPA acknowledges that it did not follow the procedural steps necessary under section 302(j) to expand the scope of sources in this category for which fugitives must be counted in part 70 major source determinations. See memorandum of June 2, 1995, entitled "EPA Reconsideration of Application of Collocation Rules to Unlisted Sources of Fugitive Emissions for Purposes of Title V Permitting," from Lydia Wegman, Deputy Director, Office of Air Quality Planning and Standards, to Regional Air Directors. Instead of perpetuating this problem by following this aspect of current part 70, and even though the Agency is not yet ready to finalize the approach taken in the August 1995 supplemental proposal for parts 70 and 71, EPA believes that an appropriate interim solution is to finalize this category similar to how it was proposed in the April 1995 part 71 proposal and consistent with the provisions in the PSD and nonattainment NSR

regulations. As a result, the 27th category will read as follows:

Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.

Use of the above language best ensures that, until EPA is prepared to finalize part 70's proposed revisions, there will be no discrepancy between the treatment of fugitive emissions under PSD and nonattainment NSR and the corresponding provision in this phase I part 71 rule. This language further ensures that sources which are considered major sources under PSD and nonattainment NSR are also major sources under part 71. This consistency is compelled by section 501(2) which requires any stationary source to be considered major under title V if it is a major source under section 112 or a major stationary source under section 302 or part D of title I.

It is important to remember that EPA has proposed additional modifications to the list of source categories, including this 27th category, in the August 1995 proposal for parts 70 and 71. However, as EPA is currently in the process of reviewing and evaluating comments regarding these revisions, EPA cannot at this time finalize any of these proposed modifications.

The EPA stresses that the definition of major source in today's rulemaking does not constitute a decision to reject other proposed changes to the term contained in the recent proposals. Rather, EPA expects the Phase II part 71 rulemaking to make whatever changes to the term are necessary in order to maintain harmonization with part 70, if the part 70 definition of major source is ultimately revised as the Agency intends. In the meantime, however, in order to avoid delay in fulfilling the Agency's responsibilities under title V, and in order to avoid repeating a procedural mistake that occurred in the development of the first part 70 rule, EPA has concluded, in response to the commenters, that at this point it is most reasonable to promulgate a definition that is consistent with the major source definition contained in the current part 70 rule, except for the 27th category of sources listed pursuant to section 302(j). As EPA has already told States that they may receive interim approval of their State programs even if they do not literally match with current part 70's 27th category, due to EPA's concession that the Agency did not take the procedural steps necessary in part 70 to constitute a section 302(j) rulemaking, EPA believes it is reasonable to take this limited departure from part 70. The EPA will respond to specific comments on

the major source definition as proposed in April 1995 and August 1995 in the context of finalizing the Phase II part 71 rule.

5. Permit Modification and Permit Revision

For the purposes of this rulemaking, EPA adopted the definition of permit modification in the current part 70 regulation and revised the definition of "permit revision" to be consistent with the current part 70 definition.

6. Permitting Authority

The final rule changes the proposed definition of "permitting authority" to more closely match the definition of the term currently promulgated at section 70.2.

7. Potential to Emit

Today's rule does not include a final regulatory definition of the term "potential to emit." The part 71 proposal contained a proposed definition of potential to emit that was based on the August 1994 proposed revisions to part 70. The current part 70 definition of the term provides that physical or operational limits on a source's capacity to emit an air pollutant shall be considered part of the source's design if the limitation is enforceable by the Administrator. Under the proposed definition, the phrase "and by citizens under the Act" would have been added. The EPA is still in the process of evaluating comments on the proposed revisions to part 70 with respect to this issue, and is not yet prepared to adopt the revision to the definition into a final rule. Consequently, it is premature to adopt this change into the final part 71 rule at this time.

In addition, EPA also received substantial adverse comment on the proposed requirement that limitations on potential to emit be enforceable by the Administrator (i.e., "federally enforceable"). Industry commenters noted that EPA's policy on Federal enforceability was the subject of several pending lawsuits against the Agency in the Court of Appeals. These commenters have long held that emissions limitations enforceable under State law should not have to be federally enforceable in order to be considered part of a source's physical or operational design and a valid limit on potential to emit. These commenters also urged EPA to codify the Agency's January 25, 1995, memorandum in which EPA stated it would not require certain sources that otherwise have the potential to emit an air pollutant in major amounts to obtain permits under state part 70 programs.

See, memorandum of January 25, 1995, entitled "Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act)," from John Seitz, Director, Office of Air Quality Planning and Standards, to Regional Air Division Directors (hereafter "January 25, 1995 memorandum from John Seitz").

Since the close of the comment period, the U.S. Court of Appeals for the District of Columbia Circuit has ruled on two occasions that EPA in two separate regulations had failed to explain why the Agency had adopted a restrictive interpretation of "potential to emit." See *National Mining Association v. EPA*, 59 F.3d 1351 (D.C. Cir. July 21, 1995), and *Chemical Manufacturers Association v. EPA*, No. 89-1514 (D.C. Cir. Sept. 15, 1995). In response to these rulings, EPA has begun a rulemaking effort that would consistently apply to all of its regulations and programs that base applicability on sources' potential to emit. This rulemaking will address potential to emit not only in the regulations that were the subject of the two court rulings (EPA's "General Provisions" regulations under section 112 of the Act promulgated at 40 CFR part 63, and the NSR and PSD regulations at parts 51 and 52), but also to parts 70 and 71.

In the meantime, however, the Agency believes it would not be appropriate to delay issuance of the part 71 regulation (and implementation of the Federal operating permit program in States that have not yet obtained part 70 approval) due to the pendency of the Agency's general potential to emit rulemaking. At the same time, EPA does not believe it would be appropriate to merely recodify the part 70 definition of potential to emit in this Phase I part 71 rule, in light of the recent court decisions concerning the section 112 and NSR and PSD regulations. Consequently, for this interim part 71 rule, EPA is not adopting a regulatory definition of potential to emit for purposes of part 71. This definition will be added to part 71 at a later time, when the Agency completes its general rulemaking to define potential to emit for its various stationary source programs under the Act.

Nevertheless, the absence of a regulatory definition of potential to emit in today's rule should not prevent sources from being able to determine whether they are subject to the part 71 program because they are major sources. The EPA stresses that the term "major source" is already defined as a statutory matter in title V at section 501(2) of the Act to mean a major source as defined

in section 112 and a major stationary source as defined in section 302 or part D of title I of the Act. Moreover, the definition of major source adopted today also tracks these statutory provisions, and, as discussed in the recent memorandum entitled "Interim Policy on Federal Enforceability Requirement for Limitations on Potential to Emit," from John Seitz, Director, Office of Air Quality Planning and Standards (hereafter January 22, 1996 memorandum from John Seitz), most current regulatory requirements and policies regarding potential to emit, including the interim policy discussed in the January 25, 1995 Seitz memorandum, remain in effect while EPA conducts expedited rulemaking to address these issues in detail. Consequently, in determining whether a source is major, the part 71 permitting authority and source operator should look to the regulatory definition of major source adopted in today's rule and the statutory definitions in section 112, section 302, and part D of title I (as those provisions are implemented by applicable regulations thereunder) as controlling for purposes of this Phase I part 71 rule.

In *National Mining Association v. EPA*, 59 F.3d 1351 (D.C. Cir. July 21, 1995), the Court dealt with the potential to emit definition under the hazardous air pollutant programs promulgated pursuant to section 112. In this decision, the Court agreed with EPA that only "effective" State-issued controls should be cognizable in limiting potential to emit. In addition, the Court did not question the validity of current federally enforceable mechanisms in limiting potential to emit. However, the Court found that EPA had not adequately explained why only federally enforceable measures should be considered in assessing the effectiveness of State-issued controls. Accordingly, the Court remanded the section 112 General Provisions regulation to EPA for further proceedings. Thus, EPA must either provide a better explanation as to why Federal enforceability promotes the effectiveness of State controls, or remove the exclusive Federal enforceability requirement. The Court did not vacate the section 112 regulations, and they remain in effect pending completion of EPA rulemaking proceedings in response to the Court's remand.

The EPA reiterates that independent from the decision in *National Mining*, current EPA policy already recognizes State-enforceable potential to emit limits under section 112 and title V in many circumstances under the

transition policy discussed in the January 25, 1995 John Seitz memorandum, as recently revised by the January 22, 1996 John Seitz memorandum. In recognition of the absence in some States of suitable federally enforceable mechanisms to limit potential to emit applicable to sources that might otherwise be subject to section 112 major source requirements or to title V, EPA's policy provides for the consideration of State-enforceable limits as a gap-filling measure during a transition period that extends until January 1997. Under this policy, restrictions contained in State permits issued to sources that actually emit more than 50 percent, but less than 100 percent, of a relevant major source threshold are treated by EPA as acceptable limits on potential to emit, provided that the permit and the restriction in particular are enforceable as a practical matter. In addition, sources with consistently low levels of actual emissions relative to major source thresholds can avoid section 112 major source requirements even absent any permit or other enforceable limit on potential to emit. Specifically, the policy provides that sources which maintain their emissions at levels that do not exceed 50 percent of any applicable major source threshold are not treated as major sources and do not need a permit to limit potential to emit, so long as they maintain adequate records to demonstrate that the 50 percent level is not exceeded.

Under today's Phase I part 71 rule, sources that are not treated as major under this policy would also not be treated as major for purposes of part 71. However, if a source would be treated as major under the applicable regulations implementing section 112 and this policy, the source would be required to obtain a part 71 permit. The EPA notes that this policy is to end in January 1997. In conjunction with the general rulemaking on potential to emit, EPA will consider whether it is appropriate to extend the transition period beyond January 1997.

In *Chemical Manufacturers Association v. EPA*, No. 89-1514 (D.C. Cir. Sept. 15, 1995), the Court addressed the potential to emit definition in the PSD and NSR programs. Specifically, this case challenged the June 1989 rulemaking in which EPA reaffirmed the requirement for Federal enforceability of potential to emit limits taken to avoid major source permitting requirements in these programs. In a briefly worded judgment, the Court, in light of *National Mining*, remanded the PSD and NSR regulations to EPA. In addition, in contrast to its disposition of the section

112 regulations in *National Mining*, the Court in *Chemical Manufacturers* vacated the federal enforceability requirement of the potential to emit definitions in the PSD and NSR regulations.

The EPA interprets the Court's decision to vacate the PSD/NSR Federal enforceability requirement as causing an immediate change in how EPA regulations should be read, although EPA expects that the effect of this change will be limited. Specifically, regarding provisions of the definitions of potential to emit and related definitions requiring that physical or operational changes or limitations be "federally enforceable" to be taken into account in determining PSD/NSR applicability, the term "federally enforceable" should now be read to mean "federally enforceable or legally and practically enforceable by a State or local air pollution control agency."

However, the effects of the vacatur will be limited during the period prior to completion of new EPA rulemaking on this issue. Thus, during this interim period, Federal enforceability is still required to create "synthetic minor" new and modified sources in most circumstances pending completion of EPA rulemaking. This is because EPA interprets the order vacating certain provisions of the PSD/NSR regulations as not affecting the provisions of any current State or Federal implementation plan (SIP or FIP), or of any permit issued under any current SIP or FIP. Thus, previously issued federally enforceable permits issued under such programs remain in effect.

Moreover, new or modified sources that seek to lawfully avoid compliance with the major source requirements of PSD or nonattainment NSR by limiting potential to emit to achieve synthetic minor status must still obtain a general or "minor" NSR preconstruction permit under section 110(a)(2)(C) of the Act and 40 CFR section 52.23. (This requirement was not at issue in the *Chemical Manufacturers* case, and is unaffected by the Court's ruling.) Every SIP contains a minor NSR program that applies generally to new or modified sources of air pollutants, and permits issued under such programs are, like all other SIP measures, federally enforceable. In sum, the precise impact of the vacatur on PSD/NSR applicability in any State, and hence the applicability of part 71 under the section 302 and part D of title I prongs of the definition of major source adopted in part 71, can be definitively established only by reviewing the provisions of the particular SIP or FIP to which the source is subject.

8. Regulated Air Pollutant

In the August 1995 supplemental proposal, EPA proposed a less inclusive definition than is currently promulgated in part 70 or was proposed for part 71 in the April 1995 notice. However, for purposes of today's rulemaking, EPA is retaining the definition in the part 71 proposal, which is consistent with the current part 70 definition. The EPA intends to take final action on the term as proposed in the supplemental proposal in the Phase II rulemaking.

9. Responsible Official

Although EPA has proposed, in the August 1994 proposed revisions to part 70, to clarify that the criteria for selecting the designated representative is the same at an affected source as at other sources, the Agency has adopted a definition of this term for purposes of today's rulemaking that is consistent with the definition in current part 70. The EPA will take final action in Phase II consistent with the Agency's final resolution of this issue in response to comments on the August 1994 notice.

10. Section 502(b)(10) Changes

The part 71 proposal, in omitting the definition of "section 502(b)(10) changes" from section 71.2, followed the approach used in the August 1994 proposed revisions to part 70. The Agency's reasons for the omission are articulated in that proposal at 59 FR 44467-8. As indicated in the August 1995 supplemental proposal, this is still the Agency position. However, EPA will not adopt a final position on proposed revisions regarding operational flexibility for part 70 or 71 until the Phase II rulemaking. For purposes of today's rulemaking, EPA has adopted a definition of the section 502(b)(10) changes that comports with the current part 70 regulation, in order to better harmonize the Phase I part 71 rule and the current part 70 regulation.

11. Title I Modification

The part 71 proposal, based on the August 1994 proposed revision to part 70, contained a proposed definition of the phrase "Title I modification or modification under any provision of title I of the Act." Subsequently, EPA issued a revised proposed definition in the August 1995 supplemental proposal for parts 70 and 71. The EPA is in the process of reviewing and developing a position in response to the comments on the several proposals with respect to this issue, and is not yet prepared to define the term in a final rule. The EPA will add a definition in the Phase II rulemaking that is consistent with how

EPA ultimately defines the term under part 70.

A detailed discussion of the history of this definition is contained in the preamble to the August 1995 part 70 proposal (60 FR 45545). At issue is whether the phrase "modifications under any provision of title I" as used in section 502(b)(10) of the Act includes not only modifications subject to major NSR requirements of parts C and D of title I but also modifications subject to minor NSR programs established by the States pursuant to section 110(a)(2)(C).

In August 1994, EPA proposed to interpret the title I modification language of part 70 to include minor as well as major NSR modifications (55 FR 44527). The EPA received many comments from industry and States contesting this interpretation. The commenters argued that EPA had defined title I modification in the preamble to the May 1991 proposed part 70 rule to exclude minor NSR (56 FR 21746-47 and footnote 6) and did not redefine it in the final July 1992 rule. As a result, they argued that they were relying on the current rule to be interpreted consistent with the proposed rule preamble and that EPA could not change its interpretation without undertaking further rulemaking.

Based in part on the arguments raised by commenters, EPA revised its proposed interpretation of the definition of title I modification in the August 1995 supplemental notice to exclude modifications subject to minor NSR. In addition, EPA proposed regulatory language defining title I modification which excluded the reference to section 110(a)(2) of the Act.

While EPA is not yet prepared to adopt a final definition for the term, in implementing the Phase I part 71 program EPA will treat the issue consistently with the approach the Agency has advised States to take under the current part 70 regulation. Consequently, it will not consider title I modifications to include changes subject to State minor NSR programs.

B. Section 71.3—Sources Subject to Permitting Requirements

The final rule promulgates provisions regarding applicability of the program at section 71.3. These provisions are based on their counterparts in the currently promulgated part 70 rule at section 70.3. Consequently, in several aspects, they differ from section 71.3 as proposed, which was based on the August 1994 proposed revisions to section 70.3 which the Agency is not yet prepared to finalize.

Paragraph (a)(1) of the part 71 proposal contained an exemption from

title V for major sources that would be subject to title V only if they have the potential to accidentally release pollutants listed pursuant to section 112(r)(3) in major amounts. This exemption has been deleted, even though it garnered reviewer support, consistent with the decision to match the part 70 requirements except where unique circumstances make a change necessary. If EPA ultimately revises part 70 to add the deleted language, the Agency would intend to revise part 71 consistently.

Proposed section 71.3(a)(4) which was modelled upon the August 1994 proposed revisions to part 70 and would have stated that any source subject to title I parts C or D would be required to obtain a permit was also deleted from the final regulation to comport with the part 70 regulation. The purpose of this provision was to ensure that all sources subject to preconstruction permitting as major sources under parts C or D of the Act are also subject to title V permitting. Again, if part 70 is ultimately revised to add this provision, EPA would intend to revise part 71 to add it as well.

Similarly, paragraph (b)(2) has been changed to conform with section 70.3(b)(2), which addresses applicability for sources subject to section 111 or 112 standards promulgated after July 21, 1992. Proposed section 71.3(b)(2) differed from both existing section 70.3(b)(2) and the August 1994 proposed revisions thereto. If section 70.3(b)(2) is ultimately revised, EPA would expect to revise section 71.3(b)(2) to harmonize it with part 70.

Paragraphs (c) and (d) of this section, found in the proposal at sections 71.6(a)(1)(iv) and 71.5(f)(3)(i), respectively, were moved to this section for compatibility with the current part 70 provisions at sections 70.3 (c) and (d).

C. Section 71.4—Program Implementation

The major issues raised by commenters on proposed section 71.4 related to the need to base part 71 on finalized (as opposed to proposed) provisions of part 70, how the part 71 program should be customized to fit the unique needs of the State or area for which the program is administered, and jurisdictional issues with respect to programs on Tribal lands. The Agency's approach to the first issue is discussed at length in section II of this document. This section addresses the second and third issues in addition to several minor changes to the proposed rule that were adopted today.

1. National Template Approach

With respect to the second issue, EPA received divergent comments. For example, commenters suggested that a national template should be flexible, that a national template should be used only to fill in the gaps of deficient State programs, and that there should be no national template because title V does not authorize EPA to develop such a rule.

The Agency carefully considered the statutory framework for the program and interprets title V as authorizing a national template approach. For a further discussion of this issue, see section II of this document. The EPA chose a national template approach because EPA believes the national template is flexible enough to be an effective program in nearly all areas, and individual rulemakings for each area that has a part 71 program would be needlessly burdensome on the Agency. Since the national template will serve the needs of most areas, it is more efficient to promulgate the program once while allowing for separate rulemakings, as needed, in some areas. The EPA recognizes the desirability of providing a flexible approach to administering the program, as the commenters have suggested, when the national template does not adequately fit the unique State or Tribal situation. Such flexibility is already contained in section 71.4. When EPA determines that the national template rule is not appropriate for a State, EPA may adopt, through a separate rulemaking, appropriate portions of a State or Tribal program in combination with provisions of part 71 in order to craft a suitable part 71 program, as provided in section 71.4(f). Furthermore, section 71.9(c)(7) provides that when the national fee structure would not reflect the cost of administering a part 71 program, the Administrator shall through a separate rulemaking set an appropriate fee. Finally, as provided in section 71.5 and as discussed in section III.D of this document, EPA has designed part 71 to provide significant flexibility to accommodate the localized air quality issues. For example, EPA will use State application forms whenever possible and will try to match the list of trivial activities which may be left off application forms to the lists established in the State operating permit program.

2. Part 71 Programs in Tribal Areas

The EPA is deferring promulgation of regulations that would describe how the Agency would determine the boundaries of a part 71 program for a

Tribal area. The EPA has published a proposed rule, pursuant to section 301(d)(2) of the Act, specifying the provisions of the Act for which EPA believes it is appropriate to treat Indian Tribes in the same manner as States and outlining the Agency's position on the authority of Indian Tribes to administer air programs under the Act. See 59 FR 43956 (Aug. 25, 1994) ("Indian Tribes: Air Quality Planning and Management," hereafter "proposed Tribal rule"). As indicated in the part 71 proposal, EPA intends to follow the approach of the Tribal rule with respect to issues of jurisdiction and resolution of jurisdictional disputes. The EPA agrees that it would be more practical to defer addressing jurisdictional issues until the promulgation of the Tribal rule. The Agency will finalize an approach to jurisdiction as well as a definition of Tribal area in the Phase II rulemaking or in conjunction with finalizing the Tribal rule. In the interim, the Agency will not be able to implement part 71 programs in Tribal areas unless it completes a rulemaking that establishes the boundaries of the part 71 program in the Tribal area. Rulemakings for the Tribal rule and Phase II will be completed well in advance of the November 1997 deadline for EPA to implement part 71 programs on Tribal lands. Therefore, EPA does not expect that the deferral of jurisdictional issues will delay implementation of the part 71 program. Although part 71 contains no definition of "Tribal area," EPA will provide (and will require delegate agencies to provide) notice of proposed permitting actions pursuant to section 71.8(d) even prior to the Phase II rulemaking. In the interim, federally recognized Indian Tribes will receive notice with respect to permitting actions related to sources whose emissions may affect Tribal air quality and that are located in contiguous jurisdictions or are within 50 miles of the exterior boundaries of the reservation.

3. Expiration of Part 71 Permits

The Agency received comments suggesting that part 71 permits should be rescinded automatically, without the Agency taking any action, when they are replaced by a part 70 permit. The EPA agrees that no separate agency action should be required when a part 71 permit is replaced by a part 70 permit issued under the approved part 70 program because unless the rescission happens simultaneously with the issuance of the part 70 permit, a source could be subject to a part 70 and a part 71 permit which may contain different requirements. Accordingly, EPA has deleted proposed section 71.4(l)(3)

which provided that the Administrator would rescind part 71 permits when they were replaced with part 70 permits. Further, the EPA has adopted section 71.6(a)(11) which provides that part 71 permits shall contain a provision to ensure that a part 71 permit will expire when the source is issued a part 70 permit.

4. Suspension of Issuance of Part 71 Permits

The EPA revised the first paragraph of proposed section 71.4(l) to clarify, consistent with EPA's original intent, that EPA may suspend issuance of part 71 permits whenever the Agency has granted full or interim approval to a State part 70 program. Section 502(e), which addresses suspension of the issuance of part 71 permits, provides that the triggering event for suspension is publication of notice of approval. Thus, there is no statutory requirement that a State program must "fully" meet the requirements of part 70 or be fully approvable in order for EPA to suspend permit issuance. The Agency believes it is appropriate to suspend issuance of part 71 permits when a State program substantially meets the requirements of part 70 and has received interim approval because it would be confusing and burdensome to have two title V permit programs operating simultaneously in the same jurisdiction. Therefore, EPA has deleted the word "fully" from the first paragraph of proposed section 71.4(l).

5. Delegation Agreements

The final rule makes a minor change to proposed section 71.4(j) in parallel with a change to proposed section 71.10(b) to reflect the fact that under the final rule, EPA will not publish its delegation agreement with a delegate agency. Therefore, section 71.4(j) provides that the roles of the delegate agency and EPA in administering the part 71 program will be defined in a delegation agreement, not in a Federal Register notice. The EPA will follow the procedures for delegation agreements established for the PSD program under which EPA does not publish its delegation agreements. Delegation agreements reflect the understanding of EPA and the delegate agency as to their respective responsibilities and are not subject to any notice requirement. This approach allows EPA and the delegate agency to modify their agreement as circumstances change, without the burden of publishing a Federal Register notice.

6. Early Reductions Permits

The Agency retained in section 71.4(i)(3) the requirement that the permitting authority take action on complete permit applications containing an early reduction demonstration within 12 months of receipt of the complete application. Although the current part 70 regulation sets a 9 month deadline for State action, EPA Regional offices are allowed 12 months to take action on the permit applications submitted under the interim permitting rule for early reduction sources that EPA adopted prior to the approval of any State part 70 programs. See 40 CFR section 71.26(a)(2). The Agency believes that this time frame is reasonable given the effort required to process the permits and the need for sources qualifying for a compliance extension under the Early Reductions Rule to obtain a permit prior to certain deadlines set by the rule.

D. Section 71.5—Permit Applications

The part 71 proposal addressed permit applications at proposed section 71.5 (a) through (i). This proposed section was based upon a combination of corresponding provisions in the existing part 70 rule and in the August 1994 proposed revisions to part 70, and was presented in a slightly different structure from the part 70 rule. In light of EPA's decision to promulgate part 71 on an interim basis, more consistently with the existing part 70 rule, the provisions based upon the August 1994 proposal are not being adopted today. Moreover, in order to facilitate transition from implementing part 71 to part 70 programs, the final rule is being adopted in a structure that is more consistent with that of the current part 70 rule.

1. Timely Application

Under section 71.5(b)(1) of the proposal all initial permit applications would have to be submitted within 12 months or an earlier date after the source becomes subject to part 71. The proposal would have required that the permitting authority provide notice of the earlier date to the source and that this notice would be given at least 120 days in advance of the application submittal date.

Several commenters argued that the 120 days (4 months) minimum notice would not give sources sufficient time to prepare an application. They also argued that 4 months was insufficient time for sources to submit their applications early for purposes of addressing deficiencies and ensuring they receive the application shield.

In response to these comments, EPA has lengthened the notice period from 4

months to 6 months. Section 503(c) of the Act requires the submittal of all applications within 12 months of the effective date of a permit program or such earlier date as the permitting authority may establish and that one-third of these applicants be issued permits in this first year. In order to issue one-third of the permits in the first year, EPA must receive at least one-third of the applications prior to 12 months after the effective date of the program.

The EPA considered and rejected commenters' suggestions for 8 to 12 months' advance notice because they would interfere with EPA's requirement to issue one-third of the permits in the first year. The EPA believes that the 6 month alternative will allow EPA enough time to process and issue permits. The EPA believes that 6 months is sufficient time for sources to prepare applications for several reasons that had not been announced at time of proposal. First, on July 10, 1995, EPA issued the first white paper that examines options for simplifying part 70 permit applications and sets minimum expectations concerning how much information must be included in order for the application to be found complete. In today's notice EPA announces its intention to implement both of the white papers for part 71 program purposes. Second, EPA has revised the rule to clarify that part 71 permit application forms may be developed by the delegate agency or the EPA allowing a part 71 application form to be based on a State form developed for part 70 purposes, as long as the form meets the minimum requirements of part 71 (discussed in more detail below). Third, because the final rule more closely follows the part 70 program upon which most State operating programs are based, sources will be familiar with most part 71 permit application requirements.

In addition, proposed sections 71.5(b) (2) and (3) have been deleted because they referred to off-permit changes and a four-track permit revision system which the Agency is not finalizing today.

2. Complete Applications

The final rule adopts the language from the current part 70 rule concerning complete applications. However, EPA believes that several clarifications will help applicants understand the flexibility available for submitting simplified permit applications that can be found complete. The terms "simplified permit application" or "streamlined permit application" refer to applications that require less information.

In the part 71 proposal, EPA proposed to adopt language from the August 29, 1994 part 70 revision notice (59 FR 44518) that would have clarified that an application would be found complete if it contained information "sufficient to begin processing the application." As stated previously, today's rulemaking is based on provisions of current part 70; therefore, this language does not appear in today's rulemaking. However, EPA believes, as stated more fully in the first white paper, that considerable flexibility already exists in the part 70 rule to find simplified permit applications complete. Since the white papers will be implemented for part 71 purposes, this flexibility also exists in the part 71 permit program.

Furthermore, the proposed revisions to part 70 (August 29, 1994) and the part 71 proposal discussed several additional options currently available to States for developing simplified permit applications and finding them complete, and did not propose any rule changes necessary to implement these options. These options were: (1) a two-step application completeness determination process for simplified applications and (2) simplified application content requirements for applicable requirements with future compliance dates. After the publication of these proposal notices, the first white paper included these two flexibility options, as well as many additional options, and reaffirmed EPA's interpretation that implementation of these options does not depend on making changes to the part 70 rule or State part 70 programs.

The EPA believes this approach will provide flexibility for sources to prepare simplified permit applications and for permitting authorities to find them complete. This approach will also promote consistency between the part 71 and part 70 programs, which in turn, will provide for a smoother transition between the programs. Guidance on the implementation of the white papers and other flexibility options for completeness determinations for a part 71 program implemented in a particular State may be provided by the EPA or delegate agency soon after the program takes effect.

Additionally, proposed section 71.5(d), concerning the treatment of business confidential information, has been revised in the final rule. The language of the proposal discussed the responsibilities of permitting authorities to process requests for confidential treatment and included a general reference to 40 CFR part 2. Considering the structure of these regulations and this section's position in these regulations, the Agency believes that the

promulgated language clarifies the procedures that applicants must follow to request confidential treatment for business information in applications, provides a more precise cross-reference to those procedures, and does not add any new requirements regarding the treatment of confidential information not intended by the proposal.

Note also that certain technical changes are being made to part 71's completeness provisions as a result of the final rule's greater harmonization with the existing part 70 rule. First, the completeness criteria are being promulgated at section 71.5(a)(2) while the proposal addressed completeness at section 71.5(c). In addition, the final rule references section 71.5(c) as the provision setting out required information in permit applications, while the proposal referenced proposed section 71.5(f). Moreover, the final rule cites section 71.5(d) as the provision concerning certification by a responsible official, while the proposal cited proposed section 71.5(i). Finally, the citation in the proposal to section 71.7(a)(3) has been changed in the final rule to section 71.7(c)(4) as a result of the changes to section 71.7.

3. Standard Application Form and Required Application

Proposed section 71.5(f) would have required part 71 sources to submit "applications provided by the permitting authority, or if provided by the permitting authority, an electronic reporting method" and did not include any preamble discussion of the interpretation of this phrase. One commenter on the proposal encouraged EPA to use existing State forms in States where EPA assumes part 71 authority. Final section 71.5(c) has been revised to more closely follow the corresponding language of section 70.5(c). The EPA agrees with the commenter and will provide forms developed by delegate agencies (States), or the EPA, including electronic application methods, for purposes of applying for part 71 permits. This approach to application development is possible because "permitting authority" is defined in section 71.2 as including the EPA or the delegate agency. This approach to providing part 71 forms will lead to less disruption and a smoother transition for sources preparing initial part 71 applications because, in many cases, sources will be familiar with the State form on which the part 71 form is based. For example, sources may already be collecting information and drafting an operating permit using the State form in expectation of part 70 program approval by EPA. In addition, commenters asked

that EPA clarify and simplify the requirements for emissions-related information in part 71 applications consistent with EPA's guidance in the first white paper. In response to these comments, EPA intends to implement the white paper guidance with respect to the collection and reporting of emission-related information and EPA believes that no changes to part 71 are necessary to do so.

Numerous technical changes have been made to the final rule regarding information to be required in permit applications to better match the current part 70 rule. In the proposal, information requirements were addressed at proposed sections 71.5(f) through (i), while the final rule follows part 70 by covering these requirements in sections 71.5(c) and (d). New citations to other provisions of part 71 are also due to the final rule's harmonization with part 70.

4. Insignificant Activities and Emission Levels

Extensive comments were received on the proposed insignificant activity and emission levels provisions of proposed section 71.5(g). Commenters argued, in part, that activities subject to applicable requirements should be eligible for the exemption for insignificant activities and emission levels, that the requirement that applications not exclude information needed to determine whether a source is subject to the requirement to obtain a part 71 permit would be too restrictive, that the list of insignificant activities in the final rule should be expanded, that the list of trivial activities in the first white paper should be codified in part 71, that the exemption for mobile sources as insignificant activities should be removed, that the single emissions unit emissions thresholds for insignificant emissions should be raised, and that the aggregate source-wide emission thresholds for insignificant emissions should be deleted.

a. Eligibility for Insignificant Treatment and Information Required in Applications. Section 71.5(c) of the final rule addresses, in part, information that must not be omitted from permit applications. These requirements have special relevance for applicants when determining what information must be included in applications for emission units that are eligible for insignificant treatment. To be consistent with current part 70, final section 71.5(c) deletes certain proposed provisions that do not follow the corresponding language of section 70.5(c) and that were based upon the proposed revisions to part 70 published in August 1994. Accordingly,

deleted from final section 71.5(c) is the proposed language that would have not allowed the application to omit information needed to: (1) Determine whether a source is major, and (2) determine whether a source is subject to the requirement to obtain a part 71 permit. Notwithstanding these deletions, EPA continues to believe that the definition of major source at section 71.2 controls the determination of which units are counted for major source applicability purposes and that emissions of units that qualify for insignificant treatment in the application are not exempt from these determinations. Consistent with the Agency's approach in implementing the current part 70 rule, the EPA is reversing its interpretation, first expressed in the proposed preamble, that would have excluded the eligibility of activities for treatment as insignificant when such activities are subject to applicable requirements. The EPA believes that no change to the final rule is necessary to implement this new interpretation.

Industry commenters were particularly concerned that EPA's interpretation that proposed section 71.5(g) would not allow activities with applicable requirements to be eligible for insignificant treatment would render the insignificant activity and emissions level provisions meaningless because few sources would be eligible for streamlined treatment in the application.

The EPA now believes that it was overly broad in stating that emission units were precluded from eligibility as "insignificant" if such units would be subject to applicable requirements. As discussed below, EPA believes there are circumstances in which an emission unit or activity can be treated as "insignificant" under a Federal operating permits program, even if it is subject to an applicable requirement. However, a title V application must still contain information needed to determine the applicability of or to impose any applicable requirement or any required fee and a permit must still meet the requirements of section 71.6 for all emission units subject to applicable requirements, including those eligible for insignificant treatment.

Both sections 71.5(c) and 71.5(c)(3)(i) require sufficient information to verify the requirements applicable to the source and to collect appropriate permit fees.

This means that some of the information required by sections 71.5(c) (3) through (9) may be needed in the permit application for insignificant activities in order for the permitting

authority to draft an adequate operating permit. As an example, where an insignificant activity is not in compliance with an applicable requirement at the time of permit issuance, the permit application would need to contain a compliance plan, including a compliance schedule, for achieving compliance with the applicable requirement. As another example, if a source has some insignificant activities within a category that are subject to an applicable requirement and some within that same category that are not subject to that applicable requirement because the applicability criteria for the applicable requirement are different from the applicability criteria for insignificant activities, the permit application would generally be required to include sufficient information on the insignificant activity for the permitting authority to determine which units are subject to the applicable requirement and to include that applicable requirement in the permit for the subject insignificant activity. The EPA believes that a part 71 permit application may simply list the applicable requirements that apply to insignificant activities generally, rather than requiring the permit application to explicitly identify which insignificant activities are subject to which applicable requirements. The permitting authority would then issue a permit imposing the applicable requirements in the permit, but not specifically identifying which insignificant activities are subject to those applicable requirements. (For a more detailed discussion, see the first white paper and the proposed interim approval and proposed notice of correction for the State of Washington's part 70 program, 60 FR 50166 (September 28, 1995).)

b. Insignificant Activity Lists. Section 70.5(c), in part, allows States to develop lists of insignificant activities and emission levels that need not be included in applications and requires activities (or equipment) exempted due to size or production rate to be listed in the application. State part 70 program submittals were approved by EPA that implement this provision in a variety of ways. The structure of the proposed regulations was based on the structure of these State implementing regulations, and included a short list of insignificant activities and provisions setting insignificant emissions levels. The proposed list of insignificant activities, section 71.5(g)(1), included a list of specific source categories, activities, or equipment that could be left off the application. The proposed insignificant

emissions provisions, section 71.5(g)(ii), allowed sources the flexibility to treat additional source categories, equipment, or activities as insignificant, provided certain eligibility criteria were met, including not exceeding certain emissions levels, and provided that the activities were listed in the application. The EPA believed that the proposed insignificant emissions approach was flexible enough that extensive lists of insignificant activities would not be needed in the final rule. The EPA reasoned that no list of insignificant activities would ever be so inclusive as to list every type of activity potentially eligible for insignificant treatment at industrial sources, and therefore, additions to the list would require resource-intensive notice and comment rulemaking on an ongoing basis. The proposal asked for comment on its approach and asked whether the proposed approach would be compatible with approaches developed by States.

Numerous industry commenters argued, in general, that the proposed part 71 list was not extensive enough to provide meaningful relief for industry from the administrative burdens associated with submitting detailed information for emission units or activities that pose little or no environmental risk and that the part 71 list was not as extensive as lists developed by States for their part 70 programs.

The EPA is finalizing the proposed list of insignificant activities with one revision. The EPA believes that the commenters' concerns that there be more opportunities for streamlining the information required by part 71 permit applications is best addressed by implementing the white papers for part 71 purposes, and that no changes to the final rule are necessary to implement this approach. The EPA believes that the white papers provide for application streamlining that is comparable and, in many ways, superior to approaches based on omitting certain emission unit or activities from the application only when eligibility for insignificant treatment is established in a rule. In general, the white papers allow sources to provide little or no detailed source-specific information for emissions units or activities where the information is not reasonably available and to the extent the information is not needed to resolve disputed questions of major source status, applicability of requirements, compliance with applicable requirements, or needed to calculate fees.

For example, section B.3. *Insignificant Activities* of the first white paper allows

trivial activities to be completely omitted from applications. The white paper defines trivial activities as activities without specific applicable requirements (although they may have "generic" applicable requirements, explained below) and with extremely small emissions and included a list of trivial activities in Appendix A. Many of the trivial activities identified in the first white paper are common to State lists of insignificant activities. Under part 71, sources may rely on this list, and EPA or the delegate agency may add to it without the need for Federal rulemaking. This allows EPA to expand the list of trivial activities for a part 71 program in a specific location, consistent with trivial activity lists established in the State operating permit program, thus tailoring the program for a specific program implemented in a State.

Also providing considerable streamlining is section B.4 *Generic Grouping of Emission Units and Activities* of the first white paper which allows emissions units or activities with "generic" applicable requirements to be omitted from the application, independent of eligibility for insignificant treatment. Under this section, sources may provide little or no detailed source-specific information, even for units with "generic" requirements, provided that the "generic" requirements are described in the application such that their scope and manner of enforcement are clear. "Generic" requirements are certain broadly applicable requirements that apply and are enforced in the same manner for all subject units or activities and that are often found in the SIP. Examples of such requirements include requirements that apply identically to all emissions units at a facility (e.g., source-wide opacity limits), general housekeeping requirements, and requirements that apply identical emissions limits to small units (e.g., certain process weight requirements). Where the applicable requirement is amenable to this approach, part 71 permitting authorities may follow this approach regardless of whether subject activities have been listed as trivial or insignificant. A lengthy list of the types of requirements suitable for this treatment is not possible here because, among other reasons, the examples of which EPA is aware are SIP requirements, and so vary from State to State. The EPA or delegate agency will decide which SIP requirements can be treated in this generic fashion for specific locations where part 71 programs are implemented.

The EPA has determined that the insignificant activity exemption for air-conditioning units used for human comfort at final section 71.5(c)(11)(i)(B) should be changed to clarify that substances other than class I or II substances may be regulated under title VI of the Act. This change is necessary because effective November 15, 1995, title VI requires recycling or recovery of substitute refrigerants regardless of whether or not they are ozone depleting substances (Class I and Class II substances) unless EPA makes a refrigerant-specific decision that the substitute will not harm human health or the environment and can, therefore, be vented.

c. *Insignificant Emissions Levels.* In response to comments, EPA has revised proposed section 71.5(g)(2)(i), which is section 71.5(c)(11)(ii)(A) of the final rule, to increase the insignificant emissions threshold for regulated air pollutants other than (HAP) from a single emissions unit from 1 tpy to 2 tpy and to delete the 1,000 pounds (lb) per year threshold in extreme ozone nonattainment areas. The EPA believes this decision is appropriate since, as commenters pointed out, EPA has previously stated in part 70 approval notices that insignificant emissions thresholds set at 2 tpy would be approvable in most locations. The EPA believes that due to the similarity between part 70 and part 71 programs it can logically conclude that this level is also appropriate for a part 71 program, regardless of where it is located. This level will provide a measure of additional flexibility for sources to exempt insignificant activities, thus simplifying the application, with little additional risk that significant emission units will be excluded from the application. As further discussed below, there are several safeguards available in the final rule that should ensure that significant units are not excluded from applications due to their eligibility for insignificant treatment. In addition, EPA is deleting the proposed 1,000 lb per year threshold for extreme ozone nonattainment areas. This will simplify the rule by setting the same tpy emission thresholds for attainment and nonattainment pollutants, while requiring the thresholds in relative terms to be no more than 20 percent of the major source threshold for nitrogen oxides and VOC and 2 percent of the major source threshold for the remaining criteria pollutants. Two tpy is considered trivial by EPA for all pollutants other than HAP in relation to major source thresholds in all attainment or

nonattainment areas and will not prevent the EPA from collecting information of a consequential or significant nature. In addition, these levels are more commonly found in State part 70 programs and therefore should help to ease the transition from part 71 to part 70 operating permit programs.

In response to comments, EPA has decided to delete the aggregate source-wide emissions criteria for insignificant emissions of regulated air pollutants (sections 71.5(c)(11)(ii) (A) and (B) of the final rule). The EPA proposed these aggregate source-wide emissions criteria as an additional means to ensure that emissions that might otherwise trigger the applicability of applicable requirements or major source status would not be excluded from applications. However, EPA now believes that the proposed aggregate emissions thresholds would have significantly limited the value of the insignificant emissions provisions for most medium to large sources. This deletion should not impede the permitting authority's ability to write permits which assure compliance with applicable requirements and the requirements of part 71. The EPA also believes that the utility of aggregate plant-wide thresholds is negligible because of various other safeguards already provided in the rule; in particular, section 71.5(c)(11) requires applications to not exclude information needed to determine the applicability of, or to impose, any applicable requirement. In addition, the requirement of section 71.5(c)(11)(ii) that units or activities with insignificant emissions be listed in the application provides an opportunity for the permitting authority to review the source's decision to treat emissions as insignificant, while the single-unit emissions thresholds of sections 71.5(c)(11)(ii) (A) and (B) limit the size of emissions to levels that would normally ensure that the units are not covered by extensive control requirements.

5. Compliance Certification

The part 71 proposal would have required sources to submit certifications that they were in compliance with all applicable requirements. Commenters requested further clarification of the certification requirements and argued that it was not clear exactly what efforts a source was required to make to determine its compliance status prior to certifying that it was in compliance with all applicable requirements, and that it was unclear whether or not a source was obliged to reconsider past applicability

determinations prior to making such a certification. The EPA does not believe that any revisions to the rule are necessary to address the commenters' points. This is true because the white papers for part 70 address these issues and sources may follow that guidance for purposes of completing part 71 permit applications.

E. Section 71.6—Permit Content

Today's permit content provisions more closely track the provisions contained in current 70.4 and 70.6 than did those in the proposal. Thus, the order of the paragraphs in section 71.6 is more similar to the permit content section of current part 70 than to the part 71 proposal. For example, the provisions dealing with the permitting authority's duty to address emissions units in the permit has been moved from section 71.6(a)(iv) to section 71.3(c), consistent with current part 70. In addition, using current part 70 as the template for permit content means that the provisions for "off-permit" contained in today's rulemaking mirror those found at section 70.4(b), while the off-permit provisions of the proposed rule tracked those contained in the August 1994 proposed revisions to part 70. Similarly, today's rulemaking adopts the requirements for emissions trading and operational flexibility that are found in current part 70.

In addition, EPA retains a provision related to the prompt reporting of deviations from permit conditions from the part 71 proposal. Current part 70 requires States to define "prompt" in their own programs, and today's rulemaking defines the term for the part 71 program and closes this gap in the proposed rule. Today's rulemaking also establishes a part 71 permit expiration date.

The EPA reiterates that today's rulemaking finalizes provisions for permit content on an interim basis in order to better facilitate smooth transition from implementation of part 71 to approved State programs established pursuant to the current part 70 rule. With respect to permit content provisions, the April 1995 and August 1995 proposals contain provisions which reflect the Agency's current best thinking, and subsequent to reviewing all of the comments on both proposals, EPA may finalize provisions for permit content that differ from those adopted today consistent with the approaches EPA eventually takes in promulgating final revisions to part 70.

1. Off-permit Operations

Under today's rulemaking, sources are allowed to make changes at a facility

that are not addressed or prohibited by the permit terms, provided they meet the requirements of section 71.6(a)(12). The provision adopted today is patterned on 70.4(b) (14) and (15), the analogous provisions in current part 70. Like part 70, part 71 requires that the source provide the permitting authority with contemporaneous written notification for these types of changes, that these changes be incorporated into the permit at renewal, and that the source keep certain records of these changes. Consistent with current part 70, section 71.6(a)(12) limits off-permit changes to those that do not constitute title I modifications, are not subject to any requirements under title IV of the Act, and meet all applicable requirements of the Act. In applying this provision, the Agency will use the interpretation of the term "title I modification" that States are allowed to use under the current part 70 rule. EPA expects that allows a significant number of minor NSR changes, to the extent that they are not prohibited by the title V permit, to qualify for off-permit treatment.

Like part 70, part 71 does not allow off-permit changes to alter the permitted facility's obligation to comply with the compliance provisions of its title V permit and does not grant the permit shield to off-permit changes. For a more thorough discussion of the concept of off-permit changes, see the rationale for part 70's off-permit provision found at 57 FR 32269.

The part 71 proposal contained a modified off-permit provision at proposed section 71.6(q) that was designed in light of the four-track permit revision procedures contained in the proposal and modeled on the off-permit provision contained in the August 1994 proposed revisions to part 70. Proposed section 71.6(q) would have allowed certain changes to remain off-permit but would have required the source to submit an application to revise its permit to reflect that change within 6 months of commencing operation of that change. In the August 1995 supplemental proposal to parts 70 and 71, the Agency indicated that off-permit provisions may be unnecessary if the streamlined permit revisions procedures for parts 70 and 71 are adopted as proposed therein. After reviewing comments on both proposals, EPA will decide whether to retain an off-permit provision in the Phase II rulemaking, consistent with the approach EPA takes in finalizing permit revisions procedures. Off-permit treatment is available in the interim, consistent with that provided by current part 70, but EPA does not believe that many permits

will be issued prior to the Phase II rulemaking and that the off-permit provision therefore will not be greatly utilized.

2. Operational Flexibility

Under the rule adopted today, sources will enjoy the same operational flexibility as is provided to part 70 sources under current part 70. Section 502(b)(10) of the Act requires that the minimum elements of an approvable permit program include provisions to allow changes within a permitted facility without requiring a permit revision. In the current part 70 rule at section 70.4(b)(12) (i)–(iii), and the rule adopted today, there are three different methods for implementing this mandate. Accordingly, section 71.6(a)(13)(i) provides for sources to make certain changes within a permitted facility that contravene specific permit terms without requiring a permit revision, as long as the source does not exceed the emissions allowable under the permit and the change is not a title I modification. Under the interpretation of the term “title I modification” that EPA is allowing States to take under the current part 70 rule, section 502(b)(10) changes may include changes subject to minor NSR, provided the change does not exceed the emissions allowable under the permit. Section 71.6(a)(13)(ii) also allows emissions trading at the facility to meet limits in the applicable implementation plan when the plan provides for such trading on 7-days notice in cases where trading is not already provided for in the permit. Additionally, section 71.6(a)(13)(iii) allows emissions trading for the purpose of complying with a federally-enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. For a thorough discussion of the flexibility allowed under the analogous part 70 provisions, see 57 FR 32266.

The part 71 proposal contained an approach to operational flexibility that was modeled on the August 1994 proposed revisions to part 70, not current part 70. The August 1995 supplemental proposal suggested further refinements to the concept. After reviewing comments on both proposals, EPA may adopt an approach to operational flexibility that is different from the one found in today's rulemaking, consistent with the approach EPA takes in finally revising part 70. While the approach adopted today differs significantly from that of the proposal, the Agency is adopting it on an interim basis in order to better facilitate transition to the State part 70

programs that are similarly based on the provisions governing operational flexibility under the current part 70 rule.

3. Affirmative Defense

In order to remain consistent with current part 70, EPA is adopting a provision from the part 71 proposal that would allow sources to assert an affirmative defense to an enforcement action based on noncompliance with certain requirements due to an emergency. Such a defense would be independent of any emergency or upset provision contained in an applicable requirement. See section 71.6(g). This provision is consistent with that found in the current part 70 rule at section 70.6(g).

As a result of concerns identified in legal challenges to part 70, the Agency, in the August 1995 supplemental proposal, solicited comment on the need for, scope and terms of an emergency affirmative defense provision. The Agency is reviewing those comments, but has not yet made a decision on whether or not to modify or remove this additional affirmative defense provision from part 70. The Agency will make part 71 consistent with the decision reached for part 70 in the part 71 Phase II promulgation. In the interim, sources may rely on the affirmative defense offered by section 71.6(g).

4. Definition of Prompt Reporting

The proposal contained provisions concerning prompt reporting of deviations from permitting requirements at proposed sections 71.6(f) (3) and (4). The final rule at section 71.6(a)(3)(iii) requires that each permit contain provisions for prompt notification of deviations.

Two commenters requested that the prompt reporting deadlines in part 71 be adjusted to reflect other environmental regulation timelines or to reflect State program guidelines that have been approved by the Agency for part 70 programs. The Agency disagrees with the request. Section 503(b)(2) of the Act requires permittees to promptly report any deviations from permit requirements to the permitting authority. Since individual permitting authorities are responsible for having programs to attain and/or maintain air quality within their geographical boundaries, they are obligated under the operating permits program to determine, among other things, what constitutes a prompt notification. Included as factors in determining prompt notification would be elements such as pollutant concentration, deviation duration, and

authority response time. Because sources and pollutants of concern vary among permitting authorities, States have adopted differing prompt reporting schedules. The Agency has reviewed its obligation to protect air quality on a national level, and has determined that its prompt reporting deadline is appropriate for this obligation. Therefore the deadlines contained in part 71 remain unchanged from the proposal.

Two commenters requested that part 71 clarify prompt reporting requirements for deviations other than those associated with hazardous, toxic, or regulated air pollutants, as described in sections 71.6(a)(3)(iii)(B)(1) and (2). The Agency believes that the requirement contained in section 71.6(a)(3)(iii)(A), in which sources are to report all instances of deviations from permit requirements at least every 6 months, provides the basis for prompt reporting of all other deviations. However, the Agency is willing to clarify this reporting requirement and has modified section 71.6(a)(3)(iii)(B) by adding a statement that directs sources to submit all other deviation reports in accordance with the timeframe given in section 71.6(a)(3)(iii)(A).

5. Inclusion of Federally Enforceable Applicable Requirements in Permits

Two commenters requested that EPA include in part 71 the analogue to section 70.6(b)(2), a provision that requires the permitting authority to identify in the permit any applicable requirements that are not federally enforceable. The EPA disagrees with this request because part 71 permits will not include any non-federally enforceable applicable requirements; therefore, a requirement for the Agency to identify such terms as non-federally enforceable would be moot, and a part 71 analogue to section 70.6(b)(2) is not needed. Part 71 differs from part 70 in this respect. However, section 71.6(b) is consistent with the first paragraph of section 70.6(b), which provides that part 70 permit terms and conditions are to otherwise be federally enforceable.

6. General Permits

The proposal contained provisions at proposed section 71.6(l) addressing general permits, which were based on the proposed revisions to the general permits provisions in the August 1994 notice. Under part 70, the EPA afforded other permitting authorities the choice of utilizing general permits, and the Agency intended to provide this flexibility to itself. The Agency believes that general permits offer cost-effective means of issuing permits for certain

source categories. The Agency has not yet decided on the proper approach concerning opportunities for public review and judicial review associated with general permits, and in the interim, has decided to remain consistent with the current part 70 rule. Therefore, under today's notice, EPA's authorization to allow a source to operate pursuant to a general permit may proceed without public notice and does not constitute final permit action for judicial review purposes. Today's part 71 general permit provisions are found at section 71.6(d) and are patterned after the analogous provisions at current section 70.6(d). In the Phase II rulemaking, EPA intends to revise the part 71 general permit provisions if necessary to remain consistent with the approach the Agency ultimately takes in the final revisions to part 70.

7. Permit Expiration

The proposed rule contained a provision for rescinding part 71 permits at proposed section 71.4(l)(3). Under today's rulemaking at section 71.6(a)(11), part 71 permits would contain a provision that automatically cancels the part 71 permit upon expiration of the initial permit term or upon issuance of a part 70 permit, without the need for separate action to rescind the permit. The Agency believes that a clear expiration date is necessary in order to avoid potential confusion over which title V permit terms and conditions are valid. The majority of permitting authorities are moving towards final approval of part 70 programs. In those few instances where a particular permitting authority may not have final part 70 program acceptance by the deadline for implementation of part 71, the Agency expects that final program approval will occur well before the 5-year part 71 permit term (12 years for certain municipal waste combustors) has expired. Once the part 70 program is approved, sources and permitting authorities may desire to begin implementation as soon as possible. The Agency has no desire to be a stumbling block in those efforts, nor does the Agency wish to promote confusion over which permit (part 71 or 70) would be in effect at a particular time.

One of the purposes of title V was to provide sources with certainty as to their applicable requirements. Part 71 and part 70 permits will be similar, but not necessarily congruent, e.g., part 71 permits would contain only federally-enforceable requirements, insignificant activities could differ, and reporting provisions would differ. In order to prevent the potential confusion

stemming from an unexpired part 71 permit remaining in effect concurrent with a part 70 permit, the Agency has decided to preclude the event from occurring. No such comparable provisions are needed in part 70 because that program provides just one title V permit per source. Consequently, section 71.6(a)(11) provides that a part 71 permit automatically expires upon the earlier of the expiration of its term or the issuance of a part 70 permit to the source.

F. Section 71.7—Permit Review, Issuance, Renewal, Reopenings, and Revisions

As discussed above, EPA is, on an interim basis, promulgating final regulations regarding permit issuance, renewal, reopenings, and revisions for part 71 that are based upon the existing provisions governing State title V programs at 40 CFR, section 70.7. Consequently, the provisions adopted today differ from those contained in the part 71 proposal, which were based upon the August 1994 proposed revisions to part 70. The EPA is still in the process of adopting revisions to part 70, and thus is not able at this time to base part 71's provisions on the expected future changes to part 70. As a result, EPA has concluded, in response to comments, that the most reasonable approach is to model part 71's permit issuance, renewal, reopenings, and revisions procedures on the corresponding provisions in the existing part 70 rule. These changes from the proposal, in addition to other changes in response to comments, are identified below.

1. Permitting Authority's Action on Permit Application

First, the organization of the paragraphs has been changed from the proposal to be consistent with 40 CFR section 70.7(a). In addition, in section 71.7(a)(1), the word "modification" is now used in place of the word "revisions," which was used in the proposal. This is a technical change to the rule to make it conform with the language used in corresponding provisions in the current part 70 rule. Also, section 71.7(a)(1)(ii) has been changed to track section 70.7(a)(1)(ii) by explicitly providing that changes subject to minor permit modification procedures need not comply with the public participation requirements of sections 71.7 and 71.11. This change from the proposal is a result of the Agency's adoption in today's rule of permit revision procedures modeled on those contained in the existing part 70 rule. Moreover, section 71.7(a)(1)(iv) has

been adopted without the language providing that, in some cases, the terms of the permit need not provide for compliance with all applicable requirements that are in force as of the date of permit issuance. Again, this change is necessary to make section 71.7(a)(1)(iv) consistent with the corresponding provision at section 70.7(a)(1)(iv), which does not contain the proposal's language. That language was first proposed in the August 1994 proposed revisions to part 70, and the Agency is not yet prepared to adopt it into a final title V rule. Likewise, section 71.7(a)(1)(v) is being promulgated without references to the administrative amendment and *de minimis* permit revision procedures contained in the proposal in order to better match the current part 70 provisions at section 70.7(a)(1)(v).

Section 71.7(a)(2) is being adopted without the language in the proposal which would have required permitting authorities to take final action within 12 months after receipt of a complete application for early reductions permits under section 112(i)(5) of the Act because regulatory language addressing this requirement was moved to section 71.4(i)(3). Furthermore, this provision is being adopted without the language in the proposal that would have allowed permitting authorities to delay final action where an applicant fails to provide additional information in a timely manner as requested by the permitting authority, as section 70.7(a)(2) currently does not provide such authority.

A new section 71.7(a)(3) is being promulgated to require the permitting authority to ensure that priority is given to taking action on applications for construction or modification under title I of the Act. This change is made to make part 71 consistent with the corresponding provision in current part 70 at section 70.7(a)(3).

Section 71.7(a)(4) (section 71.7(a)(3) in the proposal) deletes the references in the proposal to the proposed regulatory provisions addressing administrative amendments, *de minimis* permit revisions, and minor permit revisions, and tracks current section 70.7(a)(4) by providing that permitting authorities need not make completeness determinations for applications for minor permit modifications. This change is a result of EPA's basing section 71.7 on the current section 70.7. In addition, sections 71.7(a)(5) and (6) (sections 71.7(a)(4) and (5) in the proposal) are renumbered in order to track existing sections 70.7(a)(5) and (6).

The proposal contained a provision at proposed section 71.7(a)(6) addressing how draft and final permits may be issued with respect to applicable requirements that are approved or promulgated by EPA during the permit process. This provision was proposed in the August 1994 proposed revisions to part 70 and is not contained in the current part 70 rule. For the reasons stated above, EPA is not yet prepared to adopt it into part 71, and so is deleting the proposed provision from today's final rule.

2. Requirement To Apply for a Permit

One commenter suggested revising 71.7(b) regarding the application shield to say that the permitting authority must set a reasonable deadline for the submission of additional information, and commented that EPA should not be able to request information that is "needed to process the application" but only that which is "reasonable and necessary to issue the permit". The Agency disagrees that the regulation should set a specific deadline for the submission of additional information because the determination of what is a reasonable time will vary depending on the information requested. Also, EPA disagrees that there is a distinction between information needed to process the application and information that is reasonable and necessary to issue the permit.

One commenter suggested revising section 71.7(b) to allow sources to operate subsequent to submission of a complete, but late, application or application for renewal. The Agency believes that extending an application shield to sources that fail to submit timely applications is inconsistent with the Act. The proposal for part 70 contained a provision that would have provided a grace period of up to three months to submit applications after the required submittal date. The EPA deleted this provision from the final part 70 rule because extending the application shield to sources that did not submit a timely application would have been inconsistent with section 503(c) of the Act. The Agency is promulgating section 71.7(b) to closely track the corresponding provision at current section 70.7(b). Consequently, the references in proposed section 71.7(b) to the proposed provisions addressing administrative amendments, de minimis permit revisions, and minor permit revisions have been deleted and replaced by references to provisions addressing section 502(b)(10) changes and minor permit modifications. In addition, the proposal's reference to section 71.7(a)(3) has been replaced

with a reference to section 71.7(a)(4), due to the restructuring of section 71.7(a).

3. Permit Renewal and Expiration

Section 71.7(c) is being promulgated to more closely match the corresponding provision under current section 70.7(c) than did the proposal. The references in proposed section 71.7(c)(2) to proposed sections 71.5(b) and 71.5(c) have been replaced by a reference to section 71.5(a)(1)(iii), due to the restructuring of section 71.5. Moreover, section 71.7(c)(2) (section 71.7(c)(3) in the proposal) is being promulgated without the language that would have provided that, where the permitting authority fails to act on a timely renewal application before the end of the term of title V permit, the permit shall remain in effect until the permitting authority does take final action. Instead that language (which is based upon the existing section 70.4(b)(10) of the current part 70 rule) is being promulgated at section 71.7(c)(3).

4. Permit Revisions

Commenters remarked that the Federal title V permit program as proposed in April 1995 would establish a new, added layer of permitting which would add unacceptably to the amount of time needed before a source could implement process changes. They suggested that even though the April 1995 permit revision tracks attempt to build on existing preconstruction programs, they still pose substantial new requirements (e.g., new criteria for adequate prior review in NSR). These commenters opined that if EPA believes that insufficient public review is afforded by existing programs, the Agency should address those shortcomings, not start a new process. Another commenter suggested that clerical changes should be handled through notification of the change by an amendment letter to the permitting authority that would then be attached to the permit without any EPA review until permit renewal. The commenter further suggested that all minor source changes which do not violate any permit term and do not render the source newly subject to an applicable requirement should be allowed to follow this amendment procedure. Other commenters opined that the April 1995 proposed four track permit revision procedures were fundamentally flawed and must be replaced with simpler procedures. One commenter suggested that EPA Regions, not just delegated States, should be authorized to conduct "merged processing" to add

NSR or section 112(g) terms to title V permits, if such processing is retained in the final rule. Some suggested that EPA promote consistency between part 70 and part 71 permit programs to reduce confusion for sources that have to make a transition between different regulatory programs.

In light of these and other comments, EPA proposed in August 1995 a revised permit revision process, developed with extensive stakeholder input, which proposes several ways of streamlining permit revisions, particularly for those changes subject to prior State review (e.g., NSR changes). In the interim, as discussed earlier in this preamble, rather than adopting the four-track permit revision system that the Agency proposed for part 71 on April 25, 1995, the EPA has decided to adopt, for the first phase of part 71, the permit revision system in the current (July 1992) part 70 rule. Current part 70 provides three ways to revise a permit: the administrative amendment process, the minor permit modification process and the significant permit modification process. The specific regulatory changes to proposed part 71 taken to adopt these procedures are described below.

One commenter requested that EPA not follow the approach to "title I Modification" in the August 1994 proposed revisions to part 70 in defining the term for part 71. In implementing the current part 70 permit revision procedures during the interim period, EPA would apply the interpretation of "title I modifications" that States are allowed to apply under the current part 70 rule. Under this interpretation, minor NSR actions may be incorporated into the title V permit using the minor permit modification procedures of current part 70, or alternatively, may be made as off-permit changes if they are eligible.

a. *Rationale for Providing Interim Permit Revision Procedures.* The proposal indicated that due to the ongoing discussions with stakeholders regarding permit revision procedures under title V, EPA was considering finalizing part 71 in the interim without provisions for permit revision procedures. Several commenters suggested that EPA not finalize any portion of part 71 until permit revision procedures are finalized because they will influence how sources design their initial permit applications. The commenters argued that sources will need the ability to obtain expeditious revisions to permits, and that there is thus a need for provisions governing modifications. As discussed previously, EPA has decided to include the permit revision procedures of current part 70 in

this interim part 71 rule, while reserving the right to adopt procedures based upon future changes to part 70, when part 70 revisions are promulgated and Phase II of this rule is completed.

The EPA agrees with commenters that including current part 70 revision procedures is most appropriate for several reasons. First, EPA believes that it is premature to adopt the procedures proposed in April 1995 for part 71, or in August 1995 for part 70, because both of these proposals involve outstanding issues. Although the August 1995 proposal contains the latest thinking on streamlined permit revision procedures, it would be inappropriate to rush to promulgate a proposed system before the Agency has taken time to consider comments on the August 1995 proposal and arrive at a final position. In the meantime, the Agency has at its disposal the permit procedures of the current part 70 rule under which the Agency continues to approve State programs.

Second, industry commenters note that a clear understanding of permit revision procedures is important as sources prepare their part 71 permit applications. The revision procedures of part 70 are more clearly understood than any proposed procedures, having been promulgated by EPA and adopted by many State programs. Third, adopting the existing part 70 permit revision procedures insures a smooth transition from a Federal operating permits program to a State program due to the similarity between the two programs.

Finally, the Agency does not believe that many permit revisions will occur during Phase I of this program. The timing of permit issuance under part 71 is such that the Agency believes that few part 71 permits will be issued and fewer will need to be revised before States receive part 70 approval or before Phase II of part 71 is promulgated. Permit revision procedures in Phase I of the part 71 rule become more essential the longer part 71 programs are in place without a Phase II rule, which is possible if the Phase II rulemaking is delayed.

b. Description of Permit Revision Procedures. The part 71 proposal addressed permit revisions at proposed sections 71.7(d)–(h) using proposed provisions from the August 1994 part 70 notice. Proposed section 71.7(d) would have defined when a permit revision is necessary; proposed section 71.7(e) would have addressed administrative amendments; proposed sections 71.7 (f) and (g) would have addressed de minimis permit revisions and minor permit revisions, respectively; and

proposed section 71.7(h) would have covered significant permit revisions. All of these provisions have been deleted in today's rule, and replaced with new provisions at sections 71.7 (d) and (e) that track the corresponding provisions in the current part 70 rule governing administrative amendments, minor permit modifications, and significant permit modifications. The EPA directs interested persons to the preamble to the final part 70 rule, 57 FR 32250 (July 21, 1992) for a detailed description of these permit revision procedures.

Under section 71.7(d), changes eligible to be processed as administrative amendments include administrative changes such as correction of typographical errors, changes in mailing address, ownership of the source (or part of the source) unless restricted by title IV, contact persons, and changes in individuals who have assigned responsibilities, (including the responsibility to sign permit applications). Administrative permit amendments can be handled by direct correspondence from the permitting authority to the facility after the appropriate information related to the changes has been supplied by the facility. As under current part 70, administrative amendments could also be used to address "enhanced NSR" changes, to which the permitting authority could also extend the permit shield. Sections 71.7(e) (1) and (2), which address minor permit modification procedures, are designed for small changes at a facility which will not involve complicated regulatory determinations. A source may make a change immediately upon filing an application for a minor permit modification, prior to the time the permitting authority, affected States, and EPA (in the case of a program delegated pursuant to section 71.10) review the application. Eligible changes could be processed individually or in groups, but the permit shield may not extend to these changes. Section 71.7(e)(3) covers significant modifications. In this track, the public, the permitting authority, affected States, and EPA (in the case of a program delegated pursuant to section 71.10) will review the modification in the same manner as review during permit issuance. The permit shield may extend to changes processed under this track.

5. Permit Reopenings

The proposal addressed permit reopenings at proposed 71.7 (i) and (j). These provisions were modeled on the existing provisions at section 70.7 (f) and (g), as proposed to be revised in the August 1994 notice. One of the features

of that approach was a specific provision for reopening permits to incorporate new maximum achievable control technology (MACT) standards promulgated under section 112 of the Act. As part 70 has not yet been finally revised to adopt this approach, it is premature at this time to adopt it for part 71. Consequently, in order to more closely track the current part 70 rule and promote consistency with State programs developed and approved under the current rule, the part 71 provisions for permit reopenings adopted today at sections 71.7 (f) and (g) are modeled on the existing provisions at sections 70.7 (f) and (g), and do not include the proposed provisions concerning reopening permits to incorporate new MACT standards.

G. Section 71.8—Affected State Review

The provisions of section 71.8 differ from provisions proposed in the part 71 proposal in several respects. First, because today's rulemaking adopts permit revision procedures based on the current part 70 rule, rather than those that were proposed in April, the cross references to section 71.7 were changed and the reference to de minimis permit revisions has been deleted. In addition, the final rule specifically provides, consistent with part 70, that timing of notice to affected States of major permit modifications is not tied to the timing of notice to the public.

Second, section 71.8(b) is being adopted to more consistently follow section 70.8(b)(2) in providing that where EPA delegates administration of a part 71 program, the permitting authority shall transmit notice of refusal to accept recommendations of an affected State as part of the permitting authority's submittal of the proposed permit to EPA.

Third, as discussed in section III.B of this document, a new paragraph (d) has been added to section 71.8 that requires that part 71 permitting authorities provide notice of certain permitting actions to federally recognized Indian Tribes. While this is a departure from what part 70 currently requires of State permitting authorities, EPA agrees with commenters who suggested that federally recognized Indian Tribes should not be required to establish compliance with any eligibility criteria in order to be entitled to notice of Federal permitting decisions that may affect Tribal air quality. One commenter suggested that applying for treatment in the same manner as a State was a time consuming and burdensome process for Indian Tribes and urged the elimination of that requirement for Tribes to receive notice of permitting actions. Consistent

with the Agency's policy of maintaining government-to-government relationships with Indian Tribes, EPA (and delegate agencies) will notify federally recognized Indian Tribes of draft permits that may be issued to sources that could affect Tribal air quality, including all draft permits issued by EPA for the Tribal area and all draft permits for sources that are within 50 miles of the reservation boundary or the Tribal area. Accordingly, the Agency has added a new paragraph that provides that the part 71 permitting authority shall send notices of draft permits to federally recognized Indian Tribes whose air quality may be affected by the permitting action. The EPA is imposing upon itself this responsibility in order to further its government-to-government relationship with Tribes.

H. Section 71.9—Permit Fees

1. Two-Phase Promulgation of Fee Requirements

Consistent with the two-phased approach to part 71 promulgation described in this notice, EPA is today adopting a two-phased approach to part 71 fee requirements. Upon Phase I promulgation, collection of fees should be sufficient to cover the anticipated program costs of Phase I. On the other hand, because the cost of Phase II is tied to procedures which will not be finalized until the Phase II rulemaking (i.e., revised and streamlined permit revision procedures), a fee amount for Phase II cannot be finalized in today's rule. Thus, the Phase I fee covers all program costs except those associated with permit revisions which are excluded because the Phase II rulemaking will finalize streamlined permit revision procedures that will ultimately differ substantially from those contained in today's rule. Instead, the Phase II rulemaking will add to the fee the costs for the new permit revision procedures when they are finalized. More information on the determination of specific activities and costs associated with each phase is contained in the document entitled "Federal Operating Permits Program Costs and Fee Analysis (Revised)," which is contained in the docket for this rulemaking.

The two-phased approach to fee requirements will not impact the ultimate fee amount owed by a source. For the majority of sources, EPA expects that the part 71 application and associated fee submittal will occur after the Phase II rulemaking. For these sources, the fee will be paid all at once. Sources that submit their applications prior to the Phase II rulemaking will pay

a Phase I fee in full at the time of application. The balance of the fee necessary to cover the costs of the Phase II provisions will be collected once the Phase II rule is promulgated. The specific timing and amount of the Phase II fee collection will be discussed in the Phase II rulemaking.

The EPA fully expects that the Phase II rulemaking finalizing permit revision procedures will be completed before any part 71 permits are issued and that no program costs will be incurred in the interim period as a result of permit revisions. However, EPA recognizes that in the unlikely event that a part 71 permit is both issued and revised (under the interim revision procedures in today's rule) fees will not have yet been collected to cover the cost of the revision and that if the Phase II fee is finalized based on a streamlined permit revision process, there may be a shortfall in revenue. However, the alternative would be to finalize today a Phase I fee based on the interim revision procedures that potentially overcharges sources and would necessitate, if and when the permit revision procedures are streamlined as expected, a refund. The EPA wishes to avoid this unnecessary and burdensome process.

2. Fee Amount

The part 71 proposal proposed a base fee amount of \$45 per ton/year which was based on a fee analysis which projected EPA's direct and indirect costs for implementing the part 71 program nationwide and dividing that by the total emissions subject to the fee. A detailed discussion of this methodology is found in "Federal Operating Permits Program Costs and Fee Analysis," which is contained in the docket for this rulemaking. Using the same basic methodology as the original fee analysis, EPA has calculated the costs of Phase I and has set the base Phase I fee amount at \$32 per ton/year to cover these costs. The determination of this amount is contained in the report entitled, "Federal Operating Permits Program Costs and Fee Analysis (Revised)" (hereafter "Revised Fee Analysis"), which is contained in the docket for this rulemaking. As proposed, the fee will be adjusted based on the level of contractor support needed for those programs where it is necessary for EPA to use contractors.

One commenter suggested that the \$3 per ton surcharge to cover EPA oversight of contractor and delegated programs should be eliminated, noting that EPA does not charge oversight fees for State part 70 programs. The EPA agrees and believes that such a surcharge would be inconsistent with

the approach taken in part 70. A full evaluation of the April 1995 comments was made after the development of the August 1995 proposal, in which EPA proposed to eliminate the surcharge. This evaluation of comments confirmed the direction EPA took in the August 1995 proposal. Therefore, today's action both responds to the April comments and is consistent with the August 1995 proposal. Accordingly, EPA is today deleting the surcharge provisions from sections 71.9(c)(2) and (3). The EPA will continue to consider any comments received on the supplemental proposal, and, if necessary, will take any additional action on the surcharge in the Phase II rulemaking.

For reasons similar to those described in the preceding paragraphs on the surcharge, the EPA is deleting "preparing generally applicable guidance regarding the permit program or its implementation or enforcement" from the list of activities in section 71.9(b) whose costs are subject to fees. The EPA believes that this category partially duplicates the fourth category under section 71.9(b), general administrative costs. To the extent that it is not duplicative, it refers to guidance that is issued before an individual part 71 program is in place. The EPA does not require that States charge fees for these activities for part 70 programs, and the Agency does not believe that such costs should be included in part 71 fees. This change does not result in a change in the fee structure because costs of activities which occur before the effective date of the part 71 program were not included in the original fee analysis. This change simply adjusts the list of activities in section 71.9(b) to more accurately reflect the activities whose costs were included in the fee analysis. Consistent with the deletion of the surcharge, the EPA is taking this action based on comments received on the part 71 proposal. If adverse public comment is received regarding this change as proposed in the August 1995 supplemental proposal, the EPA will take additional action as necessary in the Phase II rulemaking.

3. Fees for Delegated Programs

As discussed in the part 71 proposal, EPA intends to allow delegation of part 71 programs to States in many cases. Originally, EPA envisioned funding these delegated part 71 programs with revenue generated from part 71 fees. However, EPA is aware that many delegate agencies have the authority under State or local law to collect fees adequate to fund delegated part 71 programs. In some cases, these agencies could continue to collect fees even

though EPA would be collecting part 71 fees. Several commenters pointed out that this would result in the undesirable situation of paying fees to two permitting authorities. On the other hand, one commenter noted that if a delegate agency, in deference to part 71, rescinds its authority to collect fees, funding for the Small Business Assistance Program (SBAP) in that State could be adversely affected.

The EPA believes that the best way to address both of these situations is to suspend collection of part 71 fees for part 71 programs which are fully delegated to States and for which the State has adequate authority under State law to fund fully-delegated part 71 activities with fees collected from part 71 sources. This ensures that State revenue is available to administer the program, including the SBAP, while addressing the commenters' concerns about double fees. However, EPA cannot suspend fee collection for partially delegated part 71 programs, since in those situations EPA will still incur substantial administrative costs. Suspension of EPA fee collection does not constitute approval of the State's fee structure for part 70 purposes. Rule language codifying this approach has been added to section 71.9(c)(2).

The suspension of part 71 fees for delegated programs was proposed in the August 1995 supplemental proposal. While the timing of today's promulgation has not allowed thorough evaluation of comments on that proposal, the EPA agrees with the concerns about duplicate fees and the SBAP which were raised in reference to the part 71 proposal. A full evaluation of these comments was made after the development of the August 1995 proposal on this issue. This evaluation confirmed the direction EPA had taken in the August 1995 proposal. Therefore, today's action both responds to the April comments and is consistent with the August proposal. Furthermore, today's action is consistent with EPA's position that its fees be based on program costs, because EPA will not incur any program costs after it fully delegates a part 71 program. The EPA will still evaluate all comments received on the August 1995 proposal and will take any necessary additional regulatory action on the suspension of part 71 fees for delegated programs in the Phase II rulemaking.

For part 71 programs that are delegated but for which EPA does not waive fee collection, EPA's policy will be to continue to collect part 71 fees itself. The proposed fee amount for part 71 programs was based on the assumption that certain activities would

be more costly for EPA to implement than for States due to increased travel, unfamiliarity with individual sources, etc. However, commenters pointed out that when a program is delegated, this assumption is not applicable. The EPA agrees with this comment, and is today promulgating language establishing a lower part 71 fee for delegated programs which omits the increased cost assumption made for EPA-administered part 71 programs. Where EPA continues to collect part 71 fees for a fully-delegated program, the Phase I part 71 fee amount will be \$24 per ton/year. The determination of this amount is contained in the Revised Fee Analysis. Furthermore, for partially delegated programs, the part 71 fee that EPA collects will be lower than the fee for an EPA-administered program because the fee will be adjusted to account for the proportion of effort performed by the delegate agency at a lower cost. For these programs, the Administrator will determine the fee according to the formula in section 71.9(c)(4).

4. Timing of Fee Payment

The part 71 proposal provided that sources submitting their initial fee calculation worksheets must pay one-third of the initial fee upon submittal, and must pay the balance of the fee within 4 months. However, EPA believes that two changes discussed in today's preamble make this installment approach to fee payment infeasible. First, EPA is promulgating a later due date for permit applications, which would mean that under the proposed installment approach, receipt of two-thirds of the fee revenues would be delayed until the end of the first year of the program, which would not provide adequate funding for initial program activities. Second, EPA is promulgating a two-phased approach to fee collection. The EPA believes that it would be unnecessarily complicated and potentially confusing to provide for installment payment of the fee for one or both phases. For these reasons, EPA is promulgating language at section 71.9(e)(1) which clarifies that payment of the full fee amount for the first year is due upon submittal of the initial fee calculation worksheet.

In addition, because today's rule changes the due date for permit applications, a change must also be made to the deadlines for the initial part 71 fee calculation worksheets in the event that EPA withdraws approval of a part 70 program. The proposal contained a schedule for submission of the fee calculation worksheet based on SIC code. The due dates ranged from 4 to 7 months after the effective date of

the part 71 program. Changes to section 71.9(f)(1) adjust the fee calculation worksheet due dates to range from 6 to 9 months after the part 71 effective date, depending on SIC code.

5. Computation of Emissions Subject to Fees

A commenter pointed out that the rule language in proposed section 71.9(c)(5)(ii) inadvertently limits the 4000 ton cap on emissions subject to fees solely to programs administered by EPA, not delegated or contractor-administered programs. Accordingly, the EPA has amended this paragraph to clarify that the 4000 ton cap applies to all types of part 71 programs.

6. Penalties

The part 71 proposal contained a penalty charge of 50 percent of the fee amount if the fee is not paid within 30 days of the due date. In addition, the proposal assessed a penalty of 50 percent on underpayments with the 50 percent penalty assessed on the amount by which the source underpaid the fee owed. The proposal also provided relief from the penalty for certain underpayments where the source is making an initial fee calculation based on estimated rather than actual emissions. The proposal provided that where the underpayment results from an underestimate of future emissions and where the underpayment does not exceed 20 percent of the fee amount (i.e., where the source pays more than 80 percent of the fee owed), no penalty would be assessed.

Some industry commenters were concerned that establishing a penalty for underpayment for a source that underpays by as little as 20 percent would be too harsh in light of the uncertainty in making emissions estimates. Although title V requires a penalty to be assessed for failure to pay any fee lawfully imposed by the Administrator, the EPA agrees that there is a degree of uncertainty in estimating emissions, particularly for HAP sources, which are often smaller, and for which emission factors are not well-defined.

Upon consideration of comments and evaluation of the relative uncertainty of emission estimates for HAP listed pursuant to section 112(b) of the Act, the EPA is today promulgating in section 71.9(l)(4) an underpayment penalty which differs slightly from the proposal. For sources who base their initial fee calculation worksheet on estimated rather than actual emissions, the EPA will, for HAP emissions, apply the penalty to an underpayment of 50 percent or more. The penalty will still apply to an underpayment of 20 percent

or more for non-HAP emissions. If a source is subject to fees for both HAP and non-HAP emissions, the underpayment which would trigger a penalty will be prorated based on what portion of the source's emissions are HAP versus non-HAP. Thus, to determine whether an underpayment would incur a penalty, such a source's HAP emissions would be multiplied by the 50 percent rate, and its non-HAP emissions would be multiplied by the 20 percent rate. The sum of these emissions rates determines the level of underpayment which, if exceeded, would incur the underpayment penalty. The EPA believes that this approach offers significant relief to sources faced with difficulty in accurately estimating their emissions, while still ensuring that adequate fee revenues can be collected in a fair and timely manner.

7. Certification Requirement

The EPA believes that the correct interpretation of the part 71 certification requirement at section 71.5(d) is that it applies to all fee calculation documents. However, for clarity, EPA is today adding a requirement to sections 71.9(e) and (h) which requires certification of the fee calculation worksheets by a responsible official. The added language in section 71.9 is simply a cross reference to the language in section 71.5(d).

I. Section 71.10—Delegation of Part 71 Program

1. Delegation of Authority Agreement

With respect to the content of Delegation of Authority Agreements, EPA wishes to clarify that the adequacy of State permit fees must be addressed when EPA waives collection of part 71 permit fees. As described in section III.F.3 of this preamble, when EPA has determined that a delegate agency has raised adequate fee revenue from sources subject to title V to administer a fully-delegated part 71 program absent any financial assistance from EPA, then EPA will waive collection of part 71 fees. In such a case, the Delegation of Authority Agreement would specify that the delegate agency has sufficient revenue and will collect sufficient revenue from sources subject to title V to administer all of its duties as outlined in the Agreement. The EPA will not waive fees when the part 71 program is partially delegated or when the delegate agency lacks sufficient revenue to fund the delegated part 71 program.

2. Appeal of Permits

The Agency has revised proposed section 71.10(i), which addresses the

petition process for permits issued by delegate agencies. In lieu of restating which persons and parties may submit petitions to the Environmental Appeal Board pursuant to section 71.11(l)(1), section 71.10(i) provides that the appeals of permits under delegated program shall follow the procedures of section 71.11(l)(1).

3. Transmission of Information to EPA, Prohibition of Default Issuance, and EPA Objections

The final rule also makes certain changes to the proposed provisions addressing transmission of information to the Administrator, the prohibition of default issuance of permits, and EPA objections to proposed permits at sections 71.10(d), (f) and (g). Essentially, these changes are being made today in order to better harmonize the final rule with corresponding provisions in the currently promulgated part 70 rule at 70.8(a), (c) and (e). Regarding transmission of information to EPA, the reference in proposed section 71.10(d)(1) to proposed section 71.7(a)(1)(v) has been rewritten, and proposed paragraphs (2) and (3) have been merged into it in order to more closely track part 70. New paragraph (2) has been adopted in order to achieve consistency with section 70.8(a)(2).

The provision on prohibition of default issuance has been changed to follow the existing provision at section 70.8(e). In proposed section 71.10(f)(2), EPA had provided that the prohibition would not apply to permit revisions processed through the proposed de minimis permit revision track, following the August 1994 proposed revisions to part 70. As that track is not being adopted in this Phase I rule, the exception has been deleted.

Finally, section 71.10(g) on EPA objections has been changed from the proposal in order to follow the test established under the current part 70 rule for when EPA would object to proposed permits, and to follow the promulgated part 70 language providing for what shall happen when a permitting authority refuses to respond adequately to an EPA objection. This change includes deletion of the proposed reference to proposed section 71.7(a)(6), which is not being adopted as proposed in this final rule.

J. Section 71.11—Administrative Record, Public Participation, and Administrative Review

The Agency has chosen to establish part 71-specific rules in today's promulgated section 71.11 for administrative procedures in order to clarify for the public and the regulated

community those requirements associated specifically with Federal operating permits under title V of the Act. Today's promulgated section 71.11 is based closely on the provisions of 40 CFR part 124. Part 124 covers a number of EPA permitting programs, and the process of identifying the separate and distinct requirements associated with those individual programs can be complex. The Agency feels that it is advantageous in this case to describe the administrative procedures for today's promulgated part 71 within the rule itself, since that will avoid potential confusion as to which provisions of part 124 apply to the part 71 program, and since interested parties will not be required to refer to separate regulations in discerning applicable administrative procedures.

Certain aspects of section 71.11 that would correspond to proposed streamlined part 71 permit revision processes discussed in the preamble to the supplemental part 70 and 71 proposed rules published on August 31, 1995 (60 FR 45529), are not addressed in today's notice because the Agency is not yet prepared to conduct final rulemaking for those processes. In the meantime, EPA is promulgating permit revision processes based on the current part 70 rule in response to numerous comments on the proposed part 71.

To accommodate basing part 71's permit revision procedures on the existing part 70 rule, today's notice makes certain changes to the regulatory language of section 71.11 as proposed on April 27, 1995 (60 FR 20804) in order to apply administrative procedures to the permit revision tracks as appropriate. Changes to the regulatory language that make reference to permit revision procedures were made in the first paragraph of section 71.11 and in section 71.11(l)(1). These sections make reference to specific types of permit revisions which in this promulgated rule are those permit revision procedures found in 40 CFR part 70, rather than the four-track permit revision procedures in the April 27, 1995 proposed part 71. Section 71.11(l)(1) describes the 30-day period within which a person may request review of a final permit decision. For significant modifications, the 30-day period begins with the service of notice of the permitting authority's action. This is unchanged from the proposal. For minor permit modifications and administrative amendments, the 30-day period begins on the date the minor permit modification or administrative amendment is effective.

Section 71.11(d)(3)(i)(D) has been modified in response to comments

received which noted that under the proposal a requirement to notify any unit of local government having jurisdiction over the area where a source is located would result in notices to components of government which have no relationship to air quality and its impacts. Promulgated section 71.11(d)(3)(i)(D) stipulates that the local emergency planning committee (not "any" unit of local government) and State agencies having authority under State law with respect to the operation of the source are among the entities to receive a copy of notices of activities described in section 71.11(d)(1)(i).

Additional changes to the regulatory language of section 71.11 relate to treatment of a final permit decision as enforceable and effective where review by the EAB has been requested. In proposed sections 71.11(i)(2) and 71.11(l)(6), the Agency proposed that a final permit decision would become effective immediately upon issuance of that decision unless a later effective date were specified in the decision. It was pointed out by several commenters that, in other EPA permitting programs, such as the Resource Conservation and Recovery Act and PSD programs, an appeal request stays the effectiveness of a final permit decision. See 40 CFR section 124.15(b)(2). The EPA agrees that it would be unfair to force permittees to comply with permit terms during the time that they are subject to appeal, and that the proposal was inappropriately inconsistent with part 124 on this point. Thus, sections 71.11(i)(2) and 71.11(l)(6) have been promulgated to conform to the longstanding Agency approach reflected in 40 CFR section 124.15, so that permittees are not unfairly required to comply with permit terms pending their review by the EAB. Under the final rule, those specific permit terms and conditions that are the subject of an appeal to EAB would be stayed, while the rest of the permit would become effective as otherwise provided in section 71.11(i)(2). Moreover, section 71.11(i)(2) itself has been changed so that it better tracks part 124, which makes final permit issuance decisions immediately effective only where no comments requested a change in the draft permit; otherwise, permits are effective no sooner than 30 days after the issuance decision or following the conclusion of appeal proceedings, as applicable.

In response to comments which expressed concern that applicants should be able to appeal a final permit decision even in the absence of having commented on a draft permit, the Agency believes that applicants can

appeal if the final permit differs from the draft permit, even if the applicant did not submit comments on the draft permit. The Agency does not believe it would be appropriate to allow applicants to appeal where the final permit is identical to the draft permit, and the applicant had not commented on the draft permit. It is a far more efficient use of resources to resolve permitting issues in the administrative issuance process, rather than to allow applicants to raise issues on draft permits for the first time on appeal. To further clarify the ability of the applicant to appeal a final permit, the following language has been added to section 71.11(l)(1): "or other new grounds that were not reasonably foreseeable during the public comment period on the draft permit".

Section 71.11(l)(6) has been added, incorporating language from 40 CFR part 124. Part 124 establishes general procedures clarifying the rules to which appellants are subject in all permit programs under part 124, and therefore EPA believes it is appropriate to extend these provisions to part 71 as well. This section outlines procedures for motions for reconsideration of appeals of final orders. It stipulates a 10 day deadline for motions, and notes that motions are to be directed to the EAB, unless the case had been referred to the Administrator by the Board, and in which the Administrator had issued the final order. The effective date of the final order is not stayed unless specifically so ordered by the Board.

One commenter suggested that the proposal's requirement of a right to appeal every permit decision would be overly burdensome, commenting that even de minimis revisions would be subject to appeal. The EPA notes that final part 71 permitting actions are final actions for purposes of judicial review under section 307(b)(1) of the Act. Consequently, EPA does not have the discretion to eliminate the opportunity for judicial review of final part 71 permitting actions. Moreover, EPA disagrees that requiring administrative appeal to the EAB as a prerequisite to judicial review is either redundant or jeopardizes a source's ability to rely on its permit. Requiring administrative exhaustion of remedies is longstanding practice in EPA permit programs, and EPA notes that States with approved part 70 programs generally require administrative appeal as a prerequisite to challenging permits in State court. Also, in requiring administrative exhaustion, litigation in Federal court over permit actions will often be avoided, thus conserving both public and private resources. Finally, since

pending administrative appeal sources will be able to rely on the application shield, they will not be placed in any greater "jeopardy" than if they had directly appealed the final permit to Federal court.

Changes have been made to section 71.11(n) to replace the term "Administrator" with "permitting authority," to allow for those circumstances where a State has been delegated a part 71 program by EPA.

IV. Administrative Requirements

A. Docket

The docket for this regulatory action is A-93-51. All the documents referenced in this preamble fall into one of two categories. They are either reference materials that are considered to be generally available to the public, or they are memoranda and reports prepared specifically for this rulemaking. Both types of documents can be found in Docket No. A-93-51.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more, adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities;
- (2) Create a 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 program or the rights and obligation of recipients thereof;
- (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, it has been determined that this rule is a "significant" regulatory action. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

The EPA has estimated the annualized cost of the part 71 program based on the number of sources that would be subject to part 71 permitting requirements in the 8 States where EPA

believes the program will be implemented. A survey of those States showed that the number of part 71 sources in those States (many of which are not heavily industrialized) is much smaller than EPA's original estimates. The EPA had previously assumed that part 71 sources in 8 States would comprise 16 percent of all title V sources. However, in the States where EPA is likely to administer a part 71 program, the part 71 source population comprises slightly less than 6 percent of all title V sources. The estimated annualized cost of implementing the part 71 program is \$19.8 million to the Federal government and \$18.1 million to respondents, for a total of \$37.9 million which reflects industry's total expected costs of complying with the program. Since any costs incurred by the Agency in administering a program would be recaptured through fees imposed on sources, the true cost to the Federal government is zero. The requirements for the costs result from section 502(d) of title V which mandates that EPA develop a Federal operating permits program. The draft regulatory impact analysis (RIA) was made available for public comment as part of the April 27, 1995 proposal. The primary difference between the current RIA and the prior draft is that the RIA now assesses impacts based on the streamlined permit revision procedures that were proposed for part 70 and 71 in August of 1995, in lieu of the more cumbersome 4-track permit revision procedure that was contained in the part 71 proposal. The proposed program is designed to improve air quality by: indirectly improving the quality of State-administered operating permits programs; encouraging the adoption of lower cost control strategies based on economic incentive approaches; improving the effectiveness of enforcement and oversight of source compliance; facilitating the implementation of other titles of the Act, such as title I; and improving the quality of emissions data and other source-related data.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601) requires EPA to consider potential impacts of proposed regulations on small entities. If a preliminary analysis indicates that a proposed regulation would have a significant adverse economic impact on a substantial number of small entities, then a regulatory flexibility analysis must be prepared.

The original part 70 rule and the recently proposed revisions to part 70 were determined to not have a

significant adverse impact on small entities. See 57 FR 32250, 32294 (July 21, 1992), and 60 FR 45530, 45563 (Aug. 31, 1995). Similarly, a regulatory flexibility screening analysis of the part 71 rule revealed that the rule would not have a significant adverse impact on a substantial number of small entities, since few small entities would be subject to part 71 permitting requirements as a result of the rule's deferral of the requirement to obtain a permit for nonmajor sources.

Consequently, I hereby certify that the part 71 regulations will not have a significant adverse effect on a substantial number of small entities.

D. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et. seq. and has assigned OMB control number 2060-0336.

The information is planned to be collected to enable EPA to carry out its obligations under the Act to determine which sources are subject to the Federal Operating Permits Program and what requirements should be included in permits for sources subject to the program. Responses to the collection of information will be mandatory under section 71.5(a) which requires owners or operators of sources subject to the program to submit a timely and complete permit application and under sections 71.6 (a) and (c) which require that permits include requirements related to recordkeeping and reporting. As provided in 42 U.S.C. 7661b(e), sources may assert a business confidentiality claim for the information collected under section 114(c) of the Act.

The annual average burden on sources for the collection of information is approximately 678,000 hours per year, or 329 hours per source. The annual cost for the collection of information to respondents is \$18.1 million per year. The EPA has estimated the annualized costs based on the number of sources that would be subject to part 71 permitting requirements in the 8 States where EPA believes the program will be implemented, most of which have fewer than average number of part 71 sources per State. There is no burden for State and local agencies. The annual cost to the Federal government is \$19.8 million (assuming part 71 programs are delegated), which is recovered from sources through permit fees. Thus, the total annual cost to sources would be \$37.9 million. Burden means the total time, effort, or financial resources

expended by persons to generate, maintain, retain, or disclose or provide information to or 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 be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency 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 EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The EPA is amending the table in 40 CFR part 9 of currently approved information collection request (ICR) control numbers issued by OMB for various regulations to list the information requirements contained in this final rule.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Regulatory Information Division, Office of Policy, Planning, and Evaluation, U.S. Environmental Protection Agency (2136), 401 M Street, S.W., Washington, DC 20460, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence.

E. Unfunded Mandates Reform Act

As noted in the ICR document, today's action imposes no costs on State, local and Tribal governments. This is because the EPA incurs all costs in cases where it implements a part 71 program. A State, local, or Tribal government will incur costs where it elects to take delegation of a part 71 program. As noted in the ICR document, EPA expects that, of the estimated eight part 71 programs, States will take delegation of all eight programs. However, the costs of running these delegated programs do not represent costs imposed by today's action. This is because the costs of running a delegated part 71 program are essentially the same

as those of running an approved part 70 program. Furthermore, taking delegation is optional on the part of States.

Regardless of whether a State, local, or Tribal agency chooses to take delegation of a part 71 program, the costs to these agencies imposed by this rule over and above the costs of existing part 70 requirements are zero.

Regarding the private sector, the EPA estimates that the total cost of complying with the part 71 program would be \$37.9 million per year, assuming that the part 71 program is in effect in 8 States. The estimated costs of collection of information would be \$18.1 million per year, and \$19.8 million would be collected in fees.

For these reasons, EPA believes that the total direct costs to industry under today's action would not exceed \$100 million in any 1 year. Therefore, the Agency concludes that it is not required by Section 202 of the Unfunded Mandates Reform Act of 1995 to provide a written statement to accompany this regulatory action because promulgation of the rule would not result in the expenditure by State, local, and Tribal governments, in the aggregate or by the private sector, of \$100,000,000 or more in any 1 year.

F. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedure Act (APA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a "major rule" as defined by section 804(2) of the APA as amended.

List of Subjects

40 CFR Part 9

Reporting and Recordkeeping Requirements

40 CFR Part 55

Environmental Protection Air pollution control, Outer continental shelf, Operating permits.

40 CFR Part 71

Air pollution control, Prevention of significant deterioration, New source review, Fugitive emissions, Particulate matter, Volatile organic compounds, Nitrogen dioxide, Carbon monoxide, Hydrocarbons, Lead, Operating permits, Indian Tribes, Air pollution control—Tribal authority.

Dated: June 19, 1996.

Carol M. Browner,
Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as set forth below.

PART 9—[AMENDED]

1. In Part 9:

a. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 et seq., 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 et seq., 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 et seq., 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

b. Section 9.1 is amended by adding the new entries to the table under the indicated heading in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

40 CFR Citation	OMB control No.
* * *	*
Federal Operating Permit Programs	
71.5	2060–0336
71.6(a),(c),(d),(g)	2060–0336
71.7	2060–0336
71.9(e)–(j)	2060–0336
* * *	*

PART 55—[AMENDED]

2. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (Act) (42 U.S.C. 7401, et seq.) as amended by Public Law 101–549.

3. Section 55.6 is amended by adding paragraph (c)(3) to read as follows:

§ 55.6 Permit requirements.

* * *

(c) * * *

(3) If the COA does not have an operating permits program approved pursuant to 40 CFR part 70 or if EPA has determined that the COA is not adequately implementing an approved program, the applicable requirements of 40 CFR part 71, the Federal operating permits program, shall apply to the OCS sources. The applicable requirements of 40 CFR part 71 will be implemented and

enforced by the Administrator. The Administrator may delegate the authority to implement and enforce all or part of a Federal operating permits program to a State pursuant to § 55.11 of this part.

* * *

4. Section 55.10 is amended by revising paragraph (a)(1) and by adding paragraph (b) to read as follows:

§ 55.10 Fees.

(a) * * *

(1) The EPA will calculate and collect operating permit fees from OCS sources in accordance with the requirements of 40 CFR part 71.

* * *

(b) The OCS sources located beyond 25 miles of States' seaward boundaries. The EPA will calculate and collect operating permit fees from OCS sources in accordance with the requirements of 40 CFR part 71.

5. Section 55.13 is amended by adding paragraph (f) to read as follows:

§ 55.13 Federal requirements that apply to OCS sources.

* * *

(f) 40 CFR part 71 shall apply to OCS sources:

(1) Located within 25 miles of States' seaward boundaries if the requirements of 40 CFR part 71 are in effect in the COA.

(2) Located beyond 25 miles of States' seaward boundaries.

(3) When an operating permits program approved pursuant to 40 CFR part 70 is in effect in the COA and a Federal operating permit is issued to satisfy an EPA objection pursuant to 40 CFR 71.4(e).

* * *

PART 71—[AMENDED]

6. The authority citation for part 71 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

7. Subpart A of part 71 consisting of §§ 71.1 through 71.12 is added to read as follows:

Subpart A—Operating Permits

Sec.

71.1 Program overview.

71.2 Definitions.

71.3 Sources subject to permitting requirements.

71.4 Program implementation.

71.5 Permit applications.

71.6 Permit content.

71.7 Permit issuance, renewal, reopenings, and revisions.

71.8 Affected State review.

71.9 Permit fees.

71.10 Delegation of part 71 program.

- 71.11 Administrative record, public participation, and administrative review.
71.12 Prohibited acts.

Subpart A—Operating Permits

§ 71.1 Program overview.

(a) This part sets forth the comprehensive Federal air quality operating permits permitting program consistent with the requirements of title V of the Act (42 U.S.C. 7401 *et seq.*) and defines the requirements and the corresponding standards and procedures by which the Administrator will issue operating permits. This permitting program is designed to promote timely and efficient implementation of goals and requirements of the Act.

(b) All sources subject to the operating permit requirements of title V and this part shall have a permit to operate that assures compliance by the source with all applicable requirements.

(c) The requirements of this part, including provisions regarding schedules for submission and approval or disapproval of permit applications, shall apply to the permitting of affected sources under the acid rain program, except as provided herein or as modified by title IV of the Act and 40 CFR parts 72 through 78.

(d) Issuance of permits under this part may be coordinated with issuance of permits under the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*) and under the Clean Water Act (33 U.S.C. 1251 *et seq.*), whether issued by the State, the U.S. Environmental Protection Agency (EPA), or the U.S. Army Corps of Engineers.

(e) Nothing in this part shall prevent a State from administering an operating permits program and establishing more stringent requirements not inconsistent with the Act.

§ 71.2 Definitions.

The following definitions apply to part 71. Except as specifically provided in this section, terms used in this part retain the meaning accorded them under the applicable requirements of the Act.

Act means the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*

Affected source shall have the meaning given to it in 40 CFR 72.2.

Affected States are:

(1) All States and Tribal areas whose air quality may be affected and that are contiguous to the State or Tribal area in which the permit, permit modification or permit renewal is being proposed; or that are within 50 miles of the permitted source. A Tribe and any associated Tribal area shall be treated as a State under this paragraph (1) only if EPA has

determined that the Tribe is an eligible Tribe.

(2) The State or Tribal area in which a part 71 permit, permit modification, or permit renewal is being proposed. A Tribe and any associated Tribal area shall be treated as a State under this paragraph (2) only if EPA has determined that the Tribe is an eligible Tribe.

(3) Those areas within the jurisdiction of the air pollution control agency for the area in which a part 71 permit, permit modification, or permit renewal is being proposed.

Affected unit shall have the meaning given to it in 40 CFR 72.2.

Applicable requirement means all of the following as they apply to emissions units in a part 71 source (including requirements that have been promulgated or approved by EPA through rulemaking at the time of issuance but have future compliance dates):

(1) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in part 52 of this chapter;

(2) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I, including parts C or D, of the Act;

(3) Any standard or other requirement under section 111 of the Act, including section 111(d);

(4) Any standard or other requirement under section 112 of the Act, including any requirement concerning accident prevention under section 112(r)(7) of the Act;

(5) Any standard or other requirement of the acid rain program under title IV of the Act or 40 CFR parts 72 through 78;

(6) Any requirements established pursuant to section 114(a)(3) or 504(b) of the Act;

(7) Any standard or other requirement governing solid waste incineration, under section 129 of the Act;

(8) Any standard or other requirement for consumer and commercial products, under section 183(e) of the Act;

(9) Any standard or other requirement for tank vessels, under section 183(f) of the Act;

(10) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the Act;

(11) Any standard or other requirement of the regulations promulgated at 40 CFR part 82 to protect stratospheric ozone under title VI of the Act, unless the Administrator has determined that such requirements need not be contained in a title V permit; and

(12) Any national ambient air quality standard or increment or visibility requirement under part C of title I of the Act, but only as it would apply to temporary sources permitted pursuant to section 504(e) of the Act.

Delegate agency means the State air pollution control agency, local agency, other State agency, Tribal agency, or other agency authorized by the Administrator pursuant to § 71.10 to carry out all or part of a permit program under part 71.

Designated representative shall have the meaning given to it in section 402(26) of the Act and 40 CFR 72.2.

Draft permit means the version of a permit for which the permitting authority offers public participation under § 71.7 or § 71.11 and affected State review under § 71.8.

Eligible Indian Tribe or *eligible Tribe* means a Tribe that has been determined by EPA to meet the criteria for being treated in the same manner as a State, pursuant to the regulations implementing section 301(d)(2) of the Act.

Emissions allowable under the permit means a federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

Emissions unit means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act. This term is not meant to alter or affect the definition of the term “unit” for purposes of title IV of the Act.

EPA or the *Administrator* means the Administrator of the U.S. Environmental Protection Agency (EPA) or his or her designee.

Federal Indian reservation, Indian reservation or *reservation* means all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

Final permit means the version of a part 71 permit issued by the permitting

authority that has completed all review procedures required by §§ 71.7, 71.8, and 71.11.

Fugitive emissions are those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

General permit means a part 71 permit that meets the requirements of § 71.6(d).

Indian Tribe or *Tribe* means any Indian Tribe, band, nation, or other organized group or community, including any Alaskan native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Major source means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)), belonging to a single major industrial grouping and that are described in paragraph (1), (2), or (3) of this definition. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987.

(1) A major source under section 112 of the Act, which is defined as:

(i) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tpy or more of any hazardous air pollutant which has been listed pursuant to section 112(b) of the Act, 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as the Administrator may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

(ii) For radionuclides, "major source" shall have the meaning specified by the Administrator by rule.

(2) A major stationary source of air pollutants or any group of stationary sources as defined in section 302 of the

Act, that directly emits, or has the potential to emit, 100 tpy or more of any air pollutant (including any major source of fugitive emissions of any such pollutant, as determined by rule by the Administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of section 302(j) of the Act, unless the source belongs to one of the following categories of stationary source:

- (i) Coal cleaning plants (with thermal dryers);
- (ii) Kraft pulp mills;
- (iii) Portland cement plants;
- (iv) Primary zinc smelters;
- (v) Iron and steel mills;
- (vi) Primary aluminum ore reduction plants;
- (vii) Primary copper smelters;
- (viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (ix) Hydrofluoric, sulfuric, or nitric acid plants;
- (x) Petroleum refineries;
- (xi) Lime plants;
- (xii) Phosphate rock processing plants;
- (xiii) Coke oven batteries;
- (xiv) Sulfur recovery plants;
- (xv) Carbon black plants (furnace process);
- (xvi) Primary lead smelters;
- (xvii) Fuel conversion plants;
- (xviii) Sintering plants;
- (xix) Secondary metal production plants;
- (xx) Chemical process plants;
- (xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- (xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (xxiii) Taconite ore processing plants;
- (xxiv) Glass fiber processing plants;
- (xxv) Charcoal production plants;
- (xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or
- (xxvii) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.

(3) A major stationary source as defined in part D of title I of the Act, including:

- (i) For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tpy or more in areas classified as "serious"; 25 tpy or more in areas classified as "severe," and 10

tpy or more in areas classified as "extreme"; except that the references in this paragraph (3)(i) to 100, 50, 25, and 10 tpy of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under section 182(f) (1) or (2) of the Act, that requirements under section 182(f) of the Act do not apply;

(ii) For ozone transport regions established pursuant to section 184 of the Act, sources with the potential to emit 50 tpy or more of volatile organic compounds;

(iii) For carbon monoxide nonattainment areas:

(A) That are classified as "serious," and

(B) in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tpy or more of carbon monoxide; and

(iv) For particulate matter (PM-10) nonattainment areas classified as "serious," sources with the potential to emit 70 tpy or more of PM-10.

Part 70 permit means any permit or group of permits covering a part 70 source that has been issued, renewed, amended or revised pursuant to 40 CFR part 70.

Part 70 program or *State program* means a program approved by the Administrator under 40 CFR part 70.

Part 70 source means any source subject to the permitting requirements of 40 CFR part 70, as provided in §§ 70.3(a) and 70.3(b).

Part 71 permit, or *permit* (unless the context suggests otherwise) means any permit or group of permits covering a part 71 source that has been issued, renewed, amended or revised pursuant to this part.

Part 71 program means a Federal operating permits program under this part.

Part 71 source means any source subject to the permitting requirements of this part, as provided in §§ 71.3(a) and 71.3(b).

Permit modification means a revision to a part 71 permit that meets the requirements of § 71.7(e).

Permit program costs means all reasonable (direct and indirect) costs required to administer an operating permits program, as set forth in § 71.9(b).

Permit revision means any permit modification or administrative permit amendment.

Permitting authority means one of the following:

- (1) The Administrator, in the case of EPA-implemented programs;

(2) A delegate agency authorized by the Administrator to carry out a Federal permit program under this part; or

(3) The State air pollution control agency, local agency, other State agency, Indian Tribe, or other agency authorized by the Administrator to carry out a permit program under 40 CFR part 70.

Proposed permit means the version of a permit that the delegate agency proposes to issue and forwards to the Administrator for review in compliance with § 71.10(d).

Regulated air pollutant means the following:

(1) Nitrogen oxides or any volatile organic compounds;

(2) Any pollutant for which a national ambient air quality standard has been promulgated;

(3) Any pollutant that is subject to any standard promulgated under section 111 of the Act;

(4) Any Class I or II substance subject to a standard promulgated under or established by title VI of the Act; or

(5) Any pollutant subject to a standard promulgated under section 112 of the Act or other requirements established under section 112 of the Act, including sections 112 (g), (j), and (r) of the Act, including the following:

(i) Any pollutant subject to requirements under section 112(j) of the Act. If the Administrator fails to promulgate a standard by the date established pursuant to section 112(e) of the Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to section 112(e) of the Act; and

(ii) Any pollutant for which the requirements of section 112(g)(2) of the Act have been met, but only with respect to the individual source subject to section 112(g)(2) requirements.

Regulated pollutant (for fee calculation), which is used only for purposes of § 71.9(c), means any regulated air pollutant except the following:

(1) Carbon monoxide;

(2) Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard promulgated under or established by title VI of the Act; or

(3) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under section 112(r) of the Act.

Renewal means the process by which a permit is reissued at the end of its term.

Responsible official means one of the following:

(1) For a corporation: a president, secretary, treasurer, or vice-president of

the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or

(ii) the delegation of authority to such representative is approved in advance by the permitting authority;

(2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

(3) For a municipality, State, Federal, or other public agency: Either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA); or

(4) For affected sources:

(i) The designated representative insofar as actions, standards, requirements, or prohibitions under title IV of the Act or 40 CFR parts 72 through 78 are concerned; and

(ii) The designated representative for any other purposes under part 71.

Section 502(b)(10) changes are changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

State means any non-Federal permitting authority, including any local agency, interstate association, or statewide program. The term "State" also includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. Where such meaning is clear from the context, "State" shall have its conventional meaning. For purposes of the acid rain program, the term "State" shall be limited to authorities within the 48 contiguous States and the District of Columbia as provided in section 402(14) of the Act.

Stationary source means any building, structure, facility, or installation that emits or may emit any regulated air

pollutant or any pollutant listed under section 112(b) of the Act.

§ 71.3 Sources Subject to Permitting Requirements.

(a) *Part 71 sources.* The following sources are subject to the permitting requirements under this part:

(1) Any major source;

(2) Any source, including an area source, subject to a standard, limitation, or other requirement under section 111 of the Act;

(3) Any source, including an area source, subject to a standard or other requirement under section 112 of the Act, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under section 112(r) of the Act;

(4) Any affected source; and

(5) Any source in a source category designated by the Administrator pursuant to this section.

(b) *Source category exemptions.* (1) All sources listed in paragraph (a) of this section that are not major sources, affected sources, or solid waste incineration units required to obtain a permit pursuant to section 129(e) of the Act are exempted from the obligation to obtain a part 71 permit until such time as the Administrator completes a rulemaking to determine how the program should be structured for nonmajor sources and the appropriateness of any permanent exemptions in addition to those provided for in paragraph (b)(4) of this section.

(2) In the case of nonmajor sources subject to a standard or other requirement under either section 111 or 112 of the Act after July 21, 1992 publication, the Administrator will determine whether to exempt any or all such applicable sources from the requirement to obtain a part 70 or part 71 permit at the time that the new standard is promulgated.

(3) Any source listed in paragraph (a) of this section exempt from the requirement to obtain a permit under this section may opt to apply for a permit under a part 71 program.

(4) The following source categories are exempted from the obligation to obtain a part 71 permit:

(i) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR part 60, Subpart AAA—Standards of Performance for New Residential Wood Heaters; and

(ii) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR part 61, Subpart M—National Emission Standard for Hazardous Air

Pollutants for Asbestos, § 61.145, Standard for Demolition and Renovation.

(c) *Emissions units and part 71 sources.* (1) For major sources, the permitting authority shall include in the permit all applicable requirements for all relevant emissions units in the major source.

(2) For any nonmajor source subject to the part 71 program under paragraphs (a) or (b) of this section, the permitting authority shall include in the permit all applicable requirements applicable to emissions units that cause the source to be subject to the part 71 program.

(d) *Fugitive emissions.* Fugitive emissions from a part 71 source shall be included in the permit application and the part 71 permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

§ 71.4 Program implementation.

(a) *Part 71 programs for States.* The Administrator will administer and enforce a full or partial operating permits program for a State (excluding Tribal areas) in the following situations:

(1) A program for a State meeting the requirements of part 70 of this chapter has not been granted full approval under § 70.4 of this chapter by the Administrator by July 31, 1996, and the State's part 70 program has not been granted interim approval under § 70.4(d) of this chapter for a period extending beyond July 31, 1996. The effective date of such a part 71 program is July 31, 1996.

(2) An operating permits program for a State which was granted interim approval under § 70.4(d) of this chapter has not been granted full approval by the Administrator by the expiration of the interim approval period or July 31, 1996, whichever is later. Such a part 71 program shall be effective upon expiration of the interim approval or July 31, 1996 whichever is later.

(3) Any partial part 71 program will be effective only in those portions of a State that are not covered by a partial part 70 program that has been granted full or interim approval by the Administrator pursuant to § 70.4(c) of this chapter.

(b) *Part 71 programs for Tribal areas.* The Administrator may administer and enforce an operating permits program for a Tribal area, as defined in § 71.2, or by a rulemaking, when an operating permits program for the area which meets the requirements of part 70 of this chapter has not been granted full or

interim approval by the Administrator by July 31, 1996.

(1) [Reserved]

(2) The effective date of a part 71 program for a Tribal area shall be November 15, 1997.

(3) Notwithstanding paragraph (b)(2) of this section, the Administrator, in consultation with the governing body of the Tribal area, may adopt an earlier effective date.

(4) Notwithstanding paragraph (i)(2) of this section, within 2 years of the effective date of the part 71 program for the Tribal area, the Administrator shall take final action on permit applications from part 71 sources that are submitted within the first full year after the effective date of the part 71 program.

(c) *Part 71 programs imposed due to inadequate implementation.* (1) The Administrator will administer and enforce an operating permits program for a permitting authority if the Administrator has notified the permitting authority, in accordance with § 70.10(b)(1) of this chapter, of the Administrator's determination that a permitting authority is not adequately administering or enforcing its approved operating permits program, or any portion thereof, and the permitting authority fails to do either of the following:

(i) Correct the deficiencies within 18 months after the Administrator issues the notice; or

(ii) Take significant action to assure adequate administration and enforcement of the program within 90 days of the Administrator's notice.

(2) The effective date of a part 71 program promulgated in accordance with this paragraph (c) shall be:

(i) Two years after the Administrator's notice if the permitting authority has not corrected the deficiency within 18 months after the date of the Administrator's notice; or

(ii) Such earlier time as the Administrator determines appropriate if the permitting authority fails, within 90 days of the Administrator's notice, to take significant action to assure adequate administration and enforcement of the program.

(d) *Part 71 programs for OCS sources.* (1) Using the procedures of this part, the Administrator will issue permits to any source which is an outer continental shelf (OCS) source, as defined under § 55.2 of this chapter, is subject to the requirements of part 55 of this chapter and section 328(a) of the Act, is subject to the requirement to obtain a permit under title V of the Act, and is either:

(i) Located beyond 25 miles of States' seaward boundaries; or

(ii) Located within 25 miles of States' seaward boundaries and a part 71 program is being administered and enforced by the Administrator for the corresponding onshore area, as defined in § 55.2 of this chapter, for that source.

(2) The requirements of § 71.4(d)(1)(i) shall apply on July 31, 1996.

(3) The requirements of § 71.4(d)(1)(ii) apply upon the effective date of a part 71 program for the corresponding onshore area.

(e) *Part 71 program for permits issued to satisfy an EPA objection.* Using the procedures of this part and 40 CFR 70.8 (c) or (d), or 40 CFR 70.7(g)(4) or (5) (i) and (ii), as appropriate, the Administrator will deny, terminate, revise, revoke or reissue a permit which has been proposed or issued by a permitting authority or will issue a part 71 permit when:

(1) A permitting authority with an approved part 70 operating permits program fails to respond to a timely objection to the issuance of a permit made by the Administrator pursuant to section 505(b) of the Act and § 70.8(c) and (d) of this chapter.

(2) The Administrator, under § 70.7(g) of this chapter, finds that cause exists to reopen a permit and the permitting authority fails to either:

(i) Submit to the Administrator a proposed determination of termination, modification, or revocation and reissuance, as appropriate; or

(ii) Resolve any objection EPA makes to the permit which the permitting authority proposes to issue in response to EPA's finding of cause to reopen, and to terminate, revise, or revoke and reissue the permit in accordance with that objection.

(3) The requirements of this paragraph (e) shall apply on July 31, 1996.

(f) *Use of selected provisions of this part.* The Administrator may utilize any or all of the provisions of this part to administer the permitting process for individual sources or take action on individual permits, or may adopt through rulemaking portions of a State or Tribal program in combination with provisions of this part to administer a Federal program for the State or Tribal area in substitution of or addition to the Federal program otherwise required by this part.

(g) *Public notice of part 71 programs.* In taking action to administer and enforce an operating permits program under this part, the Administrator will publish a notice in the Federal Register informing the public of such action and the effective date of any part 71 program as set forth in § 71.4 (a), (b), (c), or (d)(1)(ii). The publication of this part in the Federal Register on July 1, 1996

serves as the notice for the part 71 permit programs described in § 71.4(d)(1) (i) and (e). The EPA will also publish a notice in the Federal Register of any delegation of a portion of the part 71 program to a State, eligible Tribe, or local agency pursuant to the provisions of § 71.10. In addition to notices published in the Federal Register under this paragraph (g), the Administrator will, to the extent practicable, publish notice in a newspaper of general circulation within the area subject to the part 71 program effectiveness or delegation, and will send a letter to the Tribal governing body for an Indian Tribe or the Governor (or his or her designee) of the affected area to provide notice of such effectiveness or delegation.

(h) *Effect of limited deficiencies in State or Tribal programs.* The Administrator may administer and enforce a part 71 program in a State or Tribal area even if only limited deficiencies exist either in the initial program submittal for a State or eligible Tribe under part 70 of this chapter or in an existing State or Tribal program that has been approved under part 70 of this chapter.

(i) *Transition plan for initial permit issuance.* If a full or partial part 71 program becomes effective in a State or Tribal area prior to the issuance of part 70 permits to all part 70 sources under an existing program that has been approved under part 70 of this chapter, the Administrator shall take final action on initial permit applications for all part 71 sources in accordance with the following transition plan.

(1) All part 71 sources that have not received part 70 permits shall submit permit applications under this part within 1 year after the effective date of the part 71 program.

(2) Final action shall be taken on at least one-third of such applications annually over a period not to exceed 3 years after such effective date.

(3) Any complete permit application containing an early reduction demonstration under section 112(i)(5) of the Act shall be acted on within 12 months of receipt of the complete application.

(4) Submittal of permit applications and the permitting of affected sources shall occur in accordance with the deadlines in title IV of the Act and 40 CFR parts 72 through 78.

(j) *Delegation of part 71 programs.* The Administrator may promulgate a part 71 program in a State or Tribal area and delegate part of the responsibility for administering the part 71 program to the State or eligible Tribe in accordance with the provisions of § 71.10; however,

delegation of a part of a program will not constitute any type of approval of a State or Tribal operating permits program under part 70 of this chapter. Where only selected portions of a part 71 program are administered by the Administrator and the State or eligible Tribe is delegated the remaining portions of the program, the Delegation Agreement referred to in § 71.10 will define the respective roles of the State or eligible Tribe and the Administrator in administering and enforcing the part 71 operating permits program.

(k) *EPA administration and enforcement of part 70 permits.* When the Administrator administers and enforces a part 71 program after a determination and notice under § 70.10(b)(1) of this chapter that a State or Tribe is not adequately administering and enforcing an operating permits program approved under part 70 of this chapter, the Administrator will administer and enforce permits issued under the part 70 program until part 71 permits are issued using the procedures of part 71. Until such time as part 70 permits are replaced by part 71 permits, the Administrator will revise, reopen, revise, terminate, or revoke and reissue part 70 permits using the procedures of part 71 and will assess and collect fees in accordance with the provisions of § 71.9.

(l) *Transition to approved part 70 program.* The Administrator will suspend the issuance of part 71 permits promptly upon publication of notice of approval of a State or Tribal operating permits program that meets the requirements of part 70 of this chapter. The Administrator may retain jurisdiction over the part 71 permits for which the administrative or judicial review process is not complete and will address this issue in the notice of State program approval. After approval of a State or Tribal program and the suspension of issuance of part 71 permits by the Administrator:

(1) The Administrator, or the permitting authority acting as the Administrator's delegated agent, will continue to administer and enforce part 71 permits until they are replaced by permits issued under the approved part 70 program. Until such time as part 71 permits are replaced by part 70 permits, the Administrator will revise, reopen, revise, terminate, or revoke and reissue part 71 permits using the procedures of the part 71 program. However, if the Administrator has delegated authority to administer part 71 permits to a delegate agency, the delegate agency will revise, reopen, terminate, or revoke and reissue part 71 permits using the procedures of the approved part 70 program. If a part

71 permit expires prior to the issuance of a part 70 permit, all terms and conditions of the part 71 permit, including any permit shield that may be granted pursuant to § 71.6(f), shall remain in effect until the part 70 permit is issued or denied, provided that a timely and complete application for a permit renewal was submitted to the permitting authority in accordance with the requirements of the approved part 70 program.

(2) A State or local agency or Indian Tribe with an approved part 70 operating permits program may issue part 70 permits for all sources with part 71 permits in accordance with a permit issuance schedule approved as part of the approved part 70 program or may issue part 70 permits to such sources at the expiration of the part 71 permits.

(m) *Exemption for certain territories.* Upon petition by the Governor of Guam, American Samoa, the Virgin Islands, or the Commonwealth of the Northern Mariana Islands, the Administrator may exempt any source or class of sources in such territory from the requirement to have a part 71 permit under this chapter. Such an exemption does not exempt such source or class of sources from any requirement of section 112 of the Act, including the requirements of section 112 (g) or (j).

(1) Such exemption may be granted if the Administrator finds that compliance with part 71 is not feasible or is unreasonable due to unique geographical, meteorological, or economic factors of such territory, or such other local factors as the Administrator deems significant. Any such petition shall be considered in accordance with section 307(d) of the Act, and any exemption granted under this paragraph (m) shall be considered final action by the Administrator for the purposes of section 307(b) of the Act.

(2) The Administrator shall promptly notify the Committees on Energy and Commerce and on Interior and Insular Affairs of the House of Representatives and the Committees on Environment and Public Works and on Energy and Natural Resources of the Senate upon receipt of any petition under this paragraph (m) and of the approval or rejection of such petition and the basis for such action.

(n) *Retention of records.* The records for each draft, proposed, and final permit application, renewal, or modification shall be kept by the Administrator for a period of 5 years.

§ 71.5 Permit applications.

(a) *Duty to apply.* For each part 71 source, the owner or operator shall submit a timely and complete permit

application in accordance with this section.

(1) *Timely application.* (i) A timely application for a source which does not have an existing operating permit issued by a State under the State's approved part 70 program and is applying for a part 71 permit for the first time is one that is submitted within 12 months after the source becomes subject to the permit program or on or before such earlier date as the permitting authority may establish. Sources required to submit applications earlier than 12 months after the source becomes subject to the permit program will be notified of the earlier submittal date at least 6 months in advance of the date.

(ii) Part 71 sources required to meet the requirements under section 112(g) of the Act, or to have a permit under the preconstruction review program approved into the applicable implementation plan under part C or D of title I of the Act, shall file a complete application to obtain the part 71 permit or permit revision within 12 months after commencing operation or on or before such earlier date as the permitting authority may establish. Sources required to submit applications earlier than 12 months after the source becomes subject to the permit program will be notified of the earlier submittal date at least 6 months in advance of the date. Where an existing part 70 or 71 permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation.

(iii) For purposes of permit renewal, a timely application is one that is submitted at least 6 months but not more than 18 months prior to expiration of the part 70 or 71 permit.

(iv) Applications for initial phase II acid rain permits shall be submitted to the permitting authority by January 1, 1996 for sulfur dioxide, and by January 1, 1998 for nitrogen oxides.

(2) *Complete application.* To be deemed complete, an application must provide all information required pursuant to paragraph (c) of this section, except that applications for permit revision need supply such information only if it is related to the proposed change. To be found complete, an initial or renewal application must remit payment of fees owed under the fee schedule established pursuant to § 71.9(b). Information required under paragraph (c) of this section must be sufficient to evaluate the subject source and its application and to determine all applicable requirements. A responsible official must certify the submitted information consistent with paragraph (d) of this section. Unless the permitting

authority determines that an application is not complete within 60 days of receipt of the application, such application shall be deemed to be complete, except as otherwise provided in § 71.7(a)(4). If, while processing an application that has been determined or deemed to be complete, the permitting authority determines that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response. The source's ability to operate without a permit, as set forth in § 71.7(b), shall be in effect from the date the application is determined or deemed to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the permitting authority.

(3) *Confidential information.* An applicant may assert a business confidentiality claim for information requested by the permitting authority using procedures found at part 2, subpart B of this chapter.

(b) *Duty to supplement or correct application.* Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

(c) *Standard application form and required information.* The permitting authority shall provide sources a standard application form or forms. The permitting authority may use discretion in developing application forms that best meet program needs and administrative efficiency. The forms and attachments chosen, however, shall include the elements specified below. An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under the schedule established pursuant to § 71.9.

(1) Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager/contact.

(2) A description of the source's processes and products (by Standard Industrial Classification Code) including

any associated with each alternate scenario identified by the source.

(3) The following emissions-related information:

(i) All emissions of pollutants for which the source is major, and all emissions of regulated air pollutants. A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit, except where such units are exempted under this paragraph (c). The permitting authority shall require additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to collect any permit fees owed under the fee schedule established pursuant to § 71.9(b).

(ii) Identification and description of all points of emissions described in paragraph (c)(3)(i) of this section in sufficient detail to establish the basis for fees and applicability of requirements of the Act.

(iii) Emissions rates in tpy and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method.

(iv) The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates, and operating schedules.

(v) Identification and description of air pollution control equipment and compliance monitoring devices or activities.

(vi) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated pollutants at the part 71 source.

(vii) Other information required by any applicable requirement (including information related to stack height limitations developed pursuant to section 123 of the Act).

(viii) Calculations on which the information in paragraphs (c)(3) (i) through (vii) of this section is based.

(4) The following air pollution control requirements:

(i) Citation and description of all applicable requirements; and

(ii) Description of or reference to any applicable test method for determining compliance with each applicable requirement.

(5) Other specific information that may be necessary to implement and enforce other applicable requirements of the Act or of this part or to determine the applicability of such requirements.

(6) An explanation of any proposed exemptions from otherwise applicable requirements.

(7) Additional information as determined to be necessary by the permitting authority to define alternative operating scenarios identified by the source pursuant to § 71.6(a)(9) or to define permit terms and conditions implementing § 71.6(a)(10) or § 71.6(a)(13).

(8) A compliance plan for all part 71 sources that contains all the following:

(i) A description of the compliance status of the source with respect to all applicable requirements.

(ii) A description as follows:

(A) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(B) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

(C) For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

(iii) A compliance schedule as follows:

(A) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(B) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

(C) A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

(iv) A schedule for submission of certified progress reports no less frequently than every 6 months for

sources required to have a schedule of compliance to remedy a violation.

(v) The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under parts 72 through 78 of this chapter with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations.

(9) Requirements for compliance certification, including the following:

(i) A certification of compliance with all applicable requirements by a responsible official consistent with paragraph (d) of this section and section 114(a)(3) of the Act;

(ii) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;

(iii) A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the permitting authority; and

(iv) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.

(10) The use of nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under parts 72 through 78 of this chapter.

(11) *Insignificant activities and emissions levels.* The following types of insignificant activities and emissions levels need not be included in permit applications. However, for insignificant activities which are exempted because of size or production rate, a list of such insignificant activities must be included in the application. An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to calculate the fee amount required under the schedule established pursuant to § 71.9 of this part.

(i) *Insignificant activities:*

(A) Mobile sources;

(B) Air-conditioning units used for human comfort that are not subject to applicable requirements under title VI of the Act and do not exhaust air pollutants into the ambient air from any manufacturing or other industrial process;

(C) Ventilating units used for human comfort that do not exhaust air

pollutants into the ambient air from any manufacturing or other industrial process;

(D) Heating units used for human comfort that do not provide heat for any manufacturing or other industrial process;

(E) Noncommercial food preparation;

(F) Consumer use of office equipment and products;

(G) Janitorial services and consumer use of janitorial products; and

(H) Internal combustion engines used for landscaping purposes.

(ii) *Insignificant emissions levels.*

Emissions meeting the criteria in paragraph (c)(11)(ii)(A) or (c)(11)(ii)(B) of this section need not be included in the application, but must be listed with sufficient detail to identify the emission unit and indicate that the exemption applies. Similar emission units, including similar capacities or sizes, may be listed under a single description, provided the number of emission units is included in the description. No additional information is required at time of application, but the permitting authority may request additional information during application processing.

(A) *Emission criteria for regulated air pollutants, excluding hazardous air pollutants (HAP).* Potential to emit of regulated air pollutants, excluding HAP, for any single emissions unit shall not exceed 2 tpy.

(B) *Emission criteria for HAP.* Potential to emit of any HAP from any single emissions unit shall not exceed 1,000 lb per year or the de minimis level established under section 112(g) of the Act, whichever is less.

(d) Any application form, report, or compliance certification submitted pursuant to these regulations shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this part shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

§ 71.6 Permit content.

(a) *Standard permit requirements.* Each permit issued under this part shall include the following elements:

(1) Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.

(i) The permit shall specify and reference the origin of and authority for each term or condition, and identify any

difference in form as compared to the applicable requirement upon which the term or condition is based.

(ii) The permit shall state that, where an applicable requirement of the Act is more stringent than an applicable requirement of 40 CFR parts 72 through 78, both provisions shall be incorporated into the permit and shall be enforceable by the Administrator.

(iii) If an applicable implementation plan allows a determination of an alternative emission limit at a part 71 source, equivalent to that contained in the plan, to be made in the permit issuance, renewal, or significant modification process, and the permitting authority elects to use such process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(2) *Permit duration.* The permitting authority shall issue permits for a fixed term of 5 years in the case of affected sources, and for a term not to exceed 5 years in the case of all other sources. Notwithstanding this requirement, the permitting authority shall issue permits for solid waste incineration units combusting municipal waste subject to standards under section 129(e) of the Act for a period not to exceed 12 years and shall review such permits at least every 5 years.

(3) *Monitoring and related recordkeeping and reporting requirements.* (i) Each permit shall contain the following requirements with respect to monitoring:

(A) All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods promulgated pursuant to sections 114(a)(3) or 504(b) of the Act;

(B) Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to paragraph (a)(3)(iii) of this section. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this paragraph (a)(3)(i)(B); and

(C) As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

(ii) With respect to recordkeeping, the permit shall incorporate all applicable recordkeeping requirements and require, where applicable, the following:

(A) Records of required monitoring information that include the following:

(1) The date, place as defined in the permit, and time of sampling or measurements;

(2) The date(s) analyses were performed;

(3) The company or entity that performed the analyses;

(4) The analytical techniques or methods used;

(5) The results of such analyses; and

(6) The operating conditions as existing at the time of sampling or measurement;

(B) Retention of records of all required monitoring data and support information for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

(iii) With respect to reporting, the permit shall incorporate all applicable reporting requirements and require the following:

(A) Submittal of reports of any required monitoring at least every 6 months. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with § 71.5(d).

(B) Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. Where the underlying applicable requirement contains a definition of prompt or otherwise specifies a time frame for reporting deviations, that definition or time frame shall govern. Where the underlying applicable requirement fails to address the time frame for reporting deviations, reports of deviations shall be submitted to the permitting authority based on the following schedule:

(1) For emissions of a hazardous air pollutant or a toxic air pollutant (as identified in an applicable regulation) that continue for more than an hour in excess of permit requirements, the

report must be made with 24 hours of the occurrence.

(2) For emissions of any regulated air pollutant, excluding those listed in paragraph (a)(3)(iii)(B)(1) of this section, that continue for more than two hours in excess of permit requirements, the report must be made within 48 hours.

(3) For all other deviations from permit requirements, the report shall be contained in the report submitted in accordance with the timeframe given in paragraph (a)(3)(iii)(A).

(4) A permit may contain a more stringent reporting requirement than required by paragraphs (a)(3)(iii)(B)(1), (2), or (3).

If any of the above conditions are met, the source must notify the permitting authority by telephone or facsimile based on the timetable listed in paragraphs (a)(3)(iii)(B) (1) through (4) of this section. A written notice, certified consistent with § 71.5(d), must be submitted within 10 working days of the occurrence. All deviations reported under paragraph (a)(3)(iii)(A) of this section must also be identified in the 6 month report required under paragraph (a)(3)(iii)(A) of this section.

(C) For purposes of paragraph (a)(3)(iii)(B) of this section, deviation means any condition determined by observation, by data from any monitoring protocol, or by any other monitoring which is required by the permit that can be used to determine compliance, that identifies that an emission unit subject to a part 71 permit term or condition has failed to meet an applicable emission limitation or standard or that a work practice was not complied with or completed. For a condition lasting more than 24 hours which constitutes a deviation, each 24 hour period is considered a separate deviation. Included in the meaning of deviation are any of the following:

(1) A condition where emissions exceed an emission limitation or standard;

(2) A condition where process or control device parameter values demonstrate that an emission limitation or standard has not been met;

(3) Any other condition in which observations or data collected demonstrates noncompliance with an emission limitation or standard or any work practice or operating condition required by the permit.

(4) A permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under 40 CFR parts 72 through 78.

(i) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program,

provided that such increases do not require a permit revision under any other applicable requirement.

(ii) No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(iii) Any such allowance shall be accounted for according to the procedures established in regulations 40 CFR parts 72 through 78.

(5) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

(6) Provisions stating the following:

(i) The permittee must comply with all conditions of the part 71 permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

(ii) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(iii) The permit may be modified, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(iv) The permit does not convey any property rights of any sort, or any exclusive privilege.

(v) The permittee shall furnish to the permitting authority, within a reasonable time, any information that the permitting authority may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the permitting authority copies of records required to be kept by the permit or, in the case of a program delegated pursuant to § 71.10, for information claimed to be confidential, the permittee may furnish such records directly to the Administrator along with a claim of confidentiality.

(7) A provision to ensure that a part 71 source pays fees to the Administrator consistent with the fee schedule approved pursuant to § 71.9.

(8) *Emissions trading.* A provision stating that no permit revision shall be

required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

(9) Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the permitting authority. Such terms and conditions:

(i) Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;

(ii) May extend the permit shield described in paragraph (f) of this section to all terms and conditions under each such operating scenario; and

(iii) Must ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of this part.

(10) Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of each emissions trade. Such terms and conditions:

(i) Shall include all terms required under paragraphs (a) and (c) of this section to determine compliance;

(ii) May extend the permit shield described in paragraph (f) of this section to all terms and conditions that allow such increases and decreases in emissions; and

(iii) Must meet all applicable requirements and requirements of this part.

(11) *Permit expiration.* A provision to ensure that a part 71 permit expires upon the earlier occurrence of the following events:

(i) twelve years elapses from the date of issuance to a solid waste incineration unit combusting municipal waste subject to standards under section 112(e) of the Act; or

(ii) five years elapses from the date of issuance; or

(iii) the source is issued a part 70 permit.

(12) *Off Permit Changes.* A provision allowing changes that are not addressed or prohibited by the permit, other than those subject to the requirements of 40 CFR parts 72 through 78 or those that are modifications under any provision of title I of the Act to be made without a permit revision, provided that the following requirements are met:

(i) Each such change shall meet all applicable requirements and shall not violate any existing permit term or condition;

(ii) Sources must provide contemporaneous written notice to the permitting authority (and EPA, in the case of a program delegated pursuant to § 71.10) of each such change, except for changes that qualify as insignificant under § 71.5(c)(11). Such written notice shall describe each such change, including the date, any change in emissions, pollutants emitted, and any applicable requirement that would apply as a result of the change;

(iii) The change shall not qualify for the shield under § 71.6(f);

(iv) The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.

(13) *Operational flexibility.* Provisions consistent with paragraphs (a)(3)(i) through (iii) of this section to allow changes within a permitted facility without requiring a permit revision, if the changes are not modifications under any provision of title I of the Act and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions): Provided, that the facility provides the Administrator (in the case of a program delegated pursuant to § 71.10) and the permitting authority with written notification as required below in advance of the proposed changes, which shall be a minimum of 7 days.

(i) The permit shall allow the permitted source to make section 502(b)(10) changes without requiring a permit revision, if the changes are not modifications under any provision of title I of the Act and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions).

(A) For each such change, the written notification required above shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

(B) The permit shield described in § 71.6(f) shall not apply to any change made pursuant to this paragraph (a)(13)(i).

(ii) The permit may provide for the permitted source to trade increases and decreases in emissions in the permitted facility, where the applicable

implementation plan provides for such emissions trades without requiring a permit revision and based on the 7-day notice prescribed in this paragraph (a)(13)(ii) of this section. This provision is available in those cases where the permit does not already provide for such emissions trading.

(A) Under this paragraph (a)(13)(ii), the written notification required above shall include such information as may be required by the provision in the applicable implementation plan authorizing the emissions trade, including at a minimum, when the proposed change will occur, a description of each such change, any change in emissions, the permit requirements with which the source will comply using the emissions trading provisions of the applicable implementation plan, and the pollutants emitted subject to the emissions trade. The notice shall also refer to the provisions with which the source will comply in the applicable implementation plan and that provide for the emissions trade.

(B) The permit shield described in § 71.6(f) shall not extend to any change made under this paragraph (a)(13)(ii). Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of the applicable implementation plan authorizing the emissions trade.

(iii) The permit shall require the permitting authority, if a permit applicant requests it, to issue permits that contain terms and conditions, including all terms required under § 71.6 (a) and (c) to determine compliance, allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The permitting authority shall not be required to include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall also require compliance with all applicable requirements.

(A) Under this paragraph (a)(13)(iii), the written notification required above shall state when the change will occur and shall describe the changes in emissions that will result and how these

increases and decreases in emissions will comply with the terms and conditions of the permit.

(B) The permit shield described in § 71.6(f) may extend to terms and conditions that allow such increases and decreases in emissions.

(b) *Federally-enforceable requirements.* All terms and conditions in a part 71 permit, including any provisions designed to limit a source's potential to emit, are enforceable by the Administrator and citizens under the Act.

(c) *Compliance requirements.* All part 71 permits shall contain the following elements with respect to compliance:

(1) Consistent with paragraph (a)(3) of this section, compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document (including reports) required by a part 71 permit shall contain a certification by a responsible official that meets the requirements of § 71.5(d).

(2) Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the permitting authority or an authorized representative to perform the following:

(i) Enter upon the permittee's premises where a part 71 source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(ii) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(iii) Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(iv) As authorized by the Act, sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.

(3) A schedule of compliance consistent with § 71.5(c)(8).

(4) Progress reports consistent with an applicable schedule of compliance and § 71.5(c)(8) to be submitted at least semiannually, or at a more frequent period if specified in the applicable requirement or by the permitting authority. Such progress reports shall contain the following:

(i) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and

(ii) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(5) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

(i) The frequency (not less than annually or such more frequent periods as specified in the applicable requirement or by the permitting authority) of submissions of compliance certifications;

(ii) In accordance with § 71.6(a)(3), a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;

(iii) A requirement that the compliance certification include the following:

(A) The identification of each term or condition of the permit that is the basis of the certification;

(B) The compliance status;

(C) Whether compliance was continuous or intermittent;

(D) The method(s) used for determining the compliance status of the source, currently and over the reporting period consistent with paragraph (a)(3) of this section; and

(E) Such other facts as the permitting authority may require to determine the compliance status of the source;

(iv) A requirement that all compliance certifications be submitted to the Administrator as well as to the permitting authority; and

(v) Such additional requirements as may be specified pursuant to sections 114(a)(3) and 504(b) of the Act.

(6) Such other provisions as the permitting authority may require.

(d) *General permits.* (1) The permitting authority may, after notice and opportunity for public participation provided under § 71.11, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to other part 71 permits and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the permitting authority shall grant the conditions and terms of the general permit.

Notwithstanding the shield provisions of paragraph (f) of this section, the source shall be subject to enforcement action for operation without a part 71 permit if the source is later determined not to qualify for the conditions and terms of the general permit. General permits shall not be authorized for affected sources under the acid rain

program unless otherwise provided in 40 CFR parts 72 through 78.

(2) Part 71 sources that would qualify for a general permit must apply to the permitting authority for coverage under the terms of the general permit or must apply for a part 71 permit consistent with § 71.5. The permitting authority may, in the general permit, provide for applications which deviate from the requirements of § 71.5, provided that such applications meet the requirements of title V of the Act, and include all information necessary to determine qualification for, and to assure compliance with, the general permit. Without repeating the public participation procedures required under § 71.11, the permitting authority may grant a source's request for authorization to operate under a general permit, but such a grant shall not be a final permit action for purposes of judicial review.

(e) *Temporary sources.* The permitting authority may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation must be temporary and involve at least one change of location during the term of the permit. No affected source shall be permitted as a temporary source. Permits for temporary sources shall include the following:

(1) Conditions that will assure compliance with all applicable requirements at all authorized locations;

(2) Requirements that the owner or operator notify the permitting authority at least 10 days in advance of each change in location; and

(3) Conditions that assure compliance with all other provisions of this section.

(f) *Permit shield.* (1) Except as provided in this part, the permitting authority may expressly include in a part 71 permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:

(i) Such applicable requirements are included and are specifically identified in the permit; or

(ii) The permitting authority, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(2) A part 71 permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.

(3) Nothing in this paragraph or in any part 71 permit shall alter or affect the following:

(i) The provisions of section 303 of the Act (emergency orders), including the authority of the Administrator under that section;

(ii) The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;

(iii) The applicable requirements of the acid rain program, consistent with section 408(a) of the Act; or

(iv) The ability of EPA to obtain information from a source pursuant to section 114 of the Act.

(g) *Emergency provision.* (1) *Definition.* An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(2) *Effect of an emergency.* An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of paragraph (g)(3) of this section are met.

(3) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) An emergency occurred and that the permittee can identify the cause(s) of the emergency;

(ii) The permitted facility was at the time being properly operated;

(iii) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and

(iv) The permittee submitted notice of the emergency to the permitting authority within 2 working days of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirement of paragraph (a)(3)(iii)(B) of this section. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(4) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

(5) This provision is in addition to any emergency or upset provision contained in any applicable requirement.

§ 71.7 Permit issuance, renewal, reopenings, and revisions.

(a) *Action on application.* (1) A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:

(i) The permitting authority has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under § 71.6(d);

(ii) Except for modifications qualifying for minor permit modification procedures under paragraphs (e) (1) and (2) of this section, the permitting authority has complied with the requirements for public participation under this section or § 71.11, as applicable;

(iii) The permitting authority has complied with the requirements for notifying and responding to affected States under § 71.8(a);

(iv) The conditions of the permit provide for compliance with all applicable requirements and the requirements of this part; and

(v) In the case of a program delegated pursuant to § 71.10, the Administrator has received a copy of the proposed permit and any notices required under § 71.10(d) and has not objected to issuance of the permit under § 71.10(g) within the time period specified therein.

(2) Except as provided under the initial transition plan provided for under § 71.4(i) or under 40 CFR part 72 or title V of the Act for the permitting of affected sources under the acid rain program, the permitting authority shall take final action on each permit application (including a request for permit modification or renewal) within 18 months after receiving a complete application.

(3) The permitting authority shall ensure that priority is given to taking action on applications for construction or modification under title I, parts C and D of the Act.

(4) The permitting authority shall promptly provide notice to the applicant of whether the application is complete. Unless the permitting authority requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application, the

application shall be deemed complete. For modifications processed through minor permit modification procedures, such as those in paragraphs (e) (1) and (2) of this section, the permitting authority need not make a completeness determination.

(5) The permitting authority shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The permitting authority shall send this statement to any person who requests it, and to EPA, in the case of a program delegated pursuant to § 71.10.

(6) The submittal of a complete application shall not affect the requirement that any source have a preconstruction permit under title I of the Act.

(b) *Requirement for a permit.* Except as provided in the following sentence, § 71.6(a)(13), and paragraphs (e)(1)(v) and e(2)(v) of this section, no part 71 source may operate after the time that it is required to submit a timely and complete application under this part, except in compliance with a permit issued under this part. If a part 71 source submits a timely and complete application for permit issuance (including for renewal), the source's failure to have a part 71 permit is not a violation of this part until the permitting authority takes final action on the permit application, except as noted in this section. This protection shall cease to apply if, subsequent to the completeness determination made pursuant to paragraph (a)(4) of this section, and as required by § 71.5(c), the applicant fails to submit by the deadline specified in writing by the permitting authority any additional information identified as being needed to process the application.

(c) *Permit renewal and expiration.* (1) (i) Permits being renewed are subject to the same procedural requirements, including those for public participation, affected State review, and EPA review (in the case of a program delegated pursuant to § 71.10) that apply to initial permit issuance.

(ii) Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with paragraph (b) of this section and § 71.5(a)(1)(iii).

(2) In the case of a program delegated pursuant to § 71.10, if the permitting authority fails to act in a timely way on permit renewal, EPA may invoke its authority under section 505(e) of the Act to terminate or revoke and reissue the permit.

(3) If a timely and complete application for a permit renewal is submitted, consistent with § 71.5(a)(2), but the permitting authority has failed to issue or deny the renewal permit before the end of the term of the previous part 70 or 71 permit, then the permit shall not expire until the renewal permit has been issued or denied and any permit shield that may be granted pursuant to § 71.6(f) may extend beyond the original permit term until renewal; or all the terms and conditions of the permit including any permit shield that may be granted pursuant to § 71.6(f) shall remain in effect until the renewal permit has been issued or denied.

(d) *Administrative permit amendments.* (1) An "administrative permit amendment" is a permit revision that:

(i) Corrects typographical errors;
(ii) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;

(iii) Requires more frequent monitoring or reporting by the permittee;

(iv) Allows for a change in ownership or operational control of a source where the permitting authority determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the permitting authority;

(v) Incorporates into the part 71 permit the requirements from preconstruction review permits authorized under an EPA-approved program, provided that such a program meets procedural requirements substantially equivalent to the requirements of §§ 71.7 and 71.8 (and § 71.10 in the case of a delegated program) that would be applicable to the change if it were subject to review as a permit modification, and compliance requirements substantially equivalent to those contained in § 71.6; or

(vi) Incorporates any other type of change which the Administrator has determined to be similar to those in paragraphs (d)(1)(i) through (iv) of this section.

(2) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by 40 CFR part 72.

(3) *Administrative permit amendment procedures.* An administrative permit amendment may be made by the permitting authority consistent with the following:

(i) The permitting authority shall take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes without providing notice to the public or affected States provided that it designates any such permit revisions as having been made pursuant to this paragraph.

(ii) The permitting authority shall submit a copy of the revised permit to the Administrator in the case of a program delegated pursuant to § 71.10.

(iii) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(4) The permitting authority may, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield in § 71.6(f) for administrative permit amendments made pursuant to paragraph (d)(1)(v) of this section which meet the relevant requirements of §§ 71.6, 71.7, and 71.8 for significant permit modifications.

(e) *Permit modifications.* A permit modification is any revision to a part 71 permit that cannot be accomplished under the provisions for administrative permit amendments under paragraph (d) of this section. A permit modification for purposes of the acid rain portion of the permit shall be governed by 40 CFR part 72.

(1) *Minor permit modification procedures.*

(i) Criteria.

(A) Minor permit modification procedures may be used only for those permit modifications that:

(1) Do not violate any applicable requirement;

(2) Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

(3) Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(4) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include:

(i) A federally enforceable emissions cap assumed to avoid classification as a modification under any provision of title I; and

(ii) An alternative emissions limit approved pursuant to regulations

promulgated under section 112(i)(5) of the Act;

(5) Are not modifications under any provision of title I of the Act; and

(6) Are not required to be processed as a significant modification.

(B) Notwithstanding paragraphs (e)(1)(i)(A) and (e)(2)(i) of this section, minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in an applicable implementation plan or in applicable requirements promulgated by EPA.

(ii) *Application.* An application requesting the use of minor permit modification procedures shall meet the requirements of § 71.5(c) and shall include the following:

(A) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(B) The source's suggested draft permit;

(C) Certification by a responsible official, consistent with § 71.5(d), that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and

(D) Completed forms for the permitting authority to use to notify affected States (and the Administrator in the case of a program delegated pursuant to § 71.10) as required under §§ 71.8 and 71.10(d).

(iii) *EPA and affected State notification.* Within 5 working days of receipt of a complete permit modification application, the permitting authority shall meet its obligation under § 71.8(a) to notify affected States (and its obligation under § 71.10(d) to notify the Administrator in the case of a program delegated pursuant to § 71.10) of the requested permit modification. In the case of a program delegated pursuant to § 71.10, the permitting authority promptly shall send any notice required under § 71.8(b) to the Administrator.

(iv) *Timetable for issuance.* In the case of a program delegated pursuant to § 71.10, the permitting authority may not issue a final permit modification until after EPA's 45-day review period or until EPA has notified the permitting authority that EPA will not object to issuance of the permit modification, whichever is first, although the permitting authority can approve the permit modification prior to that time. Within 90 days of the permitting authority's receipt of an application

under minor permit modification procedures (or 15 days after the end of the Administrator's 45-day review period under § 71.10(g) in the case of a program delegated pursuant to § 71.10, whichever is later), the permitting authority shall:

(A) Issue the permit modification as proposed;

(B) Deny the permit modification application;

(C) Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or

(D) Revise the draft permit modification (and, in the case of a program delegated pursuant to § 71.10, transmit to the Administrator the new proposed permit modification as required by § 71.10(d)).

(v) *Source's ability to make change.* The source may make the change proposed in its minor permit modification application immediately after it files such application. After the source makes the change allowed by the preceding sentence, and until the permitting authority takes any of the actions specified in paragraphs (e)(1)(iv)(A) through (C) of this section, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

(vi) *Permit shield.* The permit shield under § 71.6(f) may not extend to minor permit modifications.

(2) *Group processing of minor permit modifications.* Consistent with this paragraph, the permitting authority may modify the procedure outlined in paragraph (e)(1) of this section to process groups of a source's applications for certain modifications eligible for minor permit modification processing.

(i) *Criteria.* Group processing of modifications may be used only for those permit modifications:

(A) That meet the criteria for minor permit modification procedures under paragraph (e)(1)(i)(A) of this section; and

(B) That collectively are below the threshold level of 10 percent of the emissions allowed by the permit for the emissions unit for which the change is requested, 20 percent of the applicable

definition of major source in § 71.2, or 5 tpy, whichever is least.

(ii) *Application.* An application requesting the use of group processing procedures shall meet the requirements of § 71.5(c) and shall include the following:

(A) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs.

(B) The source's suggested draft permit.

(C) Certification by a responsible official, consistent with § 71.5(d), that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used.

(D) A list of the source's other pending applications awaiting group processing, and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under paragraph (e)(2)(i)(B) of this section.

(E) Certification, consistent with § 71.5(d), that, in the case of a program delegated pursuant to § 71.10, the source has notified EPA of the proposed modification. Such notification need only contain a brief description of the requested modification.

(F) Completed forms for the permitting authority to use to notify affected States as required under § 71.8 (and the Administrator as required under § 71.10(d) in the case of a program delegated pursuant to § 71.10).

(iii) *EPA and affected State notification.* On a quarterly basis or within 5 business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set under paragraph (e)(2)(i)(B) of this section, whichever is earlier, the permitting authority promptly shall meet its obligation under § 71.8(a) to notify affected States (and its obligation under § 71.10(d) to notify EPA in the case of a program delegated pursuant to § 71.10) of the requested permit modification. The permitting authority shall send any notice required under § 71.8(b) to the Administrator in the case of a program delegated pursuant to § 71.10.

(iv) *Timetable for issuance.* The provisions of paragraph (e)(1)(iv) of this section shall apply to modifications eligible for group processing, except that the permitting authority shall take one of the actions specified in paragraphs (e)(1)(iv)(A) through (D) of this section within 180 days of receipt of the application (or, in the case of a program delegated pursuant to § 71.10, 15 days

after the end of the Administrator's 45-day review period under § 71.10(g), whichever is later).

(v) *Source's ability to make change.* The provisions of paragraph (e)(1)(v) of this section shall apply to modifications eligible for group processing.

(vi) *Permit shield.* The provisions of paragraph (e)(1)(vi) of this section shall also apply to modifications eligible for group processing.

(3) *Significant modification procedures.*

(i) *Criteria.* Significant modification procedures shall be used for applications requesting permit modifications that do not qualify as minor permit modifications or as administrative amendments. Every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms or conditions shall be considered significant. Nothing herein shall be construed to preclude the permittee from making changes consistent with this part that would render existing permit compliance terms and conditions irrelevant.

(ii) Significant permit modifications shall meet all requirements of this part, including those for applications, public participation, review by affected States, and review by EPA (in the case of a program delegated pursuant to § 71.10), as they apply to permit issuance and permit renewal. The permitting authority shall design and implement this review process to complete review on the majority of significant permit modifications within 9 months after receipt of a complete application.

(f) *Reopening for cause.* (1) Each issued permit shall include provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:

(i) Additional applicable requirements under the Act become applicable to a major part 71 source with a remaining permit term of 3 or more years. Such a reopening shall be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions have been extended pursuant to paragraph (c)(3) of this section.

(ii) Additional requirements (including excess emissions requirements) become applicable to an affected source under the acid rain program. Upon approval by the

Administrator, excess emissions offset plans shall be deemed to be incorporated into the permit.

(iii) The permitting authority (or EPA, in the case of a program delegated pursuant to § 71.10) determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

(iv) The permitting authority (or EPA, in the case of a program delegated pursuant to § 71.10) determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

(2) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists, and shall be made as expeditiously as practicable.

(3) Reopenings under paragraph (f)(1) of this section shall not be initiated before a notice of such intent is provided to the part 71 source by the permitting authority at least 30 days in advance of the date that the permit is to be reopened, except that the permitting authority may provide a shorter time period in the case of an emergency.

(g) *Reopenings for cause by EPA for delegated programs.* (1) In the case of a program delegated pursuant to § 71.10, if the Administrator finds that cause exists to terminate, modify, or revoke and reissue a permit pursuant to paragraph (f) of this section, the Administrator will notify the permitting authority and the permittee of such finding in writing.

(2) The permitting authority shall, within 90 days after receipt of such notification, forward to EPA a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The Administrator may extend this 90-day period for an additional 90 days if he or she finds that a new or revised permit application is necessary or that the permitting authority must require the permittee to submit additional information.

(3) The Administrator will review the proposed determination from the permitting authority within 90 days of receipt.

(4) The permitting authority shall have 90 days from receipt of an EPA objection to resolve any objection that EPA makes and to terminate, modify, or revoke and reissue the permit in accordance with the Administrator's objection.

(5) If the permitting authority fails to submit a proposed determination pursuant to paragraph (g)(2) of this

section or fails to resolve any objection pursuant to paragraph (g)(4) of this section, the Administrator will terminate, modify, or revoke and reissue the permit after taking the following actions:

(i) Providing at least 30 days' notice to the permittee in writing of the reasons for any such action. This notice may be given during the procedures in paragraphs (g) (1) through (4) of this section.

(ii) Providing the permittee an opportunity for comment on the Administrator's proposed action and an opportunity for a hearing.

§ 71.8 Affected State review.

(a) *Notice of draft permits.* When a part 71 operating permits program becomes effective in a State or Tribal area, the permitting authority shall provide notice of each draft permit to any affected State, as defined in § 71.2, on or before the time that the permitting authority provides this notice to the public pursuant to § 71.7 or § 71.11(d) except to the extent § 71.7(e)(1) or (2) requires the timing of the notice to be different.

(b) *Notice of refusal to accept recommendations.* Prior to issuance of the final permit, the permitting authority shall notify any affected State in writing of any refusal by the permitting authority to accept all recommendations for the proposed permit that the affected State submitted during the public or affected State review period. The notice shall include the permitting authority's reasons for not accepting any such recommendation. The permitting authority is not required to accept recommendations that are not based on applicable requirements or the requirements of this part. In the case of a program delegated pursuant to § 71.10, the permitting authority shall include such notice as part of the submittal of the proposed permit to the Administrator (or as soon as possible after the submittal for minor permit modification procedures allowed under § 71.7(e)(1) or (2)).

(c) *Waiver of notice requirements.* The Administrator may waive the requirements of paragraph (a) of this section for any category of sources (including any class, type, or size within such category) other than major sources by regulation for a category of sources nationwide.

(d) *Notice provided to Indian Tribes.* The permitting authority shall provide notice of each draft permit to any federally recognized Indian Tribe whose air quality may be affected by the permitting action and whose reservation

or Tribal area is contiguous to the jurisdiction in which the part 71 permit is proposed or is within 50 miles of the permitted source.

§ 71.9 Permit fees

(a) *Fee requirement.* The owners or operators of part 71 sources shall pay annual fees, or the equivalent over some other period, that are sufficient to cover the permit program costs, in accordance with the procedures described in this section.

(b) *Permit program costs.* These costs include, but are not limited to, the costs of the following activities as they relate to a part 71 program:

(1) Reviewing and acting on any application for a permit, permit revision, or permit renewal, including the development of an applicable requirement as part of the processing of a permit, or permit revision or renewal;

(2) Processing permit reopenings;

(3) General administrative costs of the permit program, including transition planning, interagency coordination, contract management, training, informational services and outreach activities, assessing and collecting fees, the tracking of permit applications, compliance certifications, and related data entry;

(4) Implementing and enforcing the terms of any part 71 permit (not including any court costs or other costs associated with an enforcement action), including adequate resources to determine which sources are subject to the program;

(5) Emissions and ambient monitoring, modeling, analyses, demonstrations, preparation of inventories, and tracking emissions, provided these activities are needed in order to issue and implement part 71 permits; and

(6) Providing direct and indirect support to small business stationary sources in determining applicable requirements and in receiving permits under this part (to the extent that these services are not provided by a State Small Business Stationary Source Technical and Environmental Compliance Assistance Program).

(c) *Establishment of fee schedule.* (1) For part 71 programs that are administered by EPA, each part 71 source shall pay an annual fee in the amount of \$32 per ton (as adjusted pursuant to the criteria set forth in paragraph (n)(1) of this section) times the total tons of the actual emissions of each regulated pollutant (for fee calculation) emitted from the source, including fugitive emissions.

(2) For part 71 programs that are fully delegated pursuant to § 71.10:

(i) Where the EPA has not suspended its part 71 fee collection pursuant to paragraph (c)(2)(ii) of this section, the annual fee for each part 71 source shall be \$24 per ton (as adjusted pursuant to the criteria set forth in paragraph (n)(1) of this section) times the total tons of the actual emissions of each regulated pollutant (for fee calculation) emitted from the source, including fugitive emissions.

(ii) Where the delegate State collects fees from part 71 sources under State law which are sufficient to fund the delegated part 71 program, the EPA may suspend its collection of part 71 fees. The specific terms and conditions regarding the suspension of fee collection will be addressed in the applicable delegation agreement pursuant to § 71.10.

(3) For part 71 programs that are administered by EPA with contractor assistance, the per ton fee shall vary depending on the extent of contractor involvement and the cost to EPA of contractor assistance. The EPA shall establish a per ton fee that is based on the contractor costs for the specific part 71 program that is being administered, using the following formula:

$$\text{Cost per ton} = (E \times 32) + [(1 - E) \times \$C]$$

Where E represents EPA's proportion of total effort (expressed as a percentage of total effort) needed to administer the part 71 program, $1 - E$ represents the contractor's effort, and C represents the contractor assistance cost on a per ton basis. C shall be computed by using the following formula:

$$C = [B + T + N] \text{ divided by } 12,300,000$$

Where B represents the base cost (contractor costs), where T represents travel costs, and where N represents nonpersonnel data management and tracking costs.

(4) For programs that are delegated in part, the fee shall be computed using the following formula:

$$\text{Cost per ton} = (E \times 32) + (D \times 24) + [(1 - E - D) \times \$C]$$

Where E and D represent, respectively, the EPA and delegate agency proportions of total effort (expressed as a percentage of total effort) needed to administer the part 71 program, $1 - E - D$ represents the contractor's effort, and C represents the contractor assistance cost on a per ton basis. C shall be computed using the formula for contractor assistance cost found in paragraph (c)(3) of this section and shall be zero if contractor assistance is not utilized.

(5) The following emissions shall be excluded from the calculation of fees under paragraph (c)(1) through (c)(4) of this section:

(i) The amount of a part 71 source's actual emissions of each regulated pollutant (for fee calculation) that the source emits in excess of four thousand (4,000) tpy;

(ii) A part 71 source's actual emissions of any regulated pollutant (for fee calculation) already included in the fee calculation; and

(iii) The insignificant quantities of actual emissions not required to be listed or calculated in a permit application pursuant to § 71.5(c)(11).

(6) "Actual emissions" means the actual rate of emissions in tpy of any regulated pollutant (for fee calculation) emitted from a part 71 source over the preceding calendar year. Actual emissions shall be calculated using each emissions unit's actual operating hours, production rates, in-place control equipment, and types of materials processed, stored, or combusted during the preceding calendar year.

(7) Notwithstanding the provisions of paragraph (c) (1) through (4) of this section, if the Administrator determines that the fee structures provided in paragraphs (c)(1) through (4) of this section do not reflect the costs of administering a part 71 program, then the Administrator shall by rule set a fee which adequately reflects permit program costs for that program.

(d) *Prohibition on fees with respect to emissions from affected units.*

Notwithstanding any other provision of this section, during the years 1995 through 1999 inclusive, no fee for purposes of title V shall be required to be paid with respect to emissions from any affected unit under section 404 of the Act.

(e) *Submission of initial fee calculation work sheets and fees.* (1) Each part 71 source shall complete and submit an initial fee calculation work sheet as provided in paragraphs (e)(2), (f), and (g) of this section and shall complete and submit fee calculation work sheets thereafter as provided in paragraph (h) of this section. Calculations of actual or estimated emissions and calculation of the fees owed by a source shall be computed by the source on fee calculation work sheets provided by EPA. Fee payment of the full amount must accompany each initial fee calculation work sheet.

(2) The fee calculation work sheet shall require the source to submit a report of its actual emissions for the preceding calendar year and to compute fees owed based on those emissions. For sources that have been issued part 70 or part 71 permits, actual emissions shall be computed using compliance methods required by the most recent permit. If actual emissions cannot be determined

using the compliance methods in the permit, the actual emissions should be determined using federally recognized procedures. If a source commenced operation during the preceding calendar year, the source shall estimate its actual emissions for the current calendar year. In such a case, fees for the source shall be based on the total emissions estimated.

(3) The initial fee calculation worksheet shall be certified by a responsible official consistent with § 71.5(d).

(f) *Deadlines for submission.* (1) When EPA withdraws approval of a part 70 program and implements a part 71 program, part 71 sources shall submit initial fee calculation work sheets and fees in accordance with the following schedule:

(i) Sources having SIC codes between 0100 and 2499 inclusive shall complete and submit fee calculation work sheets and fees within 6 months of the effective date of the part 71 program;

(ii) Sources having SIC codes between 2500 and 2999 inclusive shall complete and submit fee calculation work sheets and fees within 7 months of the effective date of the part 71 program;

(iii) Sources having SIC codes between 3000 and 3999 inclusive shall complete and submit fee calculation work sheets and fees within 8 months of the effective date of the part 71 program;

(iv) Sources having SIC codes higher than 3999 shall complete and submit fee calculation work sheets and fees within 9 months of the effective date of the part 71 program.

(2) Sources that are required under either paragraph (f)(1) or (g) of this section to submit fee calculation work sheets and fees between January 1 and March 31 may estimate their emissions for the preceding calendar year in lieu of submitting actual emissions data. If the source's initial fee calculation work sheet was based on estimated emissions for the source's preceding calendar year, then the source shall reconcile the fees owed when it submits its annual emissions report, as provided in paragraph (h)(3) of this section.

(3) When EPA implements a part 71 program that does not replace an approved part 70 program, part 71 sources shall submit initial fee calculation work sheets and initial fees when submitting their permit applications in accordance with the requirements of § 71.5(a)(1).

(4) Notwithstanding the above, sources that become subject to the part 71 program after the program's effective date shall submit an initial fee calculation work sheet and initial fees

when submitting their permit applications in accordance with the requirements of § 71.5(a)(1).

(g) *Fees for sources that are issued part 71 permits following an EPA objection pursuant to § 71.4(e).* Fees for such sources shall be determined as provided in paragraph (c)(1) of this section. However, initial fee calculation work sheets for such sources and full payment of the initial fee shall be due three months after the date on which the source's part 71 permit is issued.

(h) *Annual emissions reports—(1) Deadlines for submission.* Each part 71 source shall submit an annual report of its actual emissions for the preceding calendar year, a fee calculation work sheet (based on the report), and full payment of the annual fee each year on the anniversary date of its initial fee calculation work sheet, except that sources that were required to submit initial fee calculation work sheets between January 1 and March 31 inclusive shall submit subsequent annual emissions reports and fee calculation work sheets by April 1.

(2) Annual emissions reports and fee calculation worksheets shall be certified by a responsible official consistent with § 71.5(d).

(3) For sources that have been issued part 70 or part 71 permits, actual emissions shall be computed using methods required by the most current permit for determining compliance.

(4) If the source's initial fee calculation work sheet was based on estimated emissions for the source's current or preceding calendar year, then the source shall reconcile the fees owed when it submits its annual emissions report. The source shall compare the estimated emissions from the initial work sheet and the actual emissions from the report and shall enter such information on the fee calculation work sheet that accompanies the annual report. The source shall recompute the initial fee accordingly and shall remit any underpayment with the report and work sheet. The EPA shall credit any overpayment to the source's account.

(i) *Recordkeeping requirements.* Part 71 sources shall retain, in accordance with the provisions of § 71.6(a)(3)(ii), all work sheets and other materials used to determine fee payments. Records shall be retained for 5 years following the year in which the emissions data is submitted.

(j) *Fee assessment errors.* (1) If EPA determines that a source has completed the fee calculation work sheet incorrectly, the permitting authority shall bill the applicant for the corrected fee or credit overpayments to the source's account.

(2) Each source notified by the permitting authority of additional amounts due shall remit full payment within 30 days of receipt of an invoice from the permitting authority.

(3) An owner or operator of a part 71 source who thinks that the assessed fee is in error shall provide a written explanation of the alleged error to the permitting authority along with the assessed fee. The permitting authority shall, within 90 days of receipt of the correspondence, review the data to determine whether the assessed fee was in error. If an error was made, the overpayment shall be credited to the account of the part 71 source.

(k) *Remittance procedure.* (1) Each remittance under this section shall be in United States currency and shall be paid by money order, bank draft, certified check, corporate check, or electronic funds transfer payable to the order of the U.S. Environmental Protection Agency.

(2) Each remittance shall be sent to the Environmental Protection Agency to the address designated on the fee calculation work sheet or the invoice.

(l) *Penalty and interest assessment.*

(1) The permitting authority shall assess interest on payments which are received later than the date due. The interest rate shall be the sum of the Federal short-term rate determined by the Secretary of the Treasury in accordance with section 6621(a)(2) of the Internal Revenue Code of 1986, plus 3 percentage points.

(2) The permitting authority shall assess a penalty charge of 50 percent of the fee amount if the fee is not paid within 30 days of the payment due date.

(3) If a source underpays the fee owed, except as provided in paragraph (l)(4) of this section, the permitting authority shall assess a penalty charge of 50 percent on the amount by which the fee was underpaid. Interest shall also be assessed, computed under paragraph (l)(1) of this section, on the amount by which the fee was underpaid.

(4) If a source bases its initial fee calculation on estimated emissions from the source's current or preceding calendar year, as provided under paragraph (h)(4) of this section, and underpays its fee based on an underestimation of these emissions, the permitting authority shall assess a penalty charge of 50 percent on certain of these underpayments, according to the following provisions:

(i) The penalty charge shall be assessed whenever a source's underpayment exceeds the underpayment penalty cutoff established in paragraph (l)(4)(iii) of this section. The penalty amount shall be 50

percent of the portion of the underpayment which is in excess of the underpayment penalty cutoff.

(ii) Where a source is subject to a penalty for underpayment pursuant to paragraph (l)(4)(i) of this section, interest as computed under paragraph (l)(1) of this section shall be assessed on that portion of the underpayment which is in excess of the underpayment penalty cutoff established in paragraph (l)(4)(iii) of this section.

(iii) The underpayment penalty cutoff for a source shall be the sum of the following:

(A) 50 percent of the portion of the initial fee amount which was calculated from estimated emissions of HAP listed pursuant to 112(b) of the Act, and

(B) 20 percent of the portion of initial fee amount which was calculated from estimated emissions of the remainder of the regulated air pollutants (for fee calculation).

(m) *Failure to remit fees.* The permitting authority shall not issue a final permit or permit revision until all fees, interest and penalties assessed against a source under this section are paid. The initial application of a source shall not be found complete unless the source has paid all fees owed.

(n) *Adjustments of fee schedules.*

(1) The fee schedules provided in paragraphs (c) (1) through (4) of this section shall remain in effect until December 31, 1996. Thereafter, the fee schedules shall be changed annually by the percentage, if any, of any annual increase in the Consumer Price Index.

(2) Part 71 permit program costs and fees will be reviewed by the Administrator at least every 2 years, and changes will be made to the fee schedule as necessary to reflect permit program costs.

(3) When changes to a fee schedule are made based on periodic reviews by the Administrator, the changes will be published in the Federal Register.

(o) *Use of revenue.* All fees, penalties, and interest collected under this part shall be deposited in a special fund in the U.S. Treasury, which thereafter shall be available for appropriation, to remain available until expended, subject to appropriation, to carry out the activities required by this part.

§ 71.10 Delegation of part 71 program.

(a) *Delegation of part 71 program.* The Administrator may delegate, in whole or in part, with or without signature authority, the authority to administer a part 71 operating permits program to a State, eligible Tribe, local, or other non-State agency in accordance with the provisions of this section. In order to be delegated authority to administer a part

71 program, the delegate agency must submit a legal opinion from the Attorney General from the State, or the attorney for the State, local, interstate, or eligible Tribal agency that has independent legal counsel, stating that the laws of the State, locality, interstate compact or Indian Tribe provide adequate authority to carry out all aspects of the delegated program. A Delegation of Authority Agreement (Agreement) shall set forth the terms and conditions of the delegation, shall specify the provisions that the delegate agency shall be authorized to implement, and shall be entered into by the Administrator and the delegate agency. The Agreement shall become effective upon the date that both the Administrator and the delegate agency have signed the Agreement. Once delegation becomes effective, the delegate agency will be responsible, to the extent specified in the Agreement, for administering the part 71 program for the area subject to the Agreement.

(b) *Publication of Notice of Delegation of Authority Agreement.* The Administrator shall publish a notice in the Federal Register informing the public of any delegation of a portion of the part 71 program to a State, eligible Tribe, or local agency.

(c) *Revision or revocation of Delegation of Authority Agreement.* An Agreement may be modified, amended, or revoked, in part or in whole, by the Administrator after consultation with the delegate agency.

(d) *Transmission of information to the Administrator.*

(1) When a part 71 program has been delegated in accordance with the provisions of this section, the delegate agency shall provide to the Administrator a copy of each permit application (including any application for permit modification), each proposed permit, and each final part 71 permit. The applicant may be required by the delegate agency to provide a copy of the permit application (including the compliance plan) directly to the Administrator. Upon agreement with the Administrator, the delegate agency may submit to the Administrator a permit application summary form and any relevant portion of the permit application and compliance plan, in place of the complete permit application and compliance plan. To the extent practicable, the preceding information shall be provided in computer-readable format compatible with EPA's national database management system.

(2) The Administrator may waive the requirements of paragraph (d)(1) of this section for any category of sources (including any class, type, or size within

such category) other than major sources by regulation for a category of sources nationwide.

(e) *Retention of records.* The records for each draft, proposed, and final permit, and application for permit renewal or modification shall be kept for a period of 5 years by the delegate agency. The delegate agency shall also submit to the Administrator such information as the Administrator may reasonably require to ascertain whether the delegate agency is implementing, administering, and enforcing the delegated part 71 program in compliance with the requirements of the Act and of this part.

(f) *Prohibition of default issuance.* (1) For the purposes of Federal law and title V of the Act, when a part 71 program has been delegated in accordance with the provisions of this section, no part 71 permit (including a permit renewal or modification) will be issued until affected States have had an opportunity to review the draft permit as required pursuant to § 71.8(a) and EPA has had an opportunity to review the proposed permit.

(2) To receive delegation of signature authority, the legal opinion submitted by the delegate agency pursuant to paragraph (a) of this section shall certify that no applicable provision of State, local or Tribal law requires that a part 71 permit or renewal be issued after a certain time if the delegate agency has failed to take action on the application (or includes any other similar provision providing for default issuance of a permit), unless EPA has waived such review for EPA and affected States.

(g) *EPA objection.* (1) The Administrator will object to the issuance of any proposed permit determined by the Administrator not to be in compliance with applicable requirements or requirements under this part. No permit for which an application must be transmitted to the Administrator under paragraph (d)(1) of this section shall be issued if the Administrator objects to its issuance in writing within 45 days of receipt of the proposed permit and all necessary supporting information. When a part 71 program has been delegated in accordance with the provisions of this section, failure of the delegate agency to do any of the following shall constitute grounds for an objection by the Administrator:

(i) Comply with paragraph (d) of this section;

(ii) Submit any information necessary to review adequately the proposed permit;

(iii) Process the permit under the procedures required by §§ 71.7 and 71.11; or

(iv) Comply with the requirements of § 71.8(a).

(2) Any EPA objection under paragraph (g)(1) of this section shall include a statement of the Administrator's reason(s) for objection and a description of the terms and conditions that the permit must include to respond to the objection. The Administrator will provide the permit applicant a copy of the objection.

(3) If the delegate agency fails, within 90 days after the date of an objection under paragraph (g)(1) of this section, to revise and submit to the Administrator the proposed permit in response to the objection, the Administrator shall issue or deny the permit in accordance with the requirements of this part.

(h) *Public petitions.* In the case of a delegated program, any interested person may petition the Administrator to reopen a permit for cause as provided in § 71.11(n).

(i) *Appeal of permits.* When a part 71 program has been delegated with signature authority in accordance with the provisions of this section, any person or affected State that submitted recommendations or comments on the draft permit, or that participated in the public hearing process may petition the Environmental Appeals Board in accordance with § 71.11(l)(1).

(j) *Nondelegable conditions.* (1) The Administrator's authority to object to the issuance of a part 71 permit cannot be delegated to an agency not within EPA.

(2) The Administrator's authority to act upon petitions submitted pursuant to paragraph (h) of this section cannot be delegated to an agency not within EPA.

§ 71.11 Administrative record, public participation, and administrative review.

The provisions of this section shall apply to all permit proceedings. Notwithstanding the preceding sentence, paragraphs (a) through (h) and paragraph (j) of this section shall not apply to permit revisions qualifying as minor permit modifications or administrative amendments, except that public notice of the granting of appeals of such actions under paragraph (l)(3) of this section shall be provided pursuant to paragraph (d)(1)(i)(E) of this section, and except that affected States shall be provided notice of minor permit modifications under § 71.8 as pursuant to paragraph (d)(3)(i)(B) of this section.

(a) *Draft permits.* (1) The permitting authority shall promptly provide notice to the applicant of whether the

application is complete pursuant to § 71.7(a)(3).

(2) Once an application for an initial permit, permit revision, or permit renewal is complete, the permitting authority shall decide whether to prepare a draft permit or to deny the application.

(3) If the permitting authority initially decides to deny the permit application, it shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit and follows the same procedures as any draft permit prepared under this section. If the permitting authority's final decision is that the initial decision to deny the permit application was incorrect, it shall withdraw the notice of intent to deny and proceed to prepare a draft permit under paragraph (a)(4) of this section.

(4) If the permitting authority decides to prepare a draft permit, it shall prepare a draft permit that contains the permit conditions required under § 71.6.

(5) All draft permits prepared under this section shall be publicly noticed and made available for public comment.

(b) *Statement of basis.* The permitting authority shall prepare a statement of basis for every draft permit subject to this section. The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the initial decision. The statement of basis shall be sent to the applicant and, on request, to any other person.

(c) *Administrative record for draft permits.*

(1) The provisions of a draft permit shall be based on the administrative record defined in this section.

(2) For preparing a draft permit, the administrative record shall consist of:

(i) The application and any supporting data furnished by the applicant;

(ii) The draft permit or notice of intent to deny the application or to terminate the permit;

(iii) The statement of basis;

(iv) All documents cited in the statement of basis; and

(v) Other documents contained in the supporting file for the draft permit.

(3) Material readily available at the permitting authority or published material that is generally available, and that is included in the administrative record under paragraphs (b) and (c) of this section need not be physically included with the rest of the record as long as it is specifically referred to in the statement of basis.

(d) *Public notice of permit actions and public comment period.*

(1) *Scope.*

(i) The permitting authority shall give public notice that the following actions have occurred:

(A) A permit application has been initially denied under paragraph (a) of this section;

(B) A draft permit has been prepared under paragraph (a) of this section;

(C) A hearing has been scheduled under paragraph (f) of this section; and

(D) A public comment period has been reopened under paragraph (h) of this section;

(E) An appeal has been granted under paragraph (l)(3) of this section.

(ii) No public notice is required when a request for permit revision, revocation and reissuance, or termination has been denied under paragraph (a)(2) of this section. Written notice of that denial shall be given to the requester and to the permittee.

(iii) Public notices may describe more than one permit or permit action.

(2) *Timing.* (i) Public notice of the preparation of a draft permit, (including a notice of intent to deny a permit application), shall allow at least 30 days for public comment.

(ii) Public notice of a public hearing shall be given at least 30 days before the hearing. Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.

(iii) The permitting authority shall provide such notice and opportunity for participation to affected States on or before the time that the permitting authority provides this notice to the public.

(3) *Methods.* Public notice of activities described in paragraph (d)(1)(i) of this section shall be given by the following methods:

(i) By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under paragraph (d) of this section may waive his or her rights to receive notice for any permit):

(A) The applicant;

(B) Affected States;

(C) Air pollution control agencies of affected States, Tribal and local air pollution control agencies which have jurisdiction over the area in which the source is located, the chief executives of the city and county where the source is located, any comprehensive regional land use planning agency and any State or Federal Land Manager whose lands may be affected by emissions from the source;

(D) The local emergency planning committee having jurisdiction over the

area where the source is located, and State agencies having authority under State law with respect to the operation of such source;

(E) Persons on a mailing list developed by:

(1) Including those who request in writing to be on the list;

(2) Soliciting persons for "area lists" from participants in past permit proceedings in that area; and

(3) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and, where deemed appropriate by the permitting authority, in such publications as regional and State funded newsletters, environmental bulletins, or State law journals. The permitting authority may update the mailing list from time to time by requesting written indication of continued interest from those listed. The permitting authority may delete from the list the name of any person who fails to respond to such a request.

(ii) By publication of a notice in a daily or weekly newspaper of general circulation within the area affected by the source.

(iii) By any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(4) *Contents*—(i) *All public notices*. All public notices issued under this subpart shall contain the following minimum information:

(A) The name and address of the permitting authority processing the permit;

(B) The name and address of the permittee or permit applicant and, if different, of the facility regulated by the permit, except in the case of draft general permits;

(C) The activity or activities involved in the permit action;

(D) The emissions change involved in any permit revision;

(E) The name, address, and telephone number of a person whom interested persons may contact for instructions on how to obtain additional information, such as a copy of the draft permit, the statement of basis, the application, relevant supporting materials, and other materials available to the permitting authority that are relevant to the permitting decision.

(F) A brief description of the comment procedures required by paragraph (e) of this section, a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision;

(G) The location of the administrative record, the times at which the record will be open for public inspection, and a statement that all data submitted by the applicant are available as part of the administrative record; and

(H) Any additional information considered necessary or proper.

(ii) *Public notices for hearings*. Public notice of a hearing may be combined with other notices required under paragraph (d)(1) of this section. Any public notice of a hearing under paragraph (f) of this section shall contain the following information:

(A) The information described in paragraph (d)(4)(i) of this section;

(B) Reference to the date of previous public notices relating to the permit;

(C) The date, time, and place of the hearing; and

(D) A brief description of the nature and purpose of the hearing, including the applicable rules and the comment procedures.

(5) All persons identified in paragraphs (d)(3)(i) (A), (B), (C), (D), and (E) of this section shall be mailed a copy of the public hearing notice described in paragraph (d)(4)(ii) of this section.

(e) *Public comments and requests for public hearings*. During the public comment period provided under paragraph (a) of this section, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised at the hearing. All comments shall be considered in making the final decision and shall be answered as provided in paragraph (j) of this section. The permitting authority will keep a record of the commenters and of the issues raised during the public participation process, and such records shall be available to the public.

(f) *Public hearings*. (1) The permitting authority shall hold a hearing whenever it finds, on the basis of requests, a significant degree of public interest in a draft permit.

(2) The permitting authority may also hold a public hearing at its discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision.

(3) Public notice of the hearing shall be given as specified in paragraph (d) of this section.

(4) Whenever a public hearing is held, the permitting authority shall designate a Presiding Officer for the hearing who shall be responsible for its scheduling and orderly conduct.

(5) Any person may submit oral or written statements and data concerning

the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under paragraph (d) of this section shall be automatically extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

(6) A tape recording or written transcript of the hearing shall be made available to the public.

(g) *Obligation to raise issues and provide information during the public comment period*. All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the permitting authority's initial decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably ascertainable arguments supporting their position by the close of the public comment period (including any public hearing). Any supporting materials that are submitted shall be included in full and may not be incorporated by reference, unless they are already part of the administrative record in the same proceeding, or consist of State or Federal statutes and regulations, EPA documents of general applicability, or other generally available reference materials. In the case of a program delegated pursuant to § 71.10, if requested by the Administrator, the permitting authority shall make supporting materials not already included in the administrative record available to EPA. The permitting authority may direct commenters to provide such materials directly to EPA. A comment period longer than 30 days may be necessary to give commenters a reasonable opportunity to comply with the requirements of this section. Additional time shall be granted to the extent that a commenter who requests additional time demonstrates the need for such time.

(h) *Reopening of the public comment period*. (1) The permitting authority may order the public comment period reopened if the procedures of paragraph (h) of this section could expedite the decision making process. When the public comment period is reopened under paragraph (h) of this section, all persons, including applicants, who believe any condition of a draft permit is inappropriate or that the permitting authority's initial decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must submit all reasonably available factual grounds supporting their

position, including all supporting material, by a date not less than 30 days after public notice under paragraph (h)(2) of this section, set by the permitting authority. Thereafter, any person may file a written response to the material filed by any other person, by a date, not less than 20 days after the date set for filing of the material, set by the permitting authority.

(2) Public notice of any comment period under this paragraph (h) shall identify the issues to which the requirements of paragraphs (h)(1) through (4) of this section shall apply.

(3) On its own motion or on the request of any person, the permitting authority may direct that the requirements of paragraph (h)(1) of this section shall apply during the initial comment period where it reasonably appears that issuance of the permit will be contested and that applying the requirements of paragraph (h)(1) of this section will substantially expedite the decision making process. The notice of the draft permit shall state whenever this has been done.

(4) A comment period of longer than 30 days may be necessary in complicated proceedings to give commenters a reasonable opportunity to comply with the requirements of this section. Commenters may request longer comment periods and they may be granted to the extent the permitting authority finds it necessary.

(5) If any data, information, or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit, the permitting authority may take one or more of the following actions:

- (i) Prepare a new draft permit, appropriately modified;
- (ii) Prepare a revised statement of basis, and reopen the comment period; or
- (iii) Reopen or extend the comment period to give interested persons an opportunity to comment on the information or arguments submitted.

(6) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused the reopening. The public notice shall define the scope of the reopening.

(7) Public notice of any of the above actions shall be issued under paragraph (d) of this section.

(i) *Issuance and effective date of permit.* (1) After the close of the public comment period on a draft permit, the permitting authority shall issue a final permit decision. The permitting authority shall notify the applicant and each person who has submitted written

comments or requested notice of the final permit decision. This notice shall include reference to the procedures for appealing a decision on a permit. For the purposes of this section, a final permit decision means a final decision to issue, deny, revise, revoke and reissue, renew, or terminate a permit.

(2) A final permit decision shall become effective 30 days after the service of notice of the decision, unless:

- (i) A later effective date is specified in the decision;
- (ii) Review is requested under paragraph (l) of this section (in which case the specific terms and conditions of the permit which are the subject of the request for review shall be stayed); or
- (iii) No comments requested a change in the draft permit, in which case the permit shall become effective immediately upon issuance.

(j) *Response to comments.* (1) At the time that any final permit decision is issued, the permitting authority shall issue a response to comments. This response shall:

- (i) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and
- (ii) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.

(2) Any documents cited in the response to comments shall be included in the administrative record for the final permit decision as defined in paragraph (k) of this section. If new points are raised or new material supplied during the public comment period, the permitting authority may document its response to those matters by adding new materials to the administrative record.

(3) The response to comments shall be available to the public.

(4) The permitting authority will notify in writing any affected State of any refusal to accept recommendations for the permit that the State submitted during the public or affected State review period.

(k) *Administrative record for final permits.* (1) The permitting authority shall base final permit decisions on the administrative record defined in paragraph (k)(2) of this section.

(2) The administrative record for any final permit shall consist of:

- (i) All comments received during any public comment period, including any extension or reopening;
- (ii) The tape or transcript of any hearing(s) held;
- (iii) Any written material submitted at such a hearing;
- (iv) The response to comments and any new materials placed in the record;

(v) Other documents contained in the supporting file for the permit;

(vi) The final permit;

(vii) The application and any supporting data furnished by the applicant;

(viii) The draft permit or notice of intent to deny the application or to terminate the permit;

(ix) The statement of basis for the draft permit;

(x) All documents cited in the statement of basis;

(xi) Other documents contained in the supporting file for the draft permit.

(3) The additional documents required under paragraph (k)(2) of this section should be added to the record as soon as possible after their receipt or publication by the permitting authority. The record shall be complete on the date the final permit is issued.

(4) Material readily available at the permitting authority, or published materials which are generally available and which are included in the administrative record under the standards of paragraph (j) of this section need not be physically included in the same file as the rest of the record as long as it is specifically referred to in the statement of basis or in the response to comments.

(l) *Appeal of permits.* (1) Within 30 days after a final permit decision has been issued, any person who filed comments on the draft permit or participated in the public hearing may petition the Environmental Appeals Board to review any condition of the permit decision. Any person who failed to file comments or failed to participate in the public hearing on the draft permit may petition for administrative review only to the extent of the changes from the draft to the final permit decision or other new grounds that were not reasonably foreseeable during the public comment period on the draft permit. The 30-day period within which a person may request review under this section begins with the service of notice of the permitting authority's action unless a later date is specified in that notice, except that the 30-day period within which a person may request review of a minor permit modification or administrative amendment begins upon the effective date of such action to revise the permit. The petition shall include a statement of the reasons supporting that review, including a demonstration that any issues raised were raised during the public comment period (including any public hearing) to the extent required by these regulations unless the petitioner demonstrates that it was impracticable to raise such objections within such period or unless

the grounds for such objection arose after such period, and, when appropriate, a showing that the condition in question is based on:

(i) A finding of fact or conclusion of law which is clearly erroneous; or

(ii) An exercise of discretion or an important policy consideration which the Environmental Appeals Board should, in its discretion, review.

(2) The Board may also decide on its initiative to review any condition of any permit issued under this part. The Board must act under paragraph (1) of this section within 30 days of the service date of notice of the permitting authority's action.

(3) Within a reasonable time following the filing of the petition for review, the Board shall issue an order either granting or denying the petition for review. To the extent review is denied, the conditions of the final permit decision become final agency action. Public notice of any grant of review by the Board under paragraph (1)(1) or (2) of this section shall be given as provided in paragraph (d) of this section. Public notice shall set forth a briefing schedule for the appeal and shall state that any interested person may file an amicus brief. Notice of denial of review shall be sent only to the permit applicant and to the person(s) requesting review.

(4) A petition to the Board under paragraph (1)(1) of this section is, under 42 U.S.C. 307(b), a prerequisite to seeking judicial review of the final agency action.

(5) For purposes of judicial review, final agency action occurs when a final permit is issued or denied by the permitting authority and agency review procedures are exhausted. A final permit decision shall be issued by the permitting authority:

(i) When the Board issues notice to the parties that review has been denied;

(ii) When the Board issues a decision on the merits of the appeal and the decision does not include a remand of the proceedings; or

(iii) Upon the completion of remand proceedings if the proceedings are remanded, unless the Board's remand order specifically provides that appeal of the remand decision will be required to exhaust administrative remedies.

(6) Motions to reconsider a final order shall be filed within ten (10) days after service of the final order. Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Motions for reconsideration under this provision shall be directed to, and decided by, the Board. Motions for reconsideration directed to the Administrator, rather than to the Board, will not be considered, except in cases that the Board has referred to the Administrator and in which the Administrator has issued the final order. A motion for reconsideration shall not stay the effective date of the final order unless specifically so ordered by the Board.

(m) *Computation of time.* (1) Any time period scheduled to begin on the occurrence of an act or event shall begin on the day after the act or event.

(2) Any time period scheduled to begin before the occurrence of an act or event shall be computed so that the period ends on the day before the act or event, except as otherwise provided.

(3) If the final day of any time period falls on a weekend or legal holiday, the time period shall be extended to the next working day.

(4) Whenever a party or interested person has the right or is required to act within a prescribed period after the service of notice or other paper upon him or her by mail, 3 days shall be added to the prescribed time.

(n) *Public petitions to the Permitting Authority.*

(1) Any interested person (including the permittee) may petition the permitting authority to reopen a permit for cause, and the permitting authority may commence a permit reopening on its own initiative. However, the permitting authority shall not revise,

revoke and reissue, or terminate a permit except for the reasons specified in § 71.7(f)(1) or § 71.6(a)(6)(i). All requests shall be in writing and shall contain facts or reasons supporting the request.

(2) If the permitting authority decides the request is not justified, it shall send the requester a brief written response giving a reason for the decision. Denials of requests for revision, revocation and reissuance, or termination are not subject to public notice, comment, or hearings. Denials by the permitting authority may be informally appealed to the Environmental Appeals Board by a letter briefly setting forth the relevant facts. The Board may direct the permitting authority to begin revision, revocation and reissuance, or termination proceedings under paragraph (n)(3) of this section. The appeal shall be considered denied if the Board takes no action within 60 days after receiving it. This informal appeal is, under 42 U.S.C. 307, a prerequisite to seeking judicial review of EPA action in denying a request for revision, revocation and reissuance, or termination.

(3) If the permitting authority decides the request is justified and that cause exists to revise, revoke and reissue or terminate a permit, it shall initiate proceedings to reopen the permit pursuant to § 71.7(f) or § 71.7(g).

§ 71.12 Prohibited acts.

Violations of any applicable requirement; any permit term or condition; any fee or filing requirement; any duty to allow or carry out inspection, entry, or monitoring activities; or any regulation or order issued by the permitting authority pursuant to this part are violations of the Act and are subject to full Federal enforcement authorities available under the Act.

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July 1, 1996

Part V

**Environmental
Protection Agency**

40 CFR Part 257, et al.

Criteria for Classification of Solid Waste
Disposal Facilities and Practices;
Identification and Listing of Hazardous
Waste; Requirements for Authorization of
State Hazardous Waste Programs; Final
Rule

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 257, 261, and 271****[FRL-5528-4]****RIN 2050-AE11****Criteria for Classification of Solid Waste Disposal Facilities and Practices; Identification and Listing of Hazardous Waste; Requirements for Authorization of State Hazardous Waste Programs****AGENCY:** Environmental Protection Agency.**ACTION:** Final rule.

SUMMARY: The Environmental Protection Agency today is promulgating revisions to the existing criteria for solid waste disposal facilities and practices. These revisions were developed in response to the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act (RCRA). Today's final revisions establish that only those non-municipal non-hazardous waste disposal units that meet specific standards may receive conditionally exempt small quantity generator (CESQG) hazardous wastes. Today's final revisions establish standards pertaining to location restrictions, ground-water monitoring and corrective action.

The EPA is also finalizing revisions to regulations for hazardous wastes generated by CESQGs. Today's final language will clarify acceptable disposal options under Subtitle D of RCRA by specifying that CESQG hazardous waste may be managed at municipal solid waste landfills subject to Part 258 and at nonmunicipal non-hazardous waste disposal units subject to today's revised Criteria.

EFFECTIVE DATES: January 1, 1998, except §§ 257.21 through 257.28 which are effective July 1, 1998, and §§ 261.5(f), 261.5(g) and 271.1 which are effective January 1, 1997, but which have a compliance date of January 1, 1998. The information collection requirements contained in §§ 257.24, 257.25, and 257.27 have not been approved by the Office of Management and Budget (OMB) and are not effective until OMB has approved them.

ADDRESSES: The public docket for this rulemaking (docket number F-96-NCEF-FFFFF) is located at the U.S. Environmental Protection Agency, Crystal Gateway Building, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. The public docket is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding

federal holidays. Appointments may be made by calling (703) 603-9230. Copies cost \$0.15/page.

FOR FURTHER INFORMATION CONTACT: For specific information on aspects of the final rule, please contact Paul Cassidy of the Industrial Solid Waste Branch of the Office of Solid Waste at 1-703-308-7281. For a paper copy of the Federal Register notice or for general information, please contact the RCRA Hotline at 1-800-424-9346 or at 1-703-412-9810.

SUPPLEMENTARY INFORMATION:**Regulated Entities**

Entities potentially regulated by this action are owners/operators of non-municipal non-hazardous waste disposal units that may receive conditionally exempt small quantity generator (CESQG) hazardous waste. Regulated categories and entities include:

Category	Examples of regulated entities
Construction and demolition waste disposal firms.	Owners/operators of construction and demolition waste disposal units that may receive CESQG hazardous waste.
Industrial manufacturing plants.	Owners/operators of non-municipal non-hazardous waste disposal units that may receive CESQG hazardous waste.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the type of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your non-municipal non-hazardous waste disposal unit is regulated by this action, you should carefully examine the applicability section of this final rule (i.e., section 257.5). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

This Federal Register notice will be available in electronic format on the Internet system through the EPA Public Access Server @ gopher.epa.gov.

How to Access the Net

1. Through Gopher: Go to: gopher.epa.gov. From the main menu, choose "EPA Offices and Regions".

Next, choose "Office of Solid Waste and Emergency Response (OSWER)". Next, choose "Office of Solid Waste". Then, choose "Non-Hazardous Waste—RCRA Subtitle D". Finally, choose "Industrial".

2. Through FTP: Go to: ftp.epa.gov.

Login: anonymous

Password: Your Internet Address

Files are located in directories/pub/gopher. All OSW files are in directories beginning with "OSW".

3. Through MOSAIC: Go to: http://www.epa.gov. Choose the EPA Public Access Gopher. From the main (Gopher) menu, choose "EPA Offices and Regions". Next, choose "Office of Solid Waste and Emergency Response (OSWER)". Next, choose "Office of Solid Waste". Then, choose "Non-Hazardous Waste—RCRA Subtitle D". Finally, choose "Industrial".

4. Through dial-up access: Dial 919-558-0335. Choose EPA Public Access Gopher. From the main (Gopher) menu, choose "EPA Offices and Regions". Next, choose "Office of Solid Waste and Emergency Response (OSWER)". Next, choose "Office of Solid Waste". Then, choose "Non-Hazardous Waste—RCRA Subtitle D". Finally, choose "Industrial".

Preamble Outline**I. Authority****II. Background**

A. Current Solid Waste Controls under the Resource Conservation and Recovery Act (RCRA)—Non-Hazardous Waste Management: Municipal Wastes

B. Sierra Club Lawsuit

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B. Decision to Impose or Go Beyond the Statutory Minimum Components

C. Decision to Use the Part 258 Criteria Language or General Performance Language

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B. Sections 257.7–257.13—Location Restrictions

C. Sections 257.21–257.28—Ground-Water Monitoring and Corrective Action

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E. Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators

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2. CESQG Wastes

3. Screening Procedures

VII. Implementation of Today's Final Rule**VIII. Executive Order No. 12866****IX. Regulatory Flexibility Act****X. Submission to Congress and the General Accounting Office**

- XI. Paperwork Reduction Act
- XII. Environmental Justice
- XIII. Unfunded Mandates Reform Act

I. Authority

Today's rule is being promulgated under the authority of sections 1008, 2002 (general rulemaking authority), 3001(d)(4), 4004 and 4010 of RCRA, as amended. Section 3001(d)(4) authorizes EPA to promulgate standards for generators who do not generate more than 100 kilograms per month of hazardous waste. Section 4010(c) directs EPA to revise Criteria promulgated under sections 1008 and 4004 for facilities that may receive hazardous household wastes (HHW) or small quantity generator (SQG) hazardous waste.

II. Background

A. Current Solid Waste Controls Under the Resource Conservation and Recovery Act (RCRA)—Non-Hazardous Waste Management: Municipal Wastes

As added by the Hazardous and Solid Waste Amendments (HSWA) of 1984, section 4010(c) requires that the Administrator revise the existing Part 257 Subtitle D Criteria used to classify facilities as sanitary landfills or open dumps by March 31, 1988, for facilities that may receive household hazardous waste or hazardous waste from small quantity generators. The required revisions are those necessary to protect human health and the environment and which take into account the practicable capability of such facilities. At a minimum, the revised Criteria must include ground-water monitoring as necessary to detect contamination, location restrictions, and provide for corrective action, as appropriate.

On October 9, 1991, EPA promulgated revised Criteria for Solid Waste Disposal Facilities accepting household hazardous wastes. Those revisions fulfilled the part of the statutory mandate found in RCRA section 4010 for all facilities that receive household hazardous wastes. (Any facility receiving any household waste is subject to the revised Criteria, which were relocated at 40 CFR part 258 for purposes of clarity). Revisions to the Part 257 Criteria for other Subtitle D disposal facilities that may receive conditionally exempt small quantity generator (CESQG) hazardous wastes were delayed as the Agency had little information concerning the potential or actual impacts that these types of facilities may have on human health and the environment.

B. Sierra Club Lawsuit

The Sierra Club, on October 21, 1993, filed suit against the EPA in the United States District Court for the District of Columbia, seeking to compel the EPA to promulgate revised Criteria for non-municipal facilities that may receive small quantity generator hazardous waste.

As a result of the October 21, 1993 lawsuit, the EPA and the Sierra Club reached agreement on a schedule concerning revised Criteria for non-municipal facilities that may receive CESQG wastes. This schedule requires that the EPA Administrator sign a proposal by May 15, 1995 and a final rule by July 1, 1996. On May 15, 1995, the Administrator signed proposed standards for non-municipal non-hazardous waste disposal units that may receive CESQG hazardous wastes. These proposed standards were published in the Federal Register on June 12, 1995 (see 60 FR 30964).

C. Summary of Proposed Regulatory Approach

The June 12, 1995 proposal stated that any non-municipal non-hazardous waste disposal unit¹ that meets the proposed requirements may receive CESQG hazardous waste; if such units do not meet the proposed requirements, they may not receive CESQG waste. Sections 257.5 through 257.30 were proposed to address appropriate facility standards for owners/operators of non-municipal non-hazardous waste disposal units that receive CESQG hazardous wastes. The requirements proposed in §§ 257.5 through 257.30 were substantially the same as 40 CFR part 258. The location restrictions were proposed to be effective 18 months after publication of the final rule, while the ground-water monitoring and corrective action requirements were proposed to be effective 24 months after publication of the final rule.

The June 12, 1995 proposal also proposed to amend the existing language of § 261.5 clarifying acceptable Subtitle D management options for CESQGs. The existing language in § 261.5, paragraphs (f)(3) and (g)(3) allows for a CESQG hazardous waste to be managed at a hazardous waste facility (either in interim status or permitted), a reuse or recycling facility, or a non-hazardous solid waste facility that is permitted, licensed, or registered by a State to manage municipal or

industrial waste. The June 12 proposal proposed to continue to allow CESQG waste to be managed at a hazardous waste facility or at a reuse or recycling facility; however, if CESQG waste is managed in a Subtitle D disposal facility, it must be managed in a MSWLF that is subject to part 258 or a non-municipal non-hazardous waste disposal unit that would be subject to the facility standards in §§ 257.5 through 257.30.

III. Summary of Regulatory Approach of Today's Final Rule

Based on comments received on the proposed regulatory approach, the EPA is today finalizing a rule that is almost identical to the proposed requirements for non-municipal non-hazardous waste disposal units that receive CESQG hazardous wastes. Commentors clearly did not favor imposing additional requirements, beyond those proposed, based on the lack of risks presented by non-municipal non-hazardous waste disposal units that receive CESQG hazardous wastes. Furthermore, commentors were somewhat divided on whether to use the part 258 requirements or general performance standards in writing the requirements. The EPA has elected to use the part 258 requirements.

Elsewhere in today's final rule, and again based on comments that agreed with the EPA's proposed regulatory approach for CESQGs, EPA is finalizing the proposed changes to the special requirements for CESQGs (i.e., § 261.5) to clarify the obligation that the generators of CESQG wastes have to ensure proper management of such wastes. CESQGs are those that generate no more than 100 kilograms of hazardous waste or no more than one kilogram of acutely hazardous waste in a month and who accumulate no more than 1000 kilograms of hazardous waste or no more than one kilogram of acutely hazardous waste at one time.

As previously discussed, today's final rule responds to the statutory language in RCRA section 4010(c). In responding initially to the statutory language of section 4010(c), EPA elected to regulate municipal solid waste landfills first, due to the comparatively higher risks presented by these types of facilities. As discussed in the proposed rule, the subject of today's final rule—non-municipal non-hazardous waste disposal units that receive CESQG waste—present a small risk relative to risks presented by other environmental conditions or situations. Given this lower risk, the Agency would have elected not to issue this final rule at this time. In a time of limited resources,

¹ Proposed phrase "Non-municipal solid waste disposal facility" has been replaced in the final rule with the phrase "non-municipal non-hazardous waste disposal unit". See Section VI, A2 of today's preamble for an explanation.

common sense dictates that we deal with higher priorities first, a principle on which EPA, members of the regulated community, and the public can agree. However, given the D.C. Circuit's reading of RCRA section 4010(c), *Sierra Club v. EPA*, 992 F.2d 337, 347 (D.C. Cir. 1993), and a schedule established as a result of litigation, the Agency must issue this final rule now. Faced with having to issue this final rule for a class of facilities that do not generally pose risks as high as municipal solid waste landfills, the Agency is finalizing requirements that address only the statutory minimum requirements in an attempt to reduce the economic burden on the regulated community.

A complete discussion of the main issues associated with today's final rule is presented in the next section of today's preamble while a discussion of today's requirements is presented later in today's preamble.

IV. Major Issues

A. Non-Municipal Non-Hazardous Waste Disposal Units That May Receive CESQG Hazardous Waste

The proposed rule was written to provide that only those non-municipal non-hazardous waste disposal units which meet the requirements in §§ 257.5 through 257.30 "may receive" CESQG waste, as required by RCRA section 4010(c). Any non-municipal non-hazardous waste disposal unit that did not meet the proposed requirements may not receive CESQG hazardous wastes. The proposal was written to apply to non-municipal non-hazardous waste disposal units that receive CESQG waste for storage, treatment, or disposal, including such units as surface impoundments, landfills, land application units and waste piles. The regulatory definition of the term "disposal" cover all placement of wastes on the land. See 40 CFR 257.2.

Several commentors addressed the Agency's interpretation of the statutory language "may receive". One commentor supported the Agency's decision to limit the proposed regulatory requirements to only those non-municipal non-hazardous waste disposal units that receive CESQG wastes. Another commentor, however, stated that a closer reading of Section 4010(c) reveals that Congress was not only concerned about modifying the criteria for "facilities that may receive hazardous household wastes or hazardous wastes from small quantity generators * * *" but also for "facilities potentially receiving such wastes." According to the commentor, the "may

receive" clause of the first sentence in Section 4010(c) merely refers to whether a facility may legally receive CESQG waste for disposal. The "potentially receiving such wastes" clause of the third sentence of Section 4010(c) refers to the actual potential for such facilities to receive CESQG wastes. The potential for CESQG waste to be disposed of at many types of industrial D landfills is high even with the proposed prohibition under § 261.5. It is the "potentially receiving" clause that specifically commands the Agency to promulgate provisions for all industrial facilities that could potentially receive CESQG wastes.

EPA disagrees with the commentor's interpretation of the statutory language in RCRA section 4010(c). More specifically, for a number of reasons, the Agency does not believe that the statutory language cited by the commentor evidences congressional intent that the revised criteria being promulgated today should address disposal of solid waste in all industrial disposal facilities. First, EPA believes that the commentor errs by focusing only on the "facilities potentially receiving" language in the last sentence of section 4010(c). If one reviews this language together with the statutory language in RCRA section 4010(a), it is clear that Congress did not intend for the revised criteria being promulgated today to apply to all industrial landfills.

RCRA section 4010(a) required EPA to conduct a study of the then existing guidelines and criteria issued under RCRA sections 1008 and 4004 which were applicable to "solid waste management and disposal facilities, including, but not limited to landfills and surface impoundments." 42 U.S.C. § 6949a(a). This statutory language does indeed suggest that EPA was to study a wide range of solid waste disposal facilities, including industrial landfills. (As the commentor stated, because the information on industrial disposal facilities was quite limited, EPA's report to Congress did focus on municipal landfills.)

However, the statutory language in section 4010(c) directing EPA to promulgate a rule revising the criteria in 40 CFR Part 257 limits the rule's applicability only to those facilities which may receive hazardous household waste or small quantity generator waste. 42 U.S.C. 6949a(c). If Congress had intended the revised criteria under section 4010(c) to apply to all solid waste disposal facilities, including industrial landfills and surface impoundments, it clearly could have done so by enacting language

similar to that already used in section 4010(a).

Secondly, the legislative history of RCRA section 4010 suggests that Congress expressly rejected a provision that would have required rules to be promulgated under section 4010(c) to apply to the entire universe of RCRA Subtitle D solid waste disposal facilities. Indeed, the House version of section 4010 would have required EPA to promulgate revised guidelines and criteria such that they would be applicable to all "solid waste management and disposal facilities, including, but not limited to landfills and surface impoundments * * *." H.R. 2867, section 30, 98th Cong., 1st Sess. (as introduced in the Senate on November 9, 1983). However, the Conference Committee instead adopted a Senate amendment which limited the scope of the revised criteria to those facilities that may receive hazardous household waste or small quantity generator waste. H. Rept. No. 98-1133, 98th Cong., 2d Sess., at 116-117.

Another indication that RCRA section 4010(c) was not intended to cover the entire universe of solid waste disposal facilities is the fact that subsequent to the enactment of section 4010(c) (as part of the Hazardous and Solid Waste Amendments in 1984), a number of bills were introduced in Congress which would have either authorized or required EPA to issue additional regulations that would address all disposal facilities receiving industrial waste as opposed to addressing those which may receive CESQG waste as stated in Section 4010(c). See, e.g., H.R. 3735, "Waste Materials Management Act of 1989," section 324 (would have required EPA to promulgate standards for the management of industrial solid waste) (Luken Bill); S. 1113, "Waste Minimization and Control Act of 1989," section 204 (would have required EPA to promulgate requirements for facilities that manage different types of industrial waste) (Baucus Bill). Neither of these provisions (although neither was enacted) would have been necessary if RCRA section 4010(c) required EPA to promulgate revised criteria for all types of industrial disposal facilities.

This same commentor cites to language in both the Report to Congress (as provided for in RCRA section 4010(b)) and the MSWLF rulemaking to suggest that EPA acknowledged that all industrial landfills, even those not receiving CESQG waste, should fall within the scope of today's rule. EPA acknowledges that it expressed a concern about the potential risks that industrial solid waste disposal facilities might pose; however, EPA indicated

that it did not have the level of information necessary to conduct a rulemaking for such disposal facilities. At the time of issuing the final MSWLF rule, EPA indicated that it would attempt to study these facilities to gain a better understanding of the risks that they may pose. See 56 FR 51000 (Oct. 9, 1991).

After investigating available information in more detail, it became clear that of all industrial solid waste disposal facilities, only construction and demolition and off-site commercial facilities typically receive CESQG waste. As discussed in the proposed rule, recent information and discussions with the relevant industries indicate that on-site industrial disposal facilities (which make up the vast majority of industrial disposal facilities) generally do not receive CESQG waste. However, the commentor should be aware that EPA has drafted the rule such that it will apply to such industrial on-site facilities if they receive CESQG waste. See sections 257.5(a) (1) and (3).

B. Decision To Impose or Go Beyond the Statutory Minimum Components

RCRA section 4010(c) requires that the revised criteria must at a minimum include location restrictions, ground-water monitoring as necessary to detect contamination, and corrective action, as appropriate. The June 12, 1995, proposal discussed how the Part 258 Municipal Solid Waste Landfill Criteria went beyond these requirements. (See 60 FR 30968.) The proposal for non-municipal non-hazardous waste disposal units did not, however, go beyond these statutory minimum requirements. The Agency presented data, in the June 12 proposal, which showed that the establishment of additional facility management requirements, beyond these types of requirements, for non-municipal non-hazardous waste disposal units that may receive CESQG waste was not warranted.

The Agency received comments on both sides of this issue. Some commentors felt that the statutory minimum components were adequate to address the potential risks from non-municipal non-hazardous waste disposal units that may receive CESQG wastes. However, other commentors believed that additional regulatory controls should have been required.

Commentors stated that the level of documented releases and environmental problems do not merit extensive regulations. Commentors also stated that the final regulations should be limited to the proposed requirements as they felt that those requirements were indeed

adequate given the low risks associated with the disposal of CESQG waste in non-municipal non-hazardous waste disposal units. Some commentors argued that less stringent requirements, less than the proposed requirements, would have been more appropriate.

On the other hand, some commentors raised the concern that the cumulative effect of allowing small quantities of hazardous waste to be disposed of in non-municipal non-hazardous waste disposal units would result in a major source of ground-water pollution. Commentors further felt that because MSWLF owners/operators have upgraded their units to meet the requirements in Part 258 in order to minimize the risk associated with the disposal of household hazardous wastes and CESQG wastes, non-municipal non-hazardous waste disposal units disposing of CESQG wastes should be required to meet the same standards as in Part 258 (e.g., closure and post-closure care, financial assurance and operating requirements). In addition, one commentor believed that the Agency's conclusions, concerning the potential risks associated with non-municipal non-hazardous waste disposal units receiving CESQG wastes, were based on outdated and limited data. The commentor felt that the data cited by EPA failed to justify the Agency's conclusion that non-municipal non-hazardous waste disposal units pose low risk but rather simply indicate a lack of information on the subject.

The Agency agrees with those commentors who believe that the proposed requirements are adequate to address the potential risks from non-municipal non-hazardous waste disposal units that receive CESQG hazardous wastes. In the June 1995 proposal, the Agency took the position that only the proposed requirements were necessary because "construction and demolition (C&D) waste units, in general, do not currently pose significant risks and that individual damage cases are limited in occurrence" and that off-site commercial landfills are subject to more "stringent environmental controls". The Agency requested additional data concerning C&D units to further assess the potential risks these types of units may pose as well as additional data on commercial industrial solid waste units or other types of units that may be subject to the proposal.

The Agency did not receive any new data concerning the potential risks associated with C&D units or any other types of units potentially subject to the proposal. Thus, EPA has no information suggesting that the facilities subject to

this rule pose any risks beyond those limited ones discussed in the proposed rule. (One commentor submitted leachate data on bulky waste landfills but that data was previously considered by the Agency during the development of the proposal.) In response to the commentor that suggested that the cumulative effects of allowing small amounts of hazardous waste would result in a major source of ground-water pollution the Agency disagrees. The Agency believes that the limited number of documented damage cases and cases of ground-water contamination, discussed in the proposal to this rule, do not support the commentor's concern about the creation of major sources of ground-water pollution. As such, the Agency believes that it should not go beyond the requirements that were proposed.

For those commentors who expressed the need to impose Federal controls on C&D units beyond the proposed requirements, in the form of closure/post-closure standards and/or financial assurance requirements, the Agency wishes to point out that these types of standards are prevalent among State programs for C&D units. Most States (44) specify some thickness for a final cover, 34 States require post-closure care for some period of time while 33 and 32 States require financial assurance for closure and post-closure care, respectively, for C&D units. Given the lack of data suggesting that C&D facilities pose the same risks as MSWLFs and the fact that most States already require additional regulatory controls, EPA does not believe it is appropriate to establish requirements that go beyond the statutory minimum requirements of Section 4010(c).

C. Decision To Use the Part 258 Criteria Language or General Performance Language

The June 12, 1995 proposal identified two options for writing the proposed requirements. One was to use the Part 258 criteria as the baseline for these requirements. Part 258 is a combination of performance standards and additional detail to help the owner/operator achieve compliance with the performance standards. Part 258 also establishes minimum national criteria for municipal solid waste landfills, and as such, a minimum national level of protection. The second option was to use general performance standards that could be met by facility owners/operators as they implement the standards as well as to guide States in designing new regulatory programs (or revising existing regulatory programs).

Reasons cited in the proposal for using the Part 258 Criteria included: (1) Part 258 Criteria provide sufficient detail so that an individual owner/operator can self-implement them without State interaction in those instances where States do not seek approval of their permitting program as required in RCRA Section 4005(c); (2) EPA believes that the national minimum requirements are necessary for collection of reliable and consistent ground-water monitoring data and to allow the owner/operator and States to respond to contamination from the unit; (3) They contain a substantial amount of flexibility that allows approved States to tailor standards to individual and classes of facilities; (4) Some States expressed strong support for using 258 standards as the baseline for solid waste disposal facilities that receive CESQG hazardous waste; and (5) While some States have standards for non-municipal facilities that are not identical to the 258 standards, the Agency believed there was a strong likelihood that many State programs would be approvable.

Reasons cited in the preamble in support of using the general performance standard approach included: (1) Although the Part 258 standards contain substantial flexibility for States to tailor the programs to their conditions, the Part 258 standards put certain limits on State flexibility to design a program tailored to local conditions; (2) The Part 258 standards also include certain national minimum requirements (which States can not modify) that EPA promulgated because of the risks posed by MSWLFs; (3) In the absence of a significant Federal program, over half of the States have adopted location standards, ground-water monitoring requirements, and corrective action requirements that are significantly less extensive than the Part 258 standards; and (4) a general performance standard would provide the maximum flexibility for States and owners to adopt new methodologies and technologies (e.g., detecting ground-water contamination using technologies other than monitoring wells) to meet the standard at the lowest possible cost.

Comments were received in support of both approaches. Commentors supported the use of the Part 258 Criteria because they thought general performance standards would be difficult to implement and enforce. Another commentor stated that Section 4010(c) requires EPA to spell-out the requirements that facilities must implement; he argues that by not specifying how to attain the statutory minimum requirements, a performance-based approach would fall short of the

statute. The performance-based approach would spawn endless uncertainty, requiring the wheel to be re-invented for each facility. This uncertainty would fall most heavily on citizens who are concerned about individual facilities. Other commentors argued against promulgating general performance standards and stated that the Part 258 rules provide a clear, flexible, common sense approach. Using Part 258 provides both the regulated community and the State Agencies a familiar, well-thought out scheme that is easy to administer and implement and offers sufficient flexibility to address site-specific conditions in approved States. The Agency received extensive comment in the Part 258 rulemaking indicating why general performance standards were inappropriate for landfills; those comments are as relevant today for landfills receiving CESQG waste. Finally, developing a significantly different set of rules from either Part 257 or Part 258 would also be confusing to the regulated community because it would create one set of rules for household wastes (Part 258), one for sites that accept CESQG wastes (this rule) and one for all other non-hazardous wastes (Part 257).

Other commentors supported the use of general performance standards by reiterating the reasons provided in the proposal in support of such an approach. Other commentors stated that due to the nature of the demolition waste stream being landfilled, they supported the use of general performance standards vs. all of the Part 258 standards. Commentors supported maximum State flexibility to address local conditions and requirements tailored to the perceived risk, not automatically adopting the more restrictive MSWLF regime. Another commentor stated that the Part 258 ground-water monitoring standards were developed for MSWLFs and if the ground-water monitoring program for non-municipal non-hazardous waste disposal units is not based on a performance standard that allows for site-specific design, certain facilities will be overregulated. Another commentor stated that the general performance standard is preferable as long as it provides an adequate description of the performance objective. Guidance manuals could be used to implement the general performance standards.

The Agency agrees with the majority of commentors who supported the use of the Part 258 Criteria. The Agency believes, for all of the reasons discussed by the commentors, that the use of the Part 258 criteria is the preferable option

to utilize in the final rule. The Part 258 Criteria are a clear, flexible set of regulations that can be tailored by approved States to address site-specific conditions while protecting human health and the environment. The ground-water and corrective action requirements of today's final rule offer owners/operators in approved States great flexibility in establishing a ground-water monitoring program and in selecting a corrective measure should corrective action become necessary.

In a sense, the Part 258 Criteria for ground-water monitoring and corrective action are general performance standards. However, the big difference between the use of the Part 258 Criteria and the use of a general performance standard approach is the detail that is contained in the Part 258 Criteria, the same detail would not be a part of a general performance standard approach. Both the Part 258 Criteria and the general performance standard approach use performance standards; the general performance standard approach would provide only general standards to be followed by the owner/operator, while the Part 258 Criteria would provide additional detail and guidance to an owner/operator in trying to comply with the performance standards contained in Part 258. This additional detail in the Part 258 Criteria is what the Agency believes commentors were referring to when they stated that "using Part 258 provides both the regulated community and the State Agencies a familiar, well-thought out scheme that is easy to administer and implement and offers sufficient flexibility to address site-specific conditions". It is this additional detail in Part 258 that if not contained in the general performance standard approach would create confusion among the regulated community and "spawn endless uncertainty".

The Agency believes that the use of the detail in the Part 258 Criteria for ground-water monitoring and corrective action, in the form of factors to consider vs. design standards, clearly guides an owner/operator in achieving compliance with the performance standards in Part 258 while maximizing the owners/operators ability to take into account and use site-specific data. Part 258 guides an owner/operator and State Agencies by specifying (1) what factors should be considered in determining the number, depth, and spacing of the wells in the monitoring system, (2) how wells should be cased, (3) that any statistical test comply with basic performance standards, (4) what factors should be considered in establishing an initial list of monitoring parameters and frequency, (5) what factors should be

considered in selecting any potential remedy under corrective action, and (6) what factors should be considered in developing interim measures under a corrective action program. The Agency does not believe that the use of the detail in the Part 258 Criteria will result in "facilities being overregulated". EPA also believes that this detail is necessary to protect human health and the environment.

V. Summary of Today's Final Rule

Today's final rule specifies that non-municipal non-hazardous waste disposal units that do not meet the requirements (i.e., location restrictions, ground-water monitoring and corrective action) in sections 257.5 through 257.30 may not receive CESQG hazardous waste. The ground-water monitoring and corrective action requirements being finalized today are substantially the same as those that were proposed. The location restrictions have been changed from the proposal with the major change being that in the proposal 6 location restrictions were proposed but in today's final rule only 2 location restrictions are being finalized (floodplains and wetlands). Differences between the final requirements and those that were proposed are discussed in the appropriate sections of today's preamble.

The location restrictions will be effective 18 months after publication of the final rule. The location restrictions being finalized today are the floodplains and wetlands restrictions. The floodplains restriction is applicable to new units, existing units, and lateral expansions of existing units that receive CESQG waste. Only new units and lateral expansions of existing units that receive CESQG hazardous waste must comply with the wetlands location restriction.

The ground-water monitoring and corrective action requirements will be effective 24 months after publication of the final rule. Any existing unit, new unit, or lateral expansion of an existing unit that receives CESQG hazardous waste after the effective date will be required to comply with the final ground-water monitoring and corrective action requirements. The ground-water monitoring provisions are being finalized to ensure that units that receive CESQG hazardous waste will have monitoring systems in place that will enable the detection of any contamination of ground-waters along with appropriate sampling and analysis procedures to allow for the statistical analysis of monitoring results. The corrective action requirements will allow for the evaluation, selection, and

implementation of an appropriate remedial technology to clean-up any contamination of ground-waters.

Today's final rule also amends the existing language of § 261.5 clarifying acceptable Subtitle D management options for CESQGs. The language in § 261.5, paragraphs (f)(3) and (g)(3) currently allows a CESQG hazardous waste to be managed at a hazardous waste facility (either in interim status or permitted), a reuse or recycling facility, or a non-hazardous waste disposal unit that is permitted, licensed, or registered by a State to manage municipal or industrial waste. Today's final rule would continue to allow CESQG waste to be managed at a hazardous waste facility or at a reuse or recycling facility. Today's final rule will require that if CESQG waste is managed in a Subtitle D disposal facility, it may be managed in a MSWLF that is subject to Part 258 or managed in a non-municipal non-hazardous waste disposal unit that is subject to the standards being finalized in §§ 257.5 through 257.30.

VI. Specifics of Today's Final Rule

A. Section 257.5—Applicability

1. Applicability

EPA proposed that any owner/operator of a non-municipal non-hazardous waste disposal unit that wanted to receive CESQG hazardous waste would have to comply with the proposed requirements in §§ 257.5–257.30 prior to the actual receipt of the CESQG waste. The proposal stated that owners/operators of non-municipal non-hazardous waste disposal units that do not meet the proposed criteria may not receive CESQG hazardous waste.

The proposal further stated that owners/operators of non-municipal non-hazardous waste disposal units that receive CESQG hazardous waste after the effective date would have to comply with the location restrictions (§§ 257.7–257.12) within 18 months after the date of publication of the final rule and with the ground-water monitoring and corrective action requirements (§§ 257.21–257.28) within 24 months after the date of publication of the final rule.

The Agency is finalizing the applicability of the final rule as proposed and retaining the effective dates as proposed. The Agency received no specific comments in regard to the effective dates with the exception of one comment that stated that the commentor had no problem with the two-year effective date for the ground-water monitoring and corrective action requirements.

2. Definitions

EPA proposed a number of definitions for terms in the proposal and received limited comments. One commentor thought that the term "non-municipal solid waste disposal facility" should be more appropriately called "non-municipal non-hazardous waste disposal facility". The commentor stated that by discussing only "solid waste" facilities, hazardous waste facilities are not excluded because they are a subset of "solid waste". Furthermore, this commentor thought the term "non-municipal solid waste landfill" should also more appropriately be called a "non-municipal non-hazardous waste disposal facility". This same commentor also expressed a concern that the terms "facility" and "unit" as used in §§ 257.7 through 257.9 were used interchangeably and that some clarification and/or consistency was necessary.

The EPA agrees that the term "non-municipal solid waste disposal facility" could be confusing and that the term "non-municipal non-hazardous waste disposal facility" more clearly defines the types of facilities potentially subject to today's final rule. The EPA also agrees that the terms "facility" and "unit" were used interchangeably and that the term "unit" is more appropriate to use in defining what is potentially subject to today's final rule. Therefore, in today's preamble and in the final rule language the term non-municipal non-hazardous waste disposal unit is used. Correspondingly, the terms "existing facility" and "new facility" have been changed in the final rule to refer to "existing unit" and "new unit". Existing unit refers to any non-municipal non-hazardous waste disposal unit that is receiving CESQG hazardous waste as of the effective date (i.e., 18 months after the final rule is published in the Federal Register). A new unit is any non-municipal non-hazardous waste disposal unit that has not received CESQG hazardous waste prior to the effective date (i.e., 18 months after the final rule is published in the Federal Register).

Today's applicability section (§ 257.5) has also been changed to clarify the situation where a non-municipal non-hazardous waste disposal unit decides to receive CESQG hazardous waste after the effective date of today's rule. The applicability section (section 257.5(a)(5)) has been changed to clarify that any non-municipal non-hazardous waste disposal unit that first receives CESQG hazardous waste after the date 18 months after the date of publication of this final rule in the Federal Register

must be in compliance with all the requirements prior to the receipt of the CESQG hazardous waste.

One additional change from the proposed rule language concerns the definition of the term State/Tribal Director. In the proposal the term State/Tribal Director was defined to mean the chief administrative of the State/Tribal agency responsible for implementing the State/Tribal permit program for Subtitle D regulated facilities. The remainder of the proposed rule language, however, consistently used the term State Director. This was done as a means of efficiency and the Agency did not imply any other substantive effect on the character, authority, and/or rights of Tribes. The final rule will include Indian Tribes in the definition of the term "State" (as was proposed) and Tribal Director in the definition of "State Director". This change is being made to be consistent with the proposed changes to Part 258 language in the proposed State/Tribal Permit Program Determination of Adequacy (See 61 *FR* 2584, January 26, 1996). The State/Tribal Permit Program Determination of Adequacy contains a complete discussion of the opportunities that are available to Indian Tribes to apply for program approval.

B. Sections 257.7–257.13—Location Restrictions

EPA proposed a set of location restrictions for new and existing units that receive CESQG waste which mirrored restrictions already established for MSWLFs. 40 CFR 258.10 to 258.16. However, in response to comment received on the proposal, EPA has modified the proposed location restrictions in a number of ways. Because units receiving CESQG waste pose a smaller risk to human health and the environment than do MSWLF facilities and for the reasons discussed below, EPA believes that the restrictions being promulgated today satisfy the statutory standard contained in RCRA Section 4010(c). 42 U.S.C. § 6949a(c).

1. Airport Safety

EPA proposed that new, existing, and lateral expansions of existing non-municipal non-hazardous waste disposal units, that receive CESQG hazardous waste, demonstrate that the unit does not pose a bird hazard to aircraft. The proposed airport safety provision was the same as the current Part 257 requirement; only the demonstration requirement to the affected airport and to the FAA for new and lateral expansions of existing units was new.

Several commentors objected to the airport safety provision in Section 257.7 and requested that the provision be removed. Commentors stated that units that accept CESQG wastes will be non-putrescible operations that do not provide a source of food or nesting for birds. One commentor stated that actual observations of over 30 sites across the country support the conclusion that birds are virtually nonexistent at C&D units. Lastly, one commentor referenced the recent FAA report titled "Draft Report to Congress on Potential Hazards to Aircraft by Locating Waste Disposal Sites in Vicinity of Airports", wherein, the FAA stated that recent FAA sponsored research has shown that non-putrescible waste landfills (i.e., construction and demolition waste landfills, . . .) do not attract wildlife that could create a wildlife/aircraft strike hazard.

In response to commentors concerns, the Agency has eliminated the airport safety provision from today's final rulemaking. The Agency's original requirement under Part 257 was designed to regulate units that dispose of putrescible wastes; based on the fact that units potentially subject to today's final rule do not receive putrescible wastes (e.g., C&D units), the Agency sees no reason to have this requirement as part of today's final rule.

2. Floodplains

EPA proposed that new, existing, and lateral expansions of existing non-municipal non-hazardous waste disposal units, that receive CESQG hazardous wastes, located in the 100-year floodplain demonstrate 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.

No comments were received on the substance of the floodplain provision; therefore, the Agency is finalizing the floodplain provision as it was proposed.

3. Wetlands

The Agency proposed that new facilities and lateral expansions of existing non-municipal non-hazardous waste disposal units, that receive CESQG hazardous wastes, not be located in a wetland unless specified demonstrations can be met by the owner/operator. The demonstrations were to ensure that if a non-municipal non-hazardous waste disposal unit needed to be located in a wetland, protection of state water quality standards and protection of the wetland will be achieved. Furthermore, the

proposal was consistent with the Agency's goal of achieving no net loss of the nation's wetlands.

No comments were received on the substance of the wetlands provision, therefore, the Agency is finalizing the wetlands provision as it was proposed.

4. Fault Areas

EPA proposed that new and lateral expansions of existing non-municipal non-hazardous waste disposal units, that receive CESQG hazardous waste, not be located within 200 feet of a fault that has had displacement in Holocene time unless the owner/operator demonstrates that an alternative setback distance of less than 200 feet will not affect the structural integrity of the unit during displacement and will be protective of human health and the environment.

One commentor questioned the need for a fault area restriction because this location provision is premised on the fact that if movement along a fault occurs, the structural integrity of the engineering features will be disrupted. Given the low risks imposed by many of the facilities potentially subject to the rule and the fact the Agency is not regulating the design features (i.e., liners, leachate collection systems) of these facilities, imposing siting restrictions is not warranted.

The Agency agrees that the fault area restriction is designed to guard against disruptions to the engineering features that provide structural integrity to the unit. Because of the low-risks posed by non-municipal non-hazardous waste units that receive CESQG waste, EPA did not propose any liner requirements or other provisions bearing on the structural integrity of the units. Thus, the Agency agrees that imposing this restriction is not warranted, and as such, the fault area restriction is not a part of today's final rule.

5. Seismic Impact Zones

EPA proposed that new and lateral expansions of existing non-municipal non-hazardous waste disposal units, that receive CESQG hazardous waste, not be located in seismic impact zones unless the owner/operator demonstrates that all containment structures are designed to resist the maximum horizontal acceleration in lithified earth material for the site.

No specific comments were received on this provision. However, this provision like the fault area provision, was designed to guard against disruptions to liners, leachate collection systems, and surface water control systems, therefore, EPA considers that the logic of the comments on fault area

restrictions applies to this restriction as well, and as such, the Agency sees no reason to include this location restriction as part of today's final rulemaking.

6. Unstable Areas

EPA proposed that new, existing and lateral expansions of existing non-municipal non-hazardous waste disposal units, that receive CESQG hazardous waste, located in an unstable area demonstrate that engineering measures have been incorporated into the facility design to ensure that the integrity of the structural components of the facility will not be disrupted.

As with the seismic impact zone restriction, no specific comments were received on this part of the proposal. However, for the same reasons as discussed above under the fault area and seismic impact zone restrictions, this location restriction is also not part of today's final rule.

7. Deadline for Making Demonstrations

EPA proposed that existing non-municipal non-hazardous waste disposal units, that receive CESQG hazardous wastes, that could not make the demonstrations pertaining to airports, floodplains, or unstable areas, would not be allowed to accept CESQG hazardous waste for disposal 18 months after the date of publication of the final rule.

No specific comments were received on this provision of the proposal. As the final rule only applies to existing units located in floodplains, this provision has been changed to require that only existing units in floodplains will not be allowed to accept CESQG hazardous waste for disposal 18 months after the date of publication of the final rule.

C. Sections 257.21–257.28—Ground-Water Monitoring and Corrective Action

1. Applicability

The Agency proposed a number of requirements under the heading "applicability." The Agency proposed that the ground-water monitoring requirements could be suspended by the Director of an approved State if the owner/operator could demonstrate that there was no potential for migration of hazardous constituents from the facility to the uppermost aquifer during the active life plus 30 years.

The Agency also proposed the existing units had to be in compliance with the groundwater monitoring requirements within 2 years after the date of publication of the final rule in the Federal Register. EPA proposed that new facilities meet the ground-water

monitoring requirements when waste is first placed in the unit. The Director of an approved State could specify an alternative schedule for compliance for existing units. The proposed alternative schedule called for 50% of existing units to be in compliance within 2 years and for all existing units to be in compliance within 3 years.

The Agency also proposed that ground-water monitoring be conducted throughout the active life plus 30 years. The director of an approved State could decrease the 30 year period.

Lastly, the Agency proposed to grant the Director of an approved State the flexibility to establish and use an alternative list of indicator parameters for some or all of the constituents listed in Appendix I (appendix I to Part 258) and to allow small, dry, remote non-municipal non-hazardous waste disposal units to use an alternative form of detecting ground-water contamination.

The Agency received no adverse comment on most of these provisions. The flexibility for small, dry, remote non-municipal units was considered an example of increased flexibility by a commentator. The Agency has slightly altered the regulatory language for the proposed flexibility for small, dry, remote non-municipal non-hazardous waste disposal units that may be allowed to use alternative forms of detecting ground-water contamination. The proposed language required, in two places, that an owner or operator had to submit results or seek approval of corrective measures within 60 days. These deadlines have been removed to allow for increased flexibility. The deadlines have been replaced with language that allows the Director of an approved State to establish a schedule for the owner or operator for the above mentioned activities. This change is also being done to be consistent with the rule language that was proposed for MSWLFs, allowing small, dry, remote MSWLFs to use alternative forms of detecting ground-water contamination. See 60 FR 40799, August 10, 1995. The proposed language allowing for alternatives to be used for small, dry, remote MSWLFs was the basis for the proposed language to allow small, dry, remote non-municipal, nonhazardous waste disposal units to also use alternative forms of detecting ground-water monitoring. See 60 FR 30976, June 12, 1995.

The length of the ground-water monitoring period (i.e., active life plus 30 years) generated some disagreement. In regard to the length of the ground-water monitoring period, two commentators concurred with the

Agency's decision to impose the ground-water monitoring period through the active life plus 30 years. The commentators believed that the time frame was consistent with other similar rules, and based upon the flexibility in the rule, was not overly burdensome to units in comparison to the environmental protection it affords.

Several commentators requested that the Agency reduce the ground-water monitoring period to a shorter time period or to a time period based on an individual unit's performance standard. In regard to a performance standard, one commentator argued a performance standard could be used by an owner/operator to demonstrate that an alternative time period is appropriate. One example suggested was that the performance standard be based on a specified number of years without significant changes in ground-water quality. No specific number of years was provided.

In regard to a shorter period of time, commentators generally agreed that the 30 years was not reflective of the low risks posed by units that may potentially receive CESQG wastes. One commentator requested 10 years for existing and 15 years for new units. Another commentator stated that a shorter period was necessary because most States have a post-closure period that ranges from 5–10 years. A third commentator stated that applying an extremely burdensome 30 years period places an economic burden on operators that is not remotely balanced by any real environmental benefit. This commentator suggested a 5-year period and that the rules could be extended if problems are discovered during the 5 years. Lastly, one commentator questioned what incentive existed to monitor groundwater for 30 years beyond the final receipt of waste. This commentator considered it unreasonable to expect that the monitoring program will be met after a disposal unit has no further economic value.

After a consideration of the comments, the Agency has elected to retain the requirement that ground-water monitoring be conducted for 30 years after the active life of the unit for the same reasons that were discussed in the proposal. The Agency believes that there is sufficient flexibility within § 257.21(e) for an approved State to decrease the 30-year period. The final regulation allows the Director of an approved State to reduce the length of the monitoring period if the owner/operator demonstrates that a shorter period is adequate to protect human health and the environment. The Agency expects that States will reduce

the length of the monitoring period if an owner/operator can demonstrate, for example, that no adverse changes in ground-water quality have been detected for some period of time less than 30 years. Furthermore, although some commentors expressed concern over the length of the 30-year period, the Agency did not receive any data supporting any such reduction in the length of the monitoring period.

Today's final rule continues to provide flexibility for an approved State to suspend the ground-water monitoring requirements in hydrogeologic settings that may preclude the migration of hazardous constituents from the unit to the ground water.

2. Ground-Water Monitoring Systems

The Agency proposed a number of requirements under the proposed section "ground-water monitoring systems". The Agency proposed that ground-water monitoring systems consist of a sufficient number of wells, installed at appropriate locations and depths to yield ground-water samples from the uppermost aquifer that represent the quality of background ground water and the quality of ground water passing the relevant point of compliance. The downgradient monitoring system was to be installed at the relevant point of compliance, as allowed by the Director of an approved State, or at the waste management unit boundary in unapproved States. The relevant point of compliance specified by the Director of an approved State was proposed to be no more than 150 meters from the waste management unit boundary and located on land owned by the owner/operator. Furthermore, the proposal allowed for multi-unit monitoring under specific conditions.

The only area to receive comments was the point of compliance. A number of commentors expressed concern regarding the 150 meter limit for the point of compliance. One commentor requested EPA to either allow a site-specific decision regarding the point of compliance or allow the use of a point of compliance within the facility boundary. A second commentor requested that EPA not specify a specific distance but rather authorize a site-specific identification of a compliance point based on the location for the potential for exposure. For example, if a unit is located a considerable distance from a drinking water well, having the point of compliance 150 meters from the unit boundary may be needlessly stringent. A third commentor stated that a flexible approach to establishing the point of

compliance is well suited to low-risk facilities.

After a consideration of the comments, the Agency has decided to retain the proposed language regarding the point of compliance. The final rule will require that the downgradient monitoring wells be installed at the waste management unit boundary in unapproved States or at the relevant point of compliance, as allowed by the Director of an approved State. The relevant point of compliance can be up to 150 meters from the waste management unit boundary. The Agency retained the 150 meter limit because the Agency believes it is essential to set a maximum distance limit for the point of compliance that would limit ground-water contamination, yet still provide flexibility to owners/operators of non-municipal non-hazardous waste disposal units that receive CESQG wastes. A point of compliance set some distance much farther from the unit boundary would result in a situation where ground-water contamination, when first detected, would be more wide-spread and result in higher corrective action costs to remedy the situation.

The Agency realizes that the point of compliance can have significant implications associated with the scope, magnitude and cost of ground-water remedial actions. Because of these implications, the point of compliance continues to be an area of discussion and debate. At this point in time, the Agency is finalizing the point of compliance language for Subtitle D units as described in the proposal for this rule. However, the Agency is addressing the point of compliance issue in an Advance Notice of Proposed Rulemaking (ANPR) (See 61 FR 19432, May 1, 1996) as part of developing regulations concerning "Corrective Action for Releases from Solid Waste Management Units at Hazardous Waste Management Facilities" (subpart S of 40 CFR part 264). The Agency intends to use the ANPR to invite comments on a number of issues, including the point of compliance pertaining to corrective action under Subtitle C of RCRA. It is possible that future regulations, which address new point of compliance approaches for Subtitle C facilities, could also address Subtitle D units subject to today's final rule.

3. Ground-Water Sampling and Analysis Requirements

The proposal required the use of consistent sampling and analysis procedures that would be designed to ensure monitoring results that provide

an accurate representation of ground-water quality at the background and downgradient monitoring wells. The Agency received no substantial comments on this section of the proposal; therefore, the sampling and analysis requirements are being finalized as proposed. Comments concerning sampling and analysis requirements are addressed in the comment response document associated with this final rule.

4. Detection Monitoring Program

The proposal addressed numerous requirements associated with detection monitoring, the first phase of ground-water monitoring. The majority of the proposed requirements pertained to which constituents had to be monitored for and the required frequency of monitoring. The proposal required that those constituents identified in Appendix I of part 258 were to be monitored for during the detection monitoring phase of ground-water monitoring and that the frequency of monitoring was to be at least semi-annual. The proposal also specified the areas of flexibility that existed for an owner/operator during detection monitoring.

The Agency received no comments on the frequency of monitoring during the detection monitoring period, and as such, the final rule requires at least semi-annual monitoring during detection monitoring. The final rule also continues to allow the Director of an approved State to specify an alternative frequency of monitoring during the active life plus 30 years (no less than annual during the active life).

The Agency did receive some comments regarding the constituents to be monitored for during detection monitoring. A commentor raised the issue of developing a new list of ground-water parameters for facilities that accept CESQG wastes. Another commentor stated that MSWLFs contain a much larger portion of waste that is biodegradable and therefore creates its own chemical degradation byproducts. Unless EPA has data that shows that leachates from non-municipal non-hazardous waste facilities are similar to municipal solid waste landfills, the Agency should not be imposing similar requirements. According to the commentor, the ground-water monitoring program should require testing only for constituents that are related to the waste accepted at the facility, not a list of constituents that could be found at any facility that may accept CESQG wastes. Lastly, the commentor stated that the monitoring parameters should be representative of

those constituents that are most mobile in the ground-water environment so that early detection is accomplished without undue cost of over regulation.

After a consideration of the comments, the Agency has decided to retain the requirements as proposed in the detection monitoring section of the proposal. The Agency believes that developing a new list of ground-water constituents for facilities that accept CESQG wastes would cause undue confusion for the regulated community. However, EPA has provided some flexibility for approved States in regard to testing for constituents that are related to the wastes accepted at the unit. Today's final rule provides flexibility to the Director of an approved State to remove from the detection monitoring list of constituents, any constituent that is not reasonably expected to be in or derived from the waste contained in the unit. Furthermore, the Director of an approved State may establish an alternative list of indicator parameters in lieu of some or all of the constituents in appendix I of part 258, if the alternative indicator parameter(s) provides a reliable indication of releases from the unit to the ground water.

The June 1995 proposal allowed the Director of an approved State to develop only an alternative list of inorganic indicator parameters; the organic parameters in appendix I of part 258 were to be monitored for and no substitutions were allowed. However, in today's final rule, the Agency has provided additional flexibility in that the Director of an approved State can establish an alternative list of indicator parameters for some or all of the constituents in appendix I of part 258 including the organic constituents. The Agency has provided this area of increased flexibility because an alternative list of indicator parameters, approved by the Director of an approved State, could be appropriate in specific circumstances, and the Agency continues to believe that the risks posed by non-municipal non-hazardous waste disposal units that may elect to receive CESQG wastes is relatively small when compared to MSWLFs. Non-municipal non-hazardous waste units that elect to receive CESQG wastes will be mostly C&D units. The Agency stated in the proposal for this rulemaking, that these types of units, in general, do not pose a significant risk. As such, the Agency believes that Directors of approved State programs can exercise additional flexibility in establishing the appropriate list of detection monitoring constituents or indicator parameters.

This area of increased flexibility can serve to alleviate commentor's concerns regarding the appropriate parameters to monitor for during detection monitoring. This area of flexibility will allow the Director of an approved State to tailor the detection monitoring list to those wastes accepted at the facility and/or those that are expected to be a concern due to mobility. One commentor expressed concern that the detection monitoring list (Appendix I to Part 258) for today's final rule should not be identical to the detection monitoring list developed for municipal solid waste landfills. The Agency, however, believes that leachates from non-municipal units are somewhat similar, in that some of same types of organics and inorganics can appear in non-municipal leachates but at lesser concentrations, and as such, saw no reason to create a separate and new detection monitoring list.

5. Assessment Monitoring Program

The proposal would have required that once a statistically significant increase over background was detected during detection monitoring, a full assessment of any impacts on ground-water quality had to be undertaken. The purpose of assessment monitoring was to sample for a larger list of constituents to determine which were present. The assessment monitoring program also required the establishment of ground-water protection standards.

The Agency received no comments on the proposed assessment monitoring requirements; therefore, the assessment monitoring program requirements are being finalized as proposed.

6. Assessment of Corrective Measures, Selection of Remedy, and Implementation of the Corrective Action Program

The proposal required that once a statistically significant increase was detected over the ground-water protection standard for any constituent detected during assessment monitoring, the owner/operator was required to assess available corrective measures. Available corrective measures were those that could meet the performance standards established under the proposed selection of remedy requirements. Lastly, the proposal would have required that once a corrective measure was selected, the owner/operator would be required to implement the selected remedy.

The Agency received no comments on the proposed corrective action requirements; therefore, the corrective action requirements are being finalized as proposed.

D. Section 257.30—Recordkeeping Requirements

EPA proposed that owners/operators of non-municipal non-hazardous waste disposal units record and retain various pieces of information in an operating record. The operating record was proposed to be at the facility or at an alternative location as approved by the Director of an approved State. The following type of information was proposed to be retained: any location restriction demonstration and any demonstration, certification, finding, monitoring, testing, or analytical data required as part of complying with the ground-water monitoring and corrective action requirements.

No comments were received on the substance of the recordkeeping requirements; therefore, the Agency is finalizing the recordkeeping requirements provision as it was proposed.

E. Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators

1. Changes to Section 261.5

The proposal would have amended the existing language of § 261.5 by establishing acceptable Subtitle D management options for CESQG waste. The existing language in § 261.5, paragraphs (f)(3) and (g)(3), allows for a CESQG hazardous waste to be managed at a hazardous waste facility (either in interim status or permitted), a reuse or recycling facility, or a non-hazardous solid waste facility that is permitted, licensed, or registered by a State to manage municipal or industrial wastes. The proposed rule would have continued to allow CESQG waste to be managed at a hazardous waste facility, or at a reuse or recycling facility; however, the proposal would have required that if CESQG waste was to be managed at a Subtitle D disposal facility, it must be managed in a MSWLF that is subject to Part 258 or a non-municipal non-hazardous waste disposal unit that is subject to the standards that were proposed for units receiving CESQG waste.

Commentors supported the proposed rule changes to paragraphs (f)(3) and (g)(3) in § 261.5 regarding waste generated by CESQGs. Commentors stated that the continuation of the CESQG rules was very important as these rules were developed to ease the burden of small generators. Other commentors also supported the proposed generator changes for various reasons: proposed changes will help CESQGs ensure that their wastes are properly managed, CESQGs may

investigate the recycling or reuse of their waste streams, or use of alternative, less-hazardous materials in their operations, and the proposed changes are a wise-policy decision.

Given the agreement that commentors had with the proposed changes to § 261.5, the Agency has decided to largely finalize the requirements as proposed.

One small change has been made in today's final rule language, however, in paragraphs (f)(3) and (g)(3). This small conforming change deals with final regulatory language that was developed in the universal waste rule (see 60 FR 25541, May 11, 1995). Universal wastes are the following hazardous wastes that are subject to the universal waste rule: batteries as described in 40 CFR 273.2, pesticides as described in 40 CFR 273.3, and thermostats as described in 40 CFR 273.4. The conforming changes are found in today's final rule language in paragraphs (f)(3)(vii) and (g)(3)(vii). The conforming changes in today's final rule allow a CESQG to manage universal wastes in a facility that is a universal waste hauler or destination, provided that facility is subject to the universal waste requirements in 40 CFR Part 273. See 60 FR 25492, May 11, 1995. The possibility that some CESQG waste could be considered a universal waste was discussed in the proposal to this final rule. See 60 FR 30968, June 12, 1996.

RCRA Section 3010(b) states that regulations respecting requirements applicable to the generation, transportation, treatment, or disposal of hazardous waste that are promulgated under Subtitle C shall take effect six months after the date of promulgation. The Administrator is authorized to establish a shorter effective date. 42 U.S.C. 6930(b).

The revisions to 40 CFR Section 261.5 and 271.1 are being promulgated, in part, under RCRA section 3001(d)(4), and thus, are subject to the six month effective date provision in section 3010(b). In the proposed rule, EPA stated that it intended to make these revisions to the Subtitle C regulations effective 18 months after their publication so as to coincide with the effective dates of the Subtitle D provisions. See 60 FR 30979. In the final rule, EPA is making the Subtitle C provisions effective in six months in accordance with RCRA section 3010(b). However, to ensure that there will be consistency in implementation of both the Subtitle C and D provisions, as suggested in the proposal, EPA has chosen to delay the compliance date for the Subtitle C provisions until 18 months after today's date. Thus,

although the Subtitle C revisions go into effect in six months, those who generate CESQG waste will have to comply with the revised disposal standards in section 261.5 (f) and (g) only when the Subtitle D revised location restrictions for CESQG waste go into effect in 18 months. The final rule language for section 261.5 and 271.1 reflect this delayed compliance date.

2. CESQG Wastes

Comments were received concerning various aspects related to the requirements for CESQGs. Comments were also received requesting that the Agency provide a clearer picture of what constitutes a CESQG waste. Lastly, other commentors stated that the final rule needed to have a screening requirement in place for facilities that elect not to receive CESQG wastes.

In regard to the comments concerning the need to better identify what is a CESQG waste, the proposal identified examples of CESQG wastes, particularly for the construction and demolition waste industry. See 60 FR 30967, June 12, 1995. CESQG hazardous wastes generated in the construction, renovation, and demolition waste industry are more likely to be specific chemicals or products used in these activities. Building demolition debris can be a CESQG waste if based on generator knowledge or a representative sample of the entire building debris, the building debris is determined to be a hazardous waste (i.e., it exhibits one of the four characteristics of a hazardous waste), and if hazardous, is under the waste quantity cutoff limit for a CESQG waste (See 60 FR 30967, June 12, 1995).

Commentors requested a comprehensive listing of C&D wastes which may be typically hazardous. The Agency's supporting document "Construction and Demolition Waste Landfills" identified a number of wastes that were considered potentially "hazardous" by various sources. The Agency continues to believe, as stated in the proposal, that not all of the wastes identified in the report are hazardous as determined under Subtitle C; however, the listing provided in the supporting document provides an indication of the types of wastes that may be present in the construction and demolition waste industry that could be a concern. Given that the Subtitle C and D regulations are generally implemented by the States, the Agency believes that owners/operators should work with their State Agencies to determine what specific rules or guidance applies with regard to the types of wastes that their State Agency considers to be hazardous.

3. Screening Procedures

Comments were also received requesting that the Agency acknowledge the use of existing screening procedures. With regard to the comments concerning the need to acknowledge the use of existing screening procedures and the need to have a screening procedure in place for facilities that elect not to receive CESQG wastes, the proposal did not require non-municipal non-hazardous waste disposal units to screen incoming wastes in order to assure that they were not receiving CESQG wastes. Rather, it left it up to the owner/operator to assure, through what ever means he/she determined, that the facility was not receiving CESQG waste. This could include certifications by waste haulers that their wastes destined for the facility will not contain CESQG wastes, written prohibitions in contracts between waste haulers and the owner/operator stating that the facility does not receive CESQG waste for disposal, and/or random screening procedures at the facility. Commentors were concerned that CESQG wastes would find their way into C&D landfills that elect not to upgrade and comply with today's final requirements, particularly given that the proposal did not require the use of a formal screening procedure to prove that the facility was not receiving CESQG wastes. Specifically, one commentor stated that without a stringent method of restricting wastes and documenting these efforts, C&D landfills that do not meet the proposed requirements may become low-cost alternatives for the unscrupulous. Two other commentors stated that the proposed rule, as written, lacked an affirmative demonstration on the part of a facility that elected not to comply with the proposed requirements, that the facility was in reality not receiving CESQG waste for disposal. The commentor argued that "without a screening method at facilities that elect not to comply, the proposed rule is insufficient to satisfy the mandate of RCRA Section 4010(c)". Several of these commentors suggested the use of the screening procedure specified in the Part 258 Criteria for municipal solid waste landfills.

Other commentors acknowledged that screening exists today for C&D facilities and that it is successful. Screening is done at most C&D facilities and, thus, regulatory criteria made applicable to such facilities should take into account screening practices that significantly reduce the risks that C&D facilities present to human health and the environment. These commentors wanted EPA to expressly acknowledge

that screening programs reduce risks at C&D facilities or to develop a regulatory approach that allows C&D facilities with established screening programs to be exempted from a majority of the proposed criteria or EPA should develop relaxed regulatory criteria that take into account such risk-reduction operational practices.

The proposal explained that owners/operators implementing a screening procedure should contact their State Agency to determine that the screening procedure ensures that the facility does not receive CESQG wastes. Responding to this statement, one commentator said that the Agency should not delegate this obligation to the states because doing so will lead to unwarranted lawsuits against owners/operators that do not want to accept CESQG wastes and confusion at the state level caused by widely divergent screening requirements that may or may not be acceptable.

In response to the comments about the need for screening requirements as part of today's final rule, the Agency is concerned that the establishment of specific and/or detailed screening standards would limit flexibility that owners/operators and State Agencies have in developing an appropriate screening method, if one is considered necessary. Under the rule as proposed and promulgated, if an owner/operator of a non-municipal non-hazardous waste disposal unit elects not to receive CESQG wastes, and therefore, does not upgrade to meet the requirements in today's final rule, he/she is not legally allowed to accept CESQG wastes. See 40 CFR 257.5(a)(3). If the owner/operator does accept CESQG wastes, then he/she would be in violation of today's final rule and would be subject to enforcement actions. See 40 CFR 257.5(a)(1). CESQGs that send their CESQG waste to landfills that are not subject to today's requirements for non-municipal units would, likewise, be subject to enforcement actions.

Owners/operators that elect not to upgrade and therefore not receive CESQG hazardous wastes, may on their own elect to develop a screening procedure that is effective in screening out CESQG materials. Owners/operators who elect to develop a screening procedure are encouraged to work with their State Agency to determine what screening procedures, may at a State level be required, recommended or in guidance. The Agency believes that the adoption of a Federal screening program as a condition of not receiving CESQG hazardous waste, will limit the flexibility that both States and owners/operators can exercise in developing a

successful screening program. The Agency does not want to interfere in the development of acceptable screening programs that, based on comments received on this rule, can be developed and are being used in the field.

VII. Implementation of Today's Final Rule

A. State Activities Under Subtitle C (*Regulation of CESQGs of Hazardous Waste*)

1. Hazardous and Solid Waste Amendments to RCRA

Today's final rule changes the existing requirements in § 261.5, paragraphs (f)(3) and (g)(3) pertaining to the special requirements for CESQGs. 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.) Following authorization, EPA retains enforcement authority under Sections 3008, 7003 and 3013 of RCRA, although authorized States have primary enforcement responsibilities.

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 EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facility which the State was authorized to permit. When new, more stringent, Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

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 they take effect in unauthorized States. EPA is directed to carry out these requirements and prohibitions in previously authorized States, including the issuance of permits and primary enforcement, until the State is granted HSWA authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA provisions apply in authorized States in the interim.

The amendments to § 261.5, paragraphs (f)(3) and (g)(3), are finalized pursuant to section 3001(d)(4) of RCRA, which is a provision added by HSWA. Therefore, the Agency has added the requirements to Table 1 in § 271.1(j)

which identifies the Federal program requirements that are promulgated pursuant to HSWA and that take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions identified in Table 1.

2. Effect on State Authorizations

As noted above, EPA will implement today's rule (i.e., the revision to § 261.5) in authorized States until they modify their programs to adopt the Section 261.5 rule change and the modification is approved by EPA. Because the rule has been finalized pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final authorization under Section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications for either interim or final authorization are described in 40 CFR 271.21. It should be noted that all HSWA interim authorizations will expire January 1, 2003. (See § 271.24(c) and 57 FR 60129 (December 18, 1992)).

40 CFR 271.21(e)(2) provides that States that have final authorization must modify their programs to reflect Federal program changes, and must subsequently submit the modifications to EPA for approval. The deadline by which the State must modify its program to adopt these regulations and submit its application for approval is specified in 40 CFR 271.21(e). These deadlines can be extended in certain cases (40 CFR 271.21(e)(3)). Once EPA approves the modification, the State requirements act in lieu of Subtitle C RCRA requirements.

States with authorized RCRA programs may already have adopted requirements under State law similar to those in today's rule. These State regulations have not been assessed against the Federal regulations being finalized today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modification is approved. Although revisions to 40 CFR Parts 257 and 261 are being finalized, for the purpose of authorization under Subtitle C, only the final changes to § 261.5 would be assessed against the Federal program. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law. In implementing the Federal program, EPA will work with States under cooperative agreements to minimize

duplication of efforts. In many cases EPA will be able to defer to the States in their efforts to implement their programs, rather than take separate actions under Federal authority.

States that submit their official applications for final authorization less than 12 months after the effective date of these standards are not required to include standards equivalent to these standards in their application. However, the State must modify its program by the deadlines set forth in § 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these standards must include standards equivalent to these standards in their applications. 40 CFR 271.3 sets forth the requirements a State must meet when submitting its final authorization application.

3. States With More Stringent Programs

EPA is aware that a number of States have more stringent requirements for the disposal of waste generated by CESQGs. In particular, some States do not allow the disposal of this waste into any Subtitle D landfill (i.e., some States do not allow permitted MSWLFs to accept CESQG hazardous waste). For these States, today's final rule would clearly be considered less stringent than the applicable provisions in these States' authorized programs. Section 3009 of RCRA allows States to adopt or retain provisions that are more stringent than the Federal provisions. Therefore, regarding today's final rule, EPA believes that States which do not allow the disposal of wastes generated by CESQGs into Subtitle D landfills under their existing authorized Subtitle C program would not be required to revise their programs and obtain authorization for today's proposed rule. Of course this situation would only apply in those cases where a State is not changing its authorized regulatory language. Further, the authorized State requirements in such States, since they would be more stringent than today's final rule, would continue to apply in that State, even though today's rule is proposed pursuant to HSWA authority.

For a State to not be required to submit an authorization revision application for today's final rule, the State must have provisions that are authorized by EPA and that are more stringent than the analogous Subtitle C provisions in today's rule. For those States that would not be required to revise their authorization, EPA encourages States to inform their EPA Regional Office by letter that for this final rule, they are not required to submit a revision application pursuant to 40 CFR 271.21(e), because in

accordance with RCRA Section 3009 the authorized State provision currently in effect is more stringent than the requirements contained in today's final rule. Otherwise, EPA might conclude that a revised authorization application is required.

B. State Activities Under Subtitle D (Regulation of Receiving Non-Municipal Non-Hazardous Units)

States are the lead entities in implementing and enforcing Subtitle D rules. The Agency intends to maintain the State's lead in implementing the Subtitle D program. RCRA Section 4005 requires States to adopt and implement, within 18 months of the publication of a final rule, a permit program or other system of prior approval and conditions to ensure that non-municipal non-hazardous waste disposal units receiving CESQG waste comply with today's standards. The statute requires EPA to determine whether States have developed adequate permit programs. States will need to review their existing programs to determine where their programs need to be revised and to complete program changes, if changes are necessary. The process for evaluating the adequacy of State programs has been set forth in a separate proposal, the State/Tribal Permit Program Determination of Adequacy. See 61 FR 2584, January 26, 1996.

For the purpose of determining adequacy and granting approval under Subtitle D for today's rule, only the proposed technical changes in §§ 257.5 through 257.30 will be evaluated by the Agency. The State may need to meet other procedural and administrative provisions identified in the State/Tribal Permit Program Determination of Adequacy. EPA policy on approval of permit programs for non-municipal non-hazardous waste disposal units receiving CESQG waste is the same process that the Agency used for determining the adequacy of State programs for the Municipal Solid Waste Landfill Criteria. In States already approved for the Part 258 MSWLF Criteria, changes required by this rulemaking will constitute a program revision.

The Agency believes that for many approved States, changes required by this rulemaking will affect the technical Criteria only and should warrant limited changes to the approved State program. For example, if non-municipal non-hazardous waste disposal units subject to this rule are already subject to an approved State MSWLF program (i.e., the non-municipal non-hazardous waste disposal units receiving CESQG waste are currently subject to the Part 258

location restrictions, ground-water monitoring, and corrective action criteria), the State may only be required to submit documentation that the non-municipal non-hazardous waste disposal units receiving CESQG waste are subject to their approved program. In most cases, the Agency anticipates that a streamlined approval process would be appropriate. States are encouraged to contact their appropriate EPA Regional office to determine the specifics of the approval process.

In the proposed State/Tribal permit program determination of adequacy, the Agency originally proposed that a streamlined approval process would not be used for permit programs that related to additional classifications other than MSWLFs. See 61 FR 2599, January 26, 1996. As suggested above, the Agency is re-evaluating its proposed position and a final determination will be made in the final State/Tribal permit program determination of adequacy.

In States that have not been approved for the MSWLF Criteria, these revisions can be incorporated into an application for overall program approval of Part 258 and §§ 257.5 through 257.30. For purposes of today's rule, States that currently restrict CESQG disposal to Subtitle C facilities (and States that may choose to adopt that restriction) or approved States which currently restrict CESQG disposal to Part 258 municipal solid waste landfills will not need to seek further EPA approval of their Subtitle D program. RCRA Section 4005(c)(1)(B) requires States to adopt and implement permit programs to ensure that facilities which receive CESQG waste will comply with the revised Criteria promulgated under Section 4010(c). However, the Agency sees no need for approved States that already require CESQG waste to be disposed of in either Subtitle C facilities or facilities subject to the Part 258 MSWLF Criteria to adopt and implement a permit program based upon the standards being finalized today.

RCRA Section 7004(b)(1) requires the Administrator and the States to encourage and provide for public participation in the development, revision, implementation, and enforcement of this regulation and, once it is promulgated, in the State permit programs which implement it. EPA provides for public participation in its decisions on whether State permit programs are adequate under RCRA Section 4005(c)(1)(c). In developing and implementing permit programs, States must provide for public participation in accordance with the provisions of 40 CFR Part 239 (specifically § 239.6).

Permit programs have been defined in the proposed State/Tribal Permit Program Determination of Adequacy to include other systems of prior approval and conditions, including licenses or registrations.

C. Summary of Comments and EPA Response

Several commenters supported EPA's approach in the proposal toward States with approved Subtitle D programs that have CESQG disposal restrictions in their Subtitle D programs. In particular, the commenters supported EPA's statement that States which require CESQG waste to be disposed of in either Subtitle C facilities or facilities subject to the part 258 MSWLF Criteria do not need EPA approval for a permit program based on today's final (Subtitle D) standards. However, the commenters believed that for these States, the absence of a required EPA approval should be extended to the Subtitle C program.

EPA believes that its approach toward States with programs that are more stringent than this final rule is the same for both the Subtitle C and Subtitle D programs. Those States with approved Subtitle D or authorized Subtitle C program that do not allow CESQG waste to be disposed of in a landfill addressed by today's technical standards do not need approval by EPA for that program. EPA's position is detailed in sections VII.A. and VII.B. above. EPA believes that since the existing approved State requirements are more stringent than the provisions in today's rule, in such States, program revisions are not necessary for the State programs to remain at least equivalent to the Federal rules.

Other commenters raised the possibility of State self-certification for State authorization for both the RCRA Subtitle C and D programs, particularly where the State already has rules that are equivalent to today's rule in its waste management programs. The commenters argued that this self-certification will result in significant resource savings.

Regarding the commenters suggestion on allowing State self-certification, EPA is currently examining this issue for Subtitle C authorization as part of the HWIR-Media rulemaking (see 61 *FR* 18780, April 29, 1996). In the proposed Phase IV LDR rule, EPA proposed an abbreviated authorization process for new minor rule changes (see 60 *FR* 43686, August 22, 1995). Although this authorization proposal did not address the rule changes in the June 12, 1995 proposal, EPA is committed to

streamlining the Subtitle C authorization process.

EPA believes that the authorization process for the Subtitle C portion of today's final rule will be very straightforward because today's rule only added two new provisions to the hazardous waste regulations. EPA will work with States and EPA regions to ensure that the Subtitle C authorization process for this rule will be completed swiftly. EPA believes that it can take such certifications into account to a large degree, thereby, greatly reducing review time. Further, EPA believes that many States will not require revisions to their authorized programs because their authorized programs are currently more stringent than today's rule.

D. Owner/Operator Responsibilities

1. Owner/Operator Responsibility and Flexibility in Approved States

The regulatory structure of the Part 258 MSWLF Criteria is based on an owner/operator achieving compliance through self-implementation with the various requirements while allowing approved States the flexibility to consider local conditions in setting appropriate alternative standards that still achieve compliance with the basic goal of the Part 258 Criteria. This flexibility that exists for approved States under Part 258 has been retained in today's final rule and can be used by approved States in determining facility specific requirements. Owners/operators of non-municipal non-hazardous waste disposal units that are receiving CESQG wastes as of the effective dates of today's final rule, due to the self-implementing nature of this final rule, would be required to comply with the promulgated standards regardless of the status of the States approval determination under Subtitle D. If an owner/operator of a non-municipal non-hazardous waste disposal unit is receiving CESQG waste and is located in a State that has not been approved under Subtitle D for these revised criteria, then the owner/operator would have to comply with the promulgated standards, without the benefit of the flexibility allowed to be granted by the Director of an approved State.

Owners/operators of non-municipal non-hazardous waste disposal units that receive CESQG waste and are located in approved States may be subject to alternate requirements based on the approved State standards.

2. CESQG's Responsibilities Relating to the Revisions in § 261.5, Paragraphs (f) and (g)

Today's final rule allows that CESQG waste go to either a hazardous waste facility, a reuse or recycling facility, a municipal solid waste landfill subject to Part 258, a non-municipal solid waste disposal facility that is subject to the requirements being proposed in §§ 257.5 through 257.30 or a solid waste management facility (i.e., incinerator) that is permitted, licensed, or registered by a State to manage municipal or non-municipal waste. Today's final rule does not mandate that CESQG waste go to a MSWLF or to a non-municipal non-hazardous waste disposal unit subject to today's final requirements. These are just two of the options as to where CESQG hazardous waste can be sent for management.

The Agency does not believe that today's final rule amendment to § 261.5 will result in a larger obligation for any CESQG. The Agency knows that the majority of CESQG waste is managed off-site. For the CESQG waste managed off-site, recycling is the predominant form of management. The Agency assumes that for the small amount of CESQG waste that is currently being sent off-site to a MSWLF, this practice can continue to occur, as long as allowed under State regulations, as all MSWLFs where CESQG waste could be sent are subject to Part 258. Hazardous waste regulations applicable to CESQGs require that CESQG hazardous waste be managed in a unit permitted, licensed, or registered by the State to manage municipal or industrial waste. Those CESQGs, including construction and demolition waste generators, who wish to send their CESQG waste to a non-municipal non-hazardous waste disposal unit and are uncertain whether the unit has the appropriate permit, license, or registration should contact his/her State Agency to ascertain if the non-municipal non-hazardous waste disposal unit in question can legally accept CESQG waste.

A CESQG may elect to screen-out or segregate out the CESQG hazardous wastes from his non-hazardous waste and then manage the CESQG hazardous portion in compliance with today's final amendments to § 261.5(f)(3) and (g)(3). The remaining non-hazardous waste would not be subject to the final requirements in § 261.5; however, it must be managed in a facility that complies with either the Part 258 Criteria or the existing Criteria in §§ 257.1–257.4. On the other hand, a CESQG may elect not to screen-out or segregate the CESQG hazardous waste

preferring instead to leave it mixed with the mass of non-hazardous waste. If the CESQG elects this option, the entire mass of material must be managed in a Subtitle C or Subtitle D facility as per today's final language in § 261.5.

E. Enforcement

1. Hazardous Waste Enforcement

Today's final rule amends § 261.5, paragraphs (f)(3) and (g)(3), and as such any CESQG who mismanages their CESQG hazardous waste on-site or delivers the CESQG hazardous waste to an inappropriate Subtitle D facility becomes subject to enforcement actions which could include loss of CESQG status for any CESQG waste that is improperly disposed of.

2. Subtitle D Enforcement

States that adopt programs meeting the standards in §§ 257.5 through 257.30 may enforce them in accordance with State authorities. Under RCRA Section 7002, citizens may seek enforcement of the standards in §§ 257.5 through 257.30 independent of any State enforcement program. Section 7002 provides that any person may commence a civil action on his/her own behalf against any person who is alleged to be in violation of any permit, standard, regulation, condition, requirement, prohibition, or order that has become effective pursuant to RCRA. Once the self-implementing provisions in §§ 257.5 through 257.30 become effective, they constitute the basis for citizen enforcement. Federal enforcement by EPA can be done only in States that EPA has determined have inadequate programs. EPA has no enforcement authorities under Section 4005 in approved States. EPA does, however, retain enforcement authority under Section 7003 to protect against imminent and substantial endangerment to health and the environment in all States.

VIII. Executive Order 12866

Under Executive Order No. 12866, EPA must determine whether a new regulation is significant. A significant regulatory action is defined as an action 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 environment, public health or safety, or state, local, or tribal governments or communities;
2. Create a 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 thereof; or

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Pursuant to the terms of the Executive Order 12866, it has been 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 will be documented in the public record.

A. Cost Impacts

In the Cost and Economic Impact Analysis (May, 1995) accompanying the proposed rule, the Agency estimated the total annual costs to the economy resulting from the proposed rule ranged from \$10.0 million to \$47.0 million.

The national low-end cost assumes that all CESQG hazardous waste is separated at the point of generation for the construction industry. It assumes there will be no CESQG waste generated by the demolition industry. The CESQG portion is disposed of at hazardous waste facilities while the remaining non-hazardous waste portion is disposed of in non-upgraded construction and demolition waste facilities. The costs include the separation costs at the point of generation, costs of transporting/dispersing the hazardous portion at a Subtitle C facility, and the costs of screening incoming wastes at all of the construction and demolition waste facilities.

The national annual high-end cost assumes that generators will not separate out CESQG waste from 30% of construction and demolition wastes and that this fraction will be sent to upgraded construction and demolition waste facilities that elect to comply with today's proposed requirements. Under this scenario, the Agency assumed that most medium to large size construction and demolition waste facilities (162) will upgrade. The costs include separation costs at the point of generation for waste not going to an upgraded landfill, costs of screening incoming wastes at 80% of the affected construction and demolition waste facilities which do not upgrade and costs for 20% of the affected construction and demolition wastes facilities to upgrade. Upgrade costs include ground-water monitoring and corrective action.

Upon receipt and incorporation of public comments, the Agency prepared

a revised Cost and Economic Impact Analysis (June, 1996). In the revised analysis, the Agency estimates the total annual costs to the economy for today's final rule will range from \$12.65 to \$51.0 million dollars. These costs fall upon approximately three types of facilities: 600 manufacturing-sector CESQGs, at an average annual cost of \$280 per facility; 10,000 construction-sector CESQGs, at an average cost of \$930 per facility; and 700 construction/demolition waste landfills, at an average cost of \$4500 per facility.

One commentator suggested that EPA had understated the costs of compliance with the new regulation. The commentator supported this conclusion based on several contentions:

(1) The commentator maintained that EPA's estimates of total construction and demolition wastes were flawed because some data sources were inappropriate, including European data. Although EPA agrees that U.S. data would be preferable, the European information provided an important and relevant insight for our analysis. EPA believes that many aspects of construction technology are similar from one developed western country to another. EPA also notes that the costing methodology used in the analysis rests mostly on costs per facility, rather than costs per ton.

(2) The commentator suggested that EPA underestimated the labor required for screening hazardous waste at construction/demolition waste landfills. Data that EPA has collected from construction/demolition landfill owner/operators, however, indicates that screening programs are already in effect at most of these facilities. EPA has collected information on the number of hours required for screening wastes per year per landfill, and believes that the nationwide estimate of one additional hour of labor per day per landfill is reasonable.

(3) The commentator also suggested that EPA had underestimated the amount of labor which would be required to separate wastes at construction sites. The Cost and Economic Impact Analysis estimated one labor hour per week per company for separating hazardous wastes. Since a company can have multiple job-sites operating simultaneously, the commentator indicated that it would be more reasonable to estimate one hour per job-site, rather than per company. EPA agrees, and notes that the wording in the original analysis was incorrect; the estimate was actually labor hours per establishment, where each establishment represents a group of job sites. Therefore, EPA has used the

costing methodology that the commentor recommends.

(4) Finally, the commentor disputes EPA's estimate of the hourly labor cost for screening wastes at the landfill and separating wastes at the generator site. EPA re-examined the labor costs, consulting with the Bureau of Labor Statistics and a standard construction industry costing guide. As a result, EPA agrees with this comment and has adjusted the labor figure by 27% (from \$13.60 per hour to \$17.32 per hour).

Further discussion of the cost analysis can be found in Cost and Economic Impact Analysis of the CESQG Rule, June 1996, available in the docket.

B. Benefits

The Agency believes that the requirements being proposed for non-municipal solid waste disposal facilities will result in more Subtitle D facilities providing protection against ground-water contamination from the disposal of small amounts of hazardous waste. Today's action will force some non-municipal solid waste disposal facilities to either upgrade and install ground-water monitoring and perform corrective action if contamination is detected, or stop accepting hazardous waste. Today's action will also cause some generators of CESQG wastes to separate out these small quantities of hazardous waste and send them to more heavily regulated facilities (i.e., Subtitle C facilities or MSWLFs). These are the direct benefits of today's proposal, however, additional benefits will be realized due to this proposal.

Today's final rule will require that any ground-water contamination that is occurring at units that continue to receive CESQG hazardous waste will be quickly detected, and therefore, corrective action can be initiated sooner avoiding a more costly corrective action.

To the extent that existing non-municipal non-hazardous waste disposal units that receive CESQG hazardous waste upgrade their units to include ground-water monitoring, and to the extent that new facilities will be located outside of floodplains and wetlands, public confidence in these types of units will be increased. Having a higher level of confidence should result in these types of units being easier to site in the future.

Finally, to the extent that CESQGs separate out the small volumes of hazardous waste, the resulting mass of clean non-hazardous waste would have a better potential to be recycled.

IX. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, Pub. L. 96-

354), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), EPA must consider whether a regulatory action will have a significant adverse impact on small entities. For a rule promulgated after June 27, 1996, EPA must either certify that the regulation will not have a significant impact on a substantial number of small entities or prepare a final regulatory flexibility analysis that contains an evaluation of five factors. 5 U.S.C. 604(a). Because EPA promulgated this rule prior to June 28, 1996, the revised requirements of SBREFA for an expanded regulatory flexibility analysis if a certification is not made do not apply. At the same time, however, EPA has conducted an analysis to determine whether the rule will have a significant impact on small entities. On the basis of that analysis, EPA certifies that this rule will not have a significant impact on a substantial number of small entities. The factual basis for this certification is as follows.

EPA anticipates that this rule will increase costs for two classes of facilities. CESQG generators that still handle their CESQG waste on site are expected to send their CESQG waste to Subtitle C facilities, at a maximum per-facility cost of \$570 per year. Construction waste generators will incur maximum additional per-firm costs of \$1,469 per year, for separation, transportation, and disposal of hazardous wastes. In each case, EPA's analysis shows that the impacts are less than one percent of annual revenues, for all sizes and types of companies.

This determination is based on EPA's projection of the response of CESQG waste generators and disposal facilities to today's rule. EPA performed a high end analysis, predicated on an assumption that C&D landfills upgrade to meet these standards. In this scenario, cost impacts would be higher. EPA does not expect C&D landfills to upgrade, however, since they would be unlikely to recover the high costs of upgrading. The analysis of effects on small entities is predicated on an assumption that the owners of C&D landfills act rationally, i.e., they choose not to upgrade but rather choose to stop accepting CESQG wastes.

Moreover, EPA has modified the proposed rule in a number of ways so that cost to small entities may be decreased. For example, EPA has included a provision which authorizes Directors of approved state programs to establish an alternative list of indicator parameters not only for the inorganic constituents but also for the organic constituents to be monitored for in the detection monitoring phase of ground

water monitoring. Thus, owner/operators of non-municipal, non-hazardous waste disposal units in approved states may have lower ground water monitoring costs.

In addition, EPA has removed four location restrictions (airports, fault areas, seismic impact zone, and unstable areas) from the final rule for the reasons set forth in Section VI.B of today's preamble. Costs for small entities that own non-municipal, non-hazardous waste disposal units that must comply with this rule would thus be reduced because no demonstrations to establish that these location restrictions have been met would need to be made.

X. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a "major rule" as defined by section 804(2) of the APA as amended.

XI. Paperwork Reduction Act

The information collection requirements in this 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. 1745.01) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2136), 401 M St., S.W. Washington, DC 20460 or by calling (202) 260-2740. The information requirements are not effective until OMB approves them.

The information to be collected under this rulemaking would be used primarily by the States to regulate and ensure that non-municipal non-hazardous waste disposal units that may receive CESQG wastes are complying with the final requirements. The information collected would be used by the State Director to confirm compliance on the part of the owner/operator with the final requirements. All information will be reported to the States or kept in an operating record at the facility. EPA will not collect information from any of the facilities subject to today's requirements, except in any potential enforcement case.

The total annual public recordkeeping and reporting burden is estimated to be 12,100 hours with an average of 67 hours per respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or 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 be able to respond to a collection of information; search data sources; complete and review collection of information; and transmit or otherwise disclose the information.

An Agency 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 EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2136), 401 M St., S.W., Washington, DC 20460 or to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence.

XII. Environmental Justice

Executive Order 12898 requires Federal Agencies, to the greatest extent practicable, to identify and address disproportionately high adverse human health or environmental effects of its activities on minority and low-income populations.

The Agency does not currently have data on the demographics of populations surrounding the facilities affected by today's final rule (i.e., construction and demolition landfills). The Agency does not believe, however, that today's final rule will adversely impact minority or low-income populations. The facilities affected by the final rule pose limited risk to surrounding populations. In addition,

today's final rule would further reduce this risk by requiring the affected facilities to either stop accepting CESQG hazardous waste or to begin ground-water monitoring and, if applicable, corrective action.

Thus, today's final rule will further reduce the already low risk for populations surrounding construction and demolition landfills, regardless of the population's ethnicity or income level. Minority and low-income populations will not be adversely affected.

XIII. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (the Act), Public Law 104-4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the Act EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the Act a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

EPA has determined that today's final rule does not include a Federal mandate that may result in estimated costs of \$100 million or more to State, local, or tribal governments in the aggregate, or to the private sector, in any one year. EPA has estimated that the annual costs of today's final rule on generators of CESQG wastes and those entities which own or operate CESQG disposal facilities, including the private sector, States, local or tribal governments, range from \$12.65-48.9M.

In addition to compliance costs for those who own or operate CESQG facilities, States will have a cost of developing permit programs or other

systems of prior approval to ensure that CESQG units comply with the final rule. Adoption and implementation of such State permit programs is required under RCRA section 4005(c)(1)(B). 42 USC 6945(c)(1)(B). The Agency has estimated that the costs for a state to develop an application for approval of an MSWLF permit program to be approximately \$15,000. Because these state permit programs already contain ground water monitoring, corrective action, and location standards for MSWLFs that are quite similar to those in this final rule, EPA believes that the additional costs for states to revise their permit programs to reflect the CESQG requirements are not expected to be significant. Also, because of the reduced level of regulatory requirements contained in this CESQG final rule as compared to the MSWLF Part 258 criteria, state costs for preparing applications for approval of a CESQG permit program should be considerably less than that \$15,000 figure.

Indian tribes are not required to develop permit programs for approval by EPA, but the Agency believes tribal governments are authorized to development such permit programs and have them approved by EPA. This issue is discussed in the proposal STIR. See 61 FR 2584, January 26, 1996. EPA has estimated that it will cost a tribal government approximately \$7,000 to prepare an application for approval of a MSWLF program. Because of the reduced regulatory provisions of the CESQG final rule, EPA expects that the costs which a tribal government might face in developing a permit program for CESQG units should be less than \$7,000.

EPA has also finalized amendments to the requirements for generators of CESQG hazardous waste. These amendments to 40 CFR 261.5 (f)(3) and (g)(3) are finalized pursuant to RCRA Section 3001 (d)(4), which is a provision added by HSWA. The § 261.5 amendments are also more stringent than current Federal hazardous waste regulations. Subtitle C regulatory changes carried out under HSWA authority become effective in all states at the same time and are implemented by EPA until states revise their programs. States are obligated to revise their hazardous waste programs and seek EPA authorization of these program revisions, unless their programs already incorporate more stringent provisions. The Agency believes approximately 24 states already have more stringent CESQG hazardous waste provisions and would not have to take action because of these regulatory changes. About 26 states would have to revise their

hazardous waste programs and seek authorization. States generally incorporate a number of hazardous waste program revisions and seek authorization for them at one time. The Agency estimates the State costs associated with Subtitle C program revision/authorization activity are approximately \$7,320 per state. Since this estimate covers several separate program components at one time, the cost for revisions only to Section 261.5 in the remaining 26 States would be substantially less.

As to section 203 of the Act, EPA has determined that the requirements being finalized today will not significantly or uniquely affect small governments, including tribal governments. EPA recognizes that small governments may own or operate waste disposal units that receive CESQG waste. However, EPA continues to estimate that the majority of construction and demolition landfills, which are the primary facilities to be subject to this final rule, are owned by the private sector. Moreover, EPA is aware that a number of states already require owners/operators of C&D landfills to meet regulatory standards that are similar to those being finalized today. Thus, EPA believes that today's final rule contains no regulatory requirements that significantly or uniquely affect small governments.

EPA has, however, sought meaningful and timely input from the private sector, states, and small governments on the development of this final rule by seeking comments on the proposed CESQG rule and by attempting to adequately address issues and concerns expressed by these entities in their comments. Furthermore, the Agency highlighted, in the June 12, 1995 proposal, those actions that it took to get meaningful and timely input from these entities prior to proposal.

List of Subjects

40 CFR Part 257

Environmental protection, Reporting and recordkeeping requirements, Waste disposal.

40 CFR Part 261

Hazardous materials, Recycling, Waste treatment and disposal.

40 CFR Part 271

Administrative practice and procedure, Hazardous materials transportation, Hazardous waste, Indian-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: June 21, 1996.

Carol M. Browner,
Administrator.

For reasons set out in the preamble, title 40, Chapter I of the Code of Federal Regulations is amended as set forth below:

PART 257—CRITERIA FOR CLASSIFICATION OF SOLID WASTE DISPOSAL FACILITIES AND PRACTICES

1. The authority citation for part 257 is revised to read as follows:

Authority: 42 U.S.C. 6907(a)(3), 6912(a)(1), 6944(a) and 6949(c), 33 U.S.C. 1345 (d) and (e).

§§ 257.1 through 257.4 [Redesignated as Subpart A]

2. Sections 257.1 through 257.4 are designated as Subpart A—Classification of Solid Waste Disposal Facilities and Practices.

3. Section 257.1(a) is revised to read as follows:

§ 257.1 Scope and purpose.

(a) Unless otherwise provided, the criteria in §§ 257.1 through 257.4 are adopted for determining which solid waste disposal facilities and practices pose a reasonable probability of adverse effects on health or the environment under sections 1008(a)(3) and 4004(a) of the Resource Conservation and Recovery Act (The Act). Unless otherwise provided, the criteria in §§ 257.5 through 257.30 are adopted for purposes of ensuring that non-municipal non-hazardous waste disposal units that receive conditionally exempt small quantity generator (CESQG) waste do not present risks to human health and the environment taking into account the practicable capability of such units in accordance with Section 4010(c) of the Act.

(1) Facilities failing to satisfy either the criteria in §§ 257.1 through 257.4 or §§ 257.5 through 257.30 are considered open dumps, which are prohibited under section 4005 of the Act.

(2) Practices failing to satisfy either the criteria in §§ 257.1 through 257.4 or §§ 257.5 through 257.30 constitute open dumping, which is prohibited under section 4005 of the Act.

* * * * *

4. Part 257 is amended by adding a new Subpart B to read as follows:

Subpart B—Disposal Standards for the Receipt of Conditionally Exempt Small Quantity Generator (CESQG) Wastes at Non-Municipal Non-Hazardous Waste Disposal Units

Sec.

257.5 Disposal standards for owners/operators of non-municipal non-hazardous waste disposal units that receive Conditionally Exempt Small Quantity Generator (CESQG) waste

Location Restrictions

257.7 Reserved
257.8 Floodplains.
257.9 Wetlands
257.10 Reserved
257.11 Reserved
257.12 Reserved
257.13 Deadline for making demonstrations.

Ground-Water Monitoring and Corrective Action

257.21 Applicability.
257.22 Ground-water monitoring systems.
257.23 Ground-water sampling and analysis requirements.
257.24 Detection monitoring program.
257.25 Assessment monitoring program.
257.26 Assessment of corrective measures.
257.27 Selection of remedy.
257.28 Implementation of the corrective action program.

Recordkeeping Requirement

257.30 Recordkeeping requirements.

Subpart B—Disposal Standards for the Receipt of Conditionally Exempt Small Quantity Generator (CESQG) Wastes at Non-Municipal Non-Hazardous Waste Disposal Units

§ 257.5 Disposal standards for owners/operators of non-municipal non-hazardous waste disposal units that receive Conditionally Exempt Small Quantity Generator (CESQG) waste.

(a) *Applicability.* (1) The requirements in this section apply to owners/operators of any non-municipal non-hazardous waste disposal unit that receives CESQG hazardous waste, as defined in 40 CFR 261.5. Non-municipal non-hazardous waste disposal units that meet the requirements of this section may receive CESQG wastes. Any owner/operator of a non-municipal non-hazardous waste disposal unit that receives CESQG hazardous waste continues to be subject to the requirements in §§ 257.3–2, 257.3–3, 257.3–5, 257.3–6, 257.3–7, and 257.3–8 (a), (b), and (d).

(2) Any non-municipal non-hazardous waste disposal unit that is receiving CESQG hazardous waste as of January 1, 1998, must be in compliance with the requirements in §§ 257.7 through 257.13 and § 257.30 by January 1, 1998, and the requirements in §§ 257.21 through 257.28 by July 1, 1998.

(3) Any non-municipal non-hazardous waste disposal unit that does not meet the requirements in this section may not receive CESQG wastes.

(4) Any non-municipal non-hazardous waste disposal unit that is not receiving CESQG Hazardous waste as of January 1, 1998, continues to be subject to the requirements in §§ 257.1 through 257.4.

(5) Any non-municipal non-hazardous waste disposal unit that first receives CESQG hazardous waste after January 1, 1998, must be in compliance with §§ 257.7 through 257.30 prior to the receipt of CESQG hazardous waste.

(b) Definitions.

Active life means the period of operation beginning with the initial receipt of solid waste and ending at the final receipt of solid waste.

Existing unit means any non-municipal non-hazardous waste disposal unit that is receiving CESQG hazardous waste as of January 1, 1998.

Facility means all contiguous land and structures, other appurtenances, and improvements on the land used for the disposal of non-municipal non-hazardous waste.

Lateral expansion means a horizontal expansion of the waste boundaries of an existing non-municipal non-hazardous waste disposal unit.

New unit means any non-municipal non-hazardous waste disposal unit that has not received CESQG hazardous waste prior to January 1, 1998.

State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and Indian Tribes.

State Director means the chief administrative officer of the lead State/Tribal agency responsible for implementing the State/Tribal permit program for Subtitle D regulated facilities.

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.

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.

Location Restrictions

§ 257.7 [Reserved]

§ 257.8 Floodplains.

(a) Owners or operators of new units, existing units, and lateral expansions located in 100-year floodplains must demonstrate 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 owner or operator must place the demonstration in the operating record and notify the State Director that it 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 equalled 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.

§ 257.9 Wetlands.

(a) Owners or operators of new units and lateral expansions shall not locate such units in wetlands, unless the owner or operator can make the following demonstrations to the Director of an approved State:

(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 involved wetlands is clearly rebutted:

(2) The construction and operation of the 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 unit will not cause or contribute to significant degradation of wetlands. The owner/operator must demonstrate the integrity of the unit and its ability to protect ecological resources by addressing the following factors:

(i) Erosion, stability, and migration potential of native wetland soils, muds and deposits used to support the unit;

(ii) Erosion, stability, and migration potential of dredged and fill materials used to support the unit;

(iii) The volume and chemical nature of the waste managed in the unit;

(iv) Impacts on fish, wildlife, and other aquatic resources and their habitat from release of the 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).

§ 257.10 [Reserved]

§ 257.11 [Reserved]

§ 257.12 [Reserved]

§ 257.13 Deadline for making demonstrations.

Existing units that cannot make the demonstration specified in § 257.8(a) pertaining to floodplains by January 1, 1998, must not accept CESQG hazardous waste for disposal.

Ground-water monitoring and corrective action.

§ 257.21 Applicability.

(a) The requirements in this section apply to units identified in § 257.5(a), except as provided in paragraph (b) of this section.

(b) Ground-water monitoring requirements under §§ 257.22 through 257.25 may be suspended by the Director of an approved State for a unit identified in § 257.5(a) if the owner or operator can demonstrate that there is no potential for migration of hazardous constituents from that unit to the uppermost aquifer during the active life of the unit plus 30 years. This demonstration must be certified by a qualified ground-water scientist and

approved by the Director of an approved State, 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) Owners and operators of facilities identified in § 257.5(a) must comply with the ground-water monitoring requirements of this section according to the following schedule unless an alternative schedule is specified under paragraph (d) of this section:

(1) Existing units and lateral expansions must be in compliance with the ground-water monitoring requirements specified in §§ 257.22 through 257.25 by July 1, 1998.

(2) New units identified in § 257.5(a) must be in compliance with the ground-water monitoring requirements specified in §§ 257.22 through 257.25 before waste can be placed in the unit.

(d) The Director of an approved State may specify an alternative schedule for the owners or operators of existing units and lateral expansions to comply with the ground-water monitoring requirements specified in §§ 257.22 through 257.25. This schedule must ensure that 50 percent of all existing units are in compliance by July 1, 1998, and all existing units are in compliance by July 1, 1999. In setting the compliance schedule, the Director of an approved State must consider potential risks posed by the unit to human health and the environment. The following factors should be considered in determining potential risk:

(1) Proximity of human and environmental receptors;
(2) Design of the unit;
(3) Age of the unit;
(4) The size of the unit; and
(5) Resource value of the underlying aquifer, including:

(i) Current and future uses;
(ii) Proximity and withdrawal rate of users; and
(iii) Ground-water quality and quantity.

(e) Once established at a unit, ground-water monitoring shall be conducted throughout the active life plus 30 years. The Director of an approved State may decrease the 30 year period if the owner/operator demonstrates that a shorter period of time is adequate to protect human health and the environment and the Director approves the demonstration.

(f) For the purposes of this section, 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 ground-water 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 judgments regarding ground-water monitoring, contaminant fate and transport, and corrective-action.

(g) The Director of an approved State may establish alternative schedules for demonstrating compliance with § 257.22(d)(2), pertaining to notification of placement of certification in operating record; § 257.24(c)(1), pertaining to notification that statistically significant increase (SSI) notice is in operating record; § 257.24(c)(2) and (3), pertaining to an assessment monitoring program; § 257.25(b), pertaining to sampling and analyzing appendix II of Part 258 constituents; § 257.25(d)(1), pertaining to placement of notice (appendix II of 40 CFR part 258 constituents detected) in record and notification of notice in record; § 257.25(d)(2), pertaining to sampling for appendix I and II of 40 CFR Part 258; § 257.25(g), pertaining to notification (and placement of notice in record) of SSI above ground-water protection standard; §§ 257.25(g)(1)(iv) and 257.26(a), pertaining to assessment of corrective measures; § 257.27(a), pertaining to selection of remedy and notification of placement in record; § 257.28(c)(4), pertaining to notification of placement in record (alternative corrective action measures); and § 257.28(f), pertaining to notification of placement in record (certification of remedy completed).

(h) Directors of approved States can use the flexibility in paragraph (i) of this section for any non-municipal non-hazardous waste disposal unit that receives CESQG waste, if the non-municipal non-hazardous waste disposal unit:

(1) Disposes of less than 20 tons of non-municipal waste daily, based on an annual average; and

(2) Has no evidence of ground-water contamination; and either

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

(4) Serves a community that has no practicable waste management alternative and the non-municipal solid waste disposal facility is located in an

area that annually receives less than or equal to 25 inches of precipitation.

(5) Owners/operators of any non-municipal non-hazardous waste disposal unit that meets the criteria in paragraph (h) of this section must place in the operating record information demonstrating this.

(i) Directors of approved States may allow any non-municipal non-hazardous waste disposal unit meeting the criteria in paragraph (h) of this section to:

(1) Use alternatives to the ground-water monitoring system prescribed in §§ 257.22 through 257.25 so long as the alternatives will detect and, if necessary, assess the nature or extent of contamination from the non-municipal non-hazardous waste disposal unit on a site-specific basis; or establish and use, on a site-specific basis, an alternative list of indicator parameters for some or all of the constituents listed in Appendix I (Appendix I of 40 CFR Part 258. Alternative indicator parameters approved by the Director of an approved State under this section must ensure detection of contamination from the non-municipal non-hazardous waste disposal unit.

(2) If contamination is detected through the use of any alternative to the ground-water monitoring system prescribed in §§ 257.22 through 257.25, the non-municipal non-hazardous waste disposal unit owner or operator must perform expanded monitoring to determine whether the detected contamination is an actual release from the non-municipal solid waste disposal unit and, if so, to determine the nature and extent of the contamination. The Director of the approved State shall establish a schedule for the non-municipal non-hazardous waste disposal unit owner or operator to submit results from expanded monitoring in a manner that ensures protection of human health and the environment.

(i) If expanded monitoring indicates that contamination from the non-municipal non-hazardous waste disposal unit has reached the saturated zone, the owner or operator must install ground-water monitoring wells and sample these wells in accordance with §§ 257.22 through 257.25.

(ii) If expanded monitoring indicates that contamination from the non-municipal non-hazardous waste disposal unit is present in the unsaturated zone or on the surface, the Director of an approved State shall establish a schedule for the owner or operator to submit a description of any necessary corrective measures. The schedule shall ensure corrective

measures, where necessary, are undertaken in a timely manner that protects human health and the environment. The proposed corrective measures are subject to revision and approval by the Director of the approved State. The owner or operator must implement the corrective measures according to a schedule established by the Director of the approved State.

(3) When considering whether to allow alternatives to a ground-water monitoring system prescribed in §§ 257.22 through 257.25, including alternative indicator parameters, the Director of an approved State shall consider at least the following factors:

(i) The geological and hydrogeological characteristics of the site;

(ii) The impact of manmade and natural features on the effectiveness of an alternative technology;

(iii) Climatic factors that may influence the selection, use, and reliability of alternative ground-water monitoring procedures; and

(iv) The effectiveness of indicator parameters in detecting a release.

(4) The Director of an approved State can require an owner or operator to comply with the requirements of §§ 257.22 through 257.25, where it is determined by the Director that using alternatives to ground-water monitoring approved under this paragraph are inadequate to detect contamination and, if necessary, to assess the nature and extent of contamination.

§ 257.22 Ground-water monitoring systems.

(a) A ground-water monitoring system must be installed that consists of a sufficient number of wells, installed at appropriate locations and depths, to yield ground-water samples from the uppermost aquifer (as defined in § 257.5(b)) that:

(1) Represent the quality of background ground water that has not been affected by leakage from a unit. A determination of background quality may include sampling of wells that are not hydraulically upgradient of the waste management area where:

(i) Hydrogeologic conditions do not allow the owner or operator to determine what wells are hydraulically upgradient; or

(ii) Sampling at other wells will provide an indication of background ground-water quality that is as representative or more representative than that provided by the upgradient wells; and

(2) Represent the quality of ground water passing the relevant point of compliance specified by the Director of an approved State or at the waste

management unit boundary in an unapproved State. The downgradient monitoring system must be installed at the relevant point of compliance specified by the Director of an approved State or at the waste management unit boundary in an unapproved State that ensures detection of ground-water contamination in the uppermost aquifer. The relevant point of compliance specified by the Director of an approved State 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 facility. In determining the relevant point of compliance the State Director shall consider at least the following factors: the hydrogeologic characteristics of the unit and surrounding land, the volume and physical and chemical characteristics of the leachate, the quantity, quality and direction of flow of ground water, the proximity and withdrawal rate of the ground-water users, the availability of alternative drinking water supplies, 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, public health, safety, and welfare effects, and practicable capability of the owner or operator. When physical obstacles preclude installation of ground-water monitoring wells at the relevant point of compliance at existing units, the down-gradient monitoring system may be installed at the closest practicable distance hydraulically down-gradient from the relevant point of compliance specified by the Director of an approved State that ensures detection of groundwater contamination in the uppermost aquifer.

(b) The Director of an approved State may approve a multi-unit ground-water monitoring system instead of separate ground-water monitoring systems for each unit when the facility has several units, provided the multi-unit ground-water monitoring system meets the requirement of § 257.22(a) and will be as protective of human health and the environment as individual monitoring systems for each unit, based on the following factors:

(1) Number, spacing, and orientation of the units;

(2) Hydrogeologic setting;

(3) Site history;

(4) Engineering design of the units; and

(5) Type of waste accepted at the 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 owner or operator must notify the State Director 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, 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 Director of an approved State. Within 14 days of this certification, the owner or operator must notify the State Director that the certification has been placed in the operating record.

§ 257.23 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 installed in compliance with § 257.22(a). The owner or operator must notify the State Director 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 be protective 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 owner or operator must determine the rate and direction of ground-water flow 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 owner or operator must establish background ground-water quality in a hydraulically upgradient or background well(s) for each of the monitoring parameters or constituents required in the particular ground-water monitoring program that applies to the unit, as determined under § 257.24(a), or § 257.25(a). Background ground-water quality may be established at wells that are not located hydraulically upgradient from the unit if it meets the requirements of § 257.22(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 § 257.24(b) for detection monitoring, § 257.25 (b) and (d) for assessment monitoring, and § 257.26(b) for corrective action.

(g) The owner or operator must specify in the operating record one of the following statistical methods to be used in evaluating ground-water monitoring data for each hazardous constituent. The statistical test chosen shall be conducted separately for each hazardous constituent in each well.

(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 owner or operator must place a justification for this alternative in the operating record and notify the State Director 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 owner or operator 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 experiment wise 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 prediction 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 owner or operator 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 unit, as determined under §§ 257.24(a) or 257.25(a).

(1) In determining whether a statistically significant increase has occurred, the owner or operator must compare the ground-water quality of each parameter or constituent at each monitoring well designated pursuant to § 257.22(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 a reasonable period of time after completing sampling and analysis, the owner or operator must determine whether there has been a statistically significant increase over background at each monitoring well.

§ 257.24 Detection monitoring program.

(a) Detection monitoring is required at facilities identified in § 257.5(a) at all ground-water monitoring wells defined under §§ 257.22 (a)(1) and (a)(2). At a minimum, a detection monitoring program must include the monitoring for the constituents listed in appendix I of 40 CFR Part 258.

(1) The Director of an approved State may delete any of the appendix I (Appendix I of 40 CFR Part 258) monitoring parameters for a unit if it can be shown that the removed constituents are not reasonably expected to be contained in or derived from the waste contained in the unit.

(2) The Director of an approved State may establish an alternative list of indicator parameters for a unit, in lieu of some or all of the constituents in appendix I to 40 CFR Part 258, if the alternative parameters provide a reliable indication of releases from the unit to the ground water. In determining alternative parameters, the Director shall consider the following factors:

(i) The types, quantities, and concentrations of constituents in waste managed at the unit;

(ii) The mobility, stability, and persistence of waste constituents or their reaction products in the unsaturated zone beneath the 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 groundwater background.

(b) The monitoring frequency for all constituents listed in appendix I to 40 CFR Part 258, 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 unit plus 30 years. A minimum of four independent samples from each well (background and downgradient) must be collected and analyzed for the appendix I (Appendix I of 40 CFR, Part 258) constituents, or the alternative list approved in accordance with paragraph (a)(2) of this section, during the first semiannual sampling event. At least one sample from each well (background and downgradient) must be collected and analyzed during subsequent semiannual sampling events. The Director of an approved State may specify an appropriate alternative frequency for repeated sampling and analysis for appendix I (Appendix I of 40 CFR Part 258) constituents, or the alternative list approved in accordance with paragraph (a)(2) of this section, during the active life plus 30 years. The alternative

frequency during the active life 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 unit and downgradient monitoring well screen (minimum distance of travel); and

(5) Resource value of the aquifer.

(c) If the owner or operator determines, pursuant to § 257.23(g), that there is a statistically significant increase over background for one or more of the constituents listed in appendix I to 40 CFR Part 258, or in the alternative list approved in accordance with paragraph (a)(2) of this section, at any monitoring well at the boundary specified under § 257.22(a)(2), the owner or operator:

(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 State Director that this notice was placed in the operating record; and

(2) Must establish an assessment monitoring program meeting the requirements of § 257.25 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 the 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 or approved by the Director of an approved State and be placed in the operating record. If a successful demonstration is made and documented, the owner or operator may continue detection monitoring as specified in this section. If, after 90 days, a successful demonstration is not made, the owner or operator must initiate an assessment monitoring program as required in § 257.25.

§ 257.25 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 appendix I of 40 CFR Part 258 or in the alternative list approved in accordance with § 257.24(a)(2).

(b) Within 90 days of triggering an assessment monitoring program, and annually thereafter, the owner or operator must sample and analyze the ground water for all constituents identified in appendix II of 40 CFR Part 258. A minimum of one sample from each downgradient well must be collected and analyzed during each sampling event. For any constituent detected in the downgradient wells as the result of the complete appendix II (Appendix II of 40 CFR Part 258) analysis, a minimum of four independent samples from each well (background and downgradient) must be collected and analyzed to establish background for the new constituents. The Director of an approved State may specify an appropriate subset of wells to be sampled and analyzed for appendix II (Appendix II of 40 CFR Part 258) constituents during assessment monitoring. The Director of an approved State may delete any of the appendix II (Appendix II of 40 CFR Part 258) monitoring parameters for a unit if it can be shown that the removed constituents are not reasonably expected to be in or derived from the waste contained in the unit.

(c) The Director of an approved State may specify an appropriate alternate frequency for repeated sampling and analysis for the full set of appendix II (Appendix II of 40 CFR part 258) constituents, or the alternative list approved in accordance with paragraph (b) of this section, during the active life plus 30 years 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 unit and downgradient monitoring well screen (minimum distance of travel);

(5) Resource value of the aquifer; and

(6) 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 owner or operator must:

(1) Within 14 days, place a notice in the operating record identifying the appendix II (appendix II of 40 CFR part 258) constituents that have been detected and notify the State Director 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 specified by § 257.22(a) to this section, conduct analyses for all

constituents in appendix I (Appendix I of 40 CFR part 258) to this part or in the alternative list approved in accordance with § 257.24(a)(2), and for those constituents in appendix II to 40 CFR part 258 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 well (background and downgradient) must be collected and analyzed during these sampling events. The Director of an approved State may specify an alternative monitoring frequency during the active life plus 30 years for the constituents referred to in this paragraph. The alternative frequency for appendix I (Appendix I of 40 CFR part 258) constituents, or the alternative list approved in accordance with § 257.24(a)(2), during the active life shall be no less than annual. The alternative frequency shall be based on consideration of the factors specified in paragraph (c) of this section;

(3) Establish background concentrations for any constituents detected pursuant to paragraphs (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 paragraphs (h) or (i) of this section.

(e) If the concentrations of all appendix II (Appendix II of 40 CFR part 258) constituents are shown to be at or below background values, using the statistical procedures in § 257.23(g), for two consecutive sampling events, the owner or operator must notify the State Director of this finding and may return to detection monitoring.

(f) If the concentrations of any appendix II (Appendix II of part 258) constituents are above background values, but all concentrations are below the ground-water protection standard established under paragraphs (h) or (i) of this section, using the statistical procedures in § 257.23(g), the owner or operator must continue assessment monitoring in accordance with this section.

(g) If one or more appendix II (Appendix II of CFR part 258) constituents are detected at statistically significant levels above the ground-water protection standard established under paragraphs (h) or (i) of this section in any sampling event, the owner or operator must, within 14 days of this finding, place a notice in the operating record identifying the appendix II (Appendix II of 40 CFR part 258) constituents that have exceeded the ground-water protection standard and

notify the State Director and all appropriate local government officials that the notice has been placed in the operating record. The owner or operator also:

(1)(i) Must characterize the nature and extent of the release by installing additional monitoring wells as necessary;

(ii) Must 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) Must 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 in accordance with paragraph (g)(1) of this section; and

(iv) Must initiate an assessment of corrective measures as required by § 257.26 within 90 days; or

(2) May demonstrate that a source other than the non-municipal non-hazardous waste disposal 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 or approved by the Director of an approved State and placed in the operating record. If a successful demonstration is made the owner or operator must continue monitoring in accordance with the assessment monitoring program pursuant to this § 257.25, and may return to detection monitoring if the appendix II (Appendix II of 40 CFR part 258) constituents are at or below background as specified in paragraph (e) of this section. Until a successful demonstration is made, the owner or operator must comply with § 257.25(g) including initiating an assessment of corrective measures.

(h) The owner or operator must establish a ground-water protection standard for each appendix II (Appendix II of 40 CFR part 258) constituent 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 § 257.22(a)(1); or

(3) For constituents for which the background level is higher than the MCL identified under subparagraph (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 (51 FR 33992, 34006, 34014, 34028, September 24, 1986);

(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) within the 1×10^{-4} to 1×10^{-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 mutation.

(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.

§ 257.26 Assessment of corrective measures.

(a) Within 90 days of finding that any of the constituents listed in appendix II (Appendix II of 40 CFR Part 258) have been detected at a statistically significant level exceeding the ground-water protection standards defined under § 257.25 (h) or (i), the owner or operator must initiate an assessment of corrective measures. Such an assessment must be completed within a reasonable period of time.

(b) The owner or operator must continue to monitor in accordance with

the assessment monitoring program as specified in § 257.25.

(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 § 257.27, 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 remedy(s).

(d) The owner or operator must discuss the results of the corrective measures assessment, prior to the selection of remedy, in a public meeting with interested and affected parties.

§ 257.27 Selection of remedy.

(a) Based on the results of the corrective measures assessment conducted under § 257.26, the owner or operator must select a remedy that, at a minimum, meets the standards listed in paragraph (b) of this section. The owner or operator must notify the State Director, within 14 days of selecting a remedy, that a report describing the selected remedy has been placed in the operating record and how it meets the standards in paragraph (b) of this section.

(b) Remedies must:

(1) Be protective of human health and the environment;

(2) Attain the ground-water protection standard as specified pursuant to §§ 257.25 (h) or (i);

(3) Reduce the source(s) of releases so as to reduce or eliminate, to the maximum extent practicable, further releases of appendix II (Appendix II of 40 CFR part 258) constituents 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 § 257.28(d).

(c) In selecting a remedy that meets the standards of § 257.27(b), the owner or operator shall consider the following evaluation factors:

(1) The long- and short-term effectiveness and protectiveness of the potential remedy(s), 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 re-disposal or 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, re-disposal, 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;

(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 owner or operator, 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 owner or operator 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 a reasonable period of time taking into consideration

the factors set forth in paragraphs (d)(1) through (d)(8) of this section. The owner or operator 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 §§ 257.25 (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 constituent;

(v) The hydrogeologic characteristic of the unit and surrounding land;

(vi) Ground-water removal and treatment costs; and

(vii) The cost and availability of alternative water supplies.

(7) Practicable capability of the owner or operator.

(8) Other relevant factors.

(e) The Director of an approved State may determine that remediation of a release of an appendix II (Appendix II of 40 CFR part 258) constituent from the unit is not necessary if the owner or operator demonstrates to the Director of the approved state that:

(1) The ground-water is additionally contaminated by substances that have originated from a source other than the unit and those substances are present in concentrations such that cleanup of the release from the 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 § 257.25 (h) or (i); or

(3) Remediation of the release(s) is technically impracticable; or

(4) Remediation results in unacceptable cross-media impacts.

(f) A determination by the Director of an approved State pursuant to paragraph (e) of this section shall not affect the authority of the State to require the owner or operator 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.

§ 257.28 Implementation of the corrective action program.

(a) Based on the schedule established under § 257.27(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 § 257.25;

(ii) Indicates the effectiveness of the corrective action remedy; and

(iii) Demonstrates compliance with ground-water protection standard pursuant to paragraph (e) of this section.

(2) Implement the corrective action remedy selected under § 257.27; 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 § 257.27. The following factors must be considered by an owner or operator 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) Risks of fire or explosion, or 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) An owner or operator may determine, based on information developed after implementation of the remedy has begun or other information, that compliance with requirements of § 257.27(b) are not being achieved through the remedy selected. In such cases, the owner or operator must implement other methods or techniques that could practically achieve compliance with the requirements, unless the owner or operator makes the determination under § 257.28(c).

(c) If the owner or operator determines that compliance with requirements under § 257.27(b) cannot be practically achieved with any currently available methods, the owner or operator must:

(1) Obtain certification of a qualified ground-water scientist or approval by the Director of an approved State that compliance with requirements under § 257.27(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 State Director 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 § 257.27, or an interim measure required under § 257.28(a)(3), 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 § 257.27 shall be considered complete when:

(1) The owner or operator complies with the ground-water protection standards established under §§ 257.25 (h) or (i) at all points within the plume of contamination that lie beyond the ground-water monitoring well system established under § 257.22(a).

(2) Compliance with the ground-water protection standards established under §§ 257.25 (h) or (i) has been achieved by demonstrating that concentrations of appendix II (Appendix II of Part 258) constituents have not exceeded the ground-water protection standard(s) for a period of three consecutive years using the statistical procedures and performance standards in § 257.23 (g) and (h). The Director of an approved State may specify an alternative length of time during which the owner or operator must demonstrate that concentrations of appendix II (Appendix II of 40 CFR part 258) constituents have not exceeded the ground-water protection standard(s) taking into consideration:

(i) Extent and concentration of the release(s);

(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 owner or operator must notify the State Director within 14 days that a certification that the remedy has been completed in compliance with the requirements of § 257.28(e) has been placed in the operating record. The certification must be signed by the owner or operator and by a qualified ground-water scientist or approved by the Director of an approved State.

Recordkeeping Requirements

§ 257.30 Recordkeeping requirements.

(a) The owner/operator of a non-municipal non-hazardous waste disposal unit must record and retain near the facility in an operating record or in an alternative location approved by the Director of an approved State the following information as it becomes available:

(1) Any location restriction demonstration required under §§ 257.7 through 257.12; and

(2) Any demonstration, certification, finding, monitoring, testing, or analytical data required in §§ 257.21 through 257.28.

(b) The owner/operator must notify the State Director 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 furnished

upon request to the State Director or be made available at all reasonable times for inspection by the State Director.

(c) The Director of an approved State can set alternative schedules for recordkeeping and notification requirements as specified in paragraphs (a) and (b) of this section, except for the notification requirements in § 257.25(g)(1)(iii).

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTES

5. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

Subpart A—General

6. Section 261.5 is amended by revising paragraphs (f)(3) and (g)(3) to read as follows:

§ 261.5 Special requirements for hazardous waste generated by conditionally exempt small quantity generators.

* * * * *

(f) * * *

(3) A conditionally exempt small quantity generator may either treat or dispose of his acute hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage, or disposal facility, either of which, if located in the U.S., is:

(i) Permitted under part 270 of this chapter;

(ii) In interim status under parts 270 and 265 of this chapter;

(iii) Authorized to manage hazardous waste by a State with a hazardous waste

management program approved under part 271 of this chapter;

(iv) Permitted, licensed, or registered by a State to manage municipal solid waste and, if managed in a municipal solid waste landfill is subject to Part 258 of this chapter;

(v) Permitted, licensed, or registered by a State to manage non-municipal non-hazardous waste and, if managed in a non-municipal non-hazardous waste disposal unit after January 1, 1998, is subject to the requirements in §§ 257.5 through 257.30 of this chapter; or

(vi) A facility which:

(A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or

(vii) For universal waste managed under part 273 of this chapter, a universal waste handler or destination facility subject to the requirements of part 273 of this chapter.

(g) * * *

(3) A conditionally exempt small quantity generator may either treat or dispose of his hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage or disposal facility, either of which, if located in the U.S., is:

(i) Permitted under part 270 of this chapter;

(ii) In interim status under parts 270 and 265 of this chapter;

(iii) Authorized to manage hazardous waste by a State with a hazardous waste management program approved under part 271 of this chapter;

(iv) Permitted, licensed, or registered by a State to manage municipal solid waste and, if managed in a municipal solid waste landfill is subject to Part 258 of this chapter;

(v) Permitted, licensed, or registered by a State to manage non-municipal non-hazardous waste and, if managed in a non-municipal non-hazardous waste disposal unit after January 1, 1998, is subject to the requirements in §§ 257.5 through 257.30 of this chapter; or

(vi) A facility which:

(A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or

(vii) For universal waste managed under part 273 of this chapter, a universal waste handler or destination facility subject to the requirements of part 273 of this chapter.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

7. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

8. In § 271.1, paragraph (j), Table 1 is amended by adding the following entry in chronological order by publication date:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
* * * * *			
July 1, 1996	Revisions to Criteria applicable to solid waste facilities that may accept CESQG hazardous wastes, excluding MSWLFs.	61 FR 34278	January 1, 1998.

Registered Federal

Monday
July 1, 1996

Part VI

Department of the Treasury

Fiscal Service

Companies Holding Certificates of
Authority as Acceptable Sureties on
Federal Bonds and As Acceptable
Reinsuring Companies; Annual List;
Notice

DEPARTMENT OF THE TREASURY

FISCAL SERVICE

(Dept. Circular 570; 1996 Revision)

COMPANIES HOLDING CERTIFICATES OF AUTHORITY AS ACCEPTABLE SURETIES ON
FEDERAL BONDS AND AS ACCEPTABLE REINSURING COMPANIES

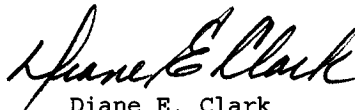
Effective July 1, 1996

This Circular is published annually, solely for the information of Federal bond-approving officers and persons required to give bonds to the United States. Copies of the Circular and interim changes may be obtained directly from the Government Printing Office (202) 512-1800. (Interim changes are published in the FEDERAL REGISTER as they occur.) Other information pertinent to Federal sureties may be obtained from the U.S. Department of the Treasury, Financial Management Service, Surety Bond Branch, 3700 East West Highway, Room 6F04, Hyattsville, MD 20782, Telephone (FTS/202) 874-6850 or (Fax/202) 874-9978.

For the most current list of Treasury authorized companies, all year round, 24 hours a day, free of charge, use your computer modem and dial into our **computerized public bulletin board** at (202) 874-6817/6872/6953/7034/8608. The list is also available through the Internet (<http://www.ustreas.gov/treasury/bureaus/finman/c570.html>). **Please note that the underwriting limitation published herein is on a per bond basis but this does not limit the amount of a bond that a company can write.** Companies are allowed to write bonds with a penal sum over their underwriting limitation as long as they protect the excess amount with reinsurance, coinsurance or other methods as specified at 31 CFR 223.10-11. Please refer to footnote (b) at the end of this publication.

The following companies have complied with the law and the regulations of the U.S. Department of the Treasury. Those listed in the front of this Circular are acceptable as sureties and reinsurers on Federal bonds under Title 31 of the United States Code, Sections 9304 to 9308 [See Note (a)]. Those listed in the back are acceptable only as reinsurers on Federal bonds under 31 CFR 223.3(b) [See Note (e)].

If we can be of any assistance, please feel free to contact the Surety Bond Branch at (202) 874-6850.



Diane E. Clark
Assistant Commissioner, Financial Information
Financial Management Service

**IMPORTANT INFORMATION IS CONTAINED IN THE NOTES AT THE END OF
THIS CIRCULAR. PLEASE READ THE NOTES CAREFULLY.**

Acadia Insurance Company

BUSINESS ADDRESS: P.O. BOX 9010, Westbrook, ME 04098-5010. PHONE: (207) 772-4300. UNDERWRITING LIMITATION *b/*: \$2,930,000. SURETY LICENSES *c/*: ME, NH, VT. INCORPORATED IN: Maine.

Acceptance Insurance Company

BUSINESS ADDRESS: 222 South 15th Street, Suite 600 North, Omaha, NE 68102. PHONE: (402) 344-8800. UNDERWRITING LIMITATION *b/*: \$10,792,000. SURETY LICENSES *c/*: AL, AZ, AR, CO, GA, IL, IA, KY, ME, MI, NE, ND, OH, TN, VA, WI. INCORPORATED IN: Nebraska.

ACCREDITED SURETY AND CASUALTY COMPANY, INC.

BUSINESS ADDRESS: P.O. Box 568529, Orlando, FL 32856-8529. PHONE: (407) 841-8500. UNDERWRITING LIMITATION *b/*: \$653,000. SURETY LICENSES *c/*: AL, FL, GA, IN, LA, MD, MS, VA. INCORPORATED IN: Florida.

ACSTAR INSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 2350, New Britain, CT 06050-2350. PHONE: (860) 224-2000. UNDERWRITING LIMITATION *b/*: \$1,769,000. SURETY LICENSES *c/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Aegis Security Insurance Company

BUSINESS ADDRESS: P.O. Box 3153, Harrisburg, PA 17105. PHONE: (717) 657-9671. UNDERWRITING LIMITATION *b/*: \$1,192,000. SURETY LICENSES *c/*: AL, AZ, AR, CA, CO, CT, DE, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Aetna Casualty & Surety Company of America

BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-9062. PHONE: (860) 277-0111. UNDERWRITING LIMITATION *b/*: \$33,358,000. SURETY LICENSES *c/*: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Aetna Casualty and Surety Company (The)

BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-9062. PHONE: (860) 277-0111. UNDERWRITING LIMITATION *b/*: \$120,052,000. SURETY LICENSES *c/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Aetna Casualty and Surety Company of Illinois

BUSINESS ADDRESS: 2525 Cabot Drive, Lisle, IL 60532-3629. PHONE: (708) 245-4001. UNDERWRITING LIMITATION *b/*: \$26,379,000. SURETY LICENSES *c/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Affiliated FM Insurance Company

BUSINESS ADDRESS: Allendale Park, P.O. Box 7500, Johnston, RI 02919-0500. PHONE: (401) 275-3000. UNDERWRITING LIMITATION *b/*: \$3,149,000. SURETY LICENSES *c/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Rhode Island.

Allegheny Mutual Casualty Company

BUSINESS ADDRESS: P.O. Box 1116, Meadville, PA 16335-7116. PHONE: (814) 336-2521. UNDERWRITING LIMITATION *b/*: \$952,000. SURETY LICENSES *c/*: CA, DC, FL, ID, IL, IN, LA, MD, MI, MS, NJ, OH, OK, PA, SC, SD, TN, TX, WA, WI. INCORPORATED IN: Pennsylvania.

See Footnotes/Notes at end of Circular

Allendale Mutual Insurance Company

BUSINESS ADDRESS: Allendale Park, P.O. Box 7500, Johnston, RI 02919-0500.
PHONE: (401) 275-3000. UNDERWRITING LIMITATION ^{b/}: \$81,347,000. SURETY
LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA,
KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND,
OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY.
INCORPORATED IN: Rhode Island.

Alliance Assurance Company of America

BUSINESS ADDRESS: 25 Independence Blvd., Warren, NJ 07059. PHONE: (212) 753-
8130. UNDERWRITING LIMITATION ^{b/}: \$15,763,000. SURETY LICENSES ^{c/}: IN, KY,
ME. INCORPORATED IN: New York.

Allied Mutual Insurance Company

BUSINESS ADDRESS: 701 5th Avenue, Des Moines, IA 50391-2007. PHONE: (515)
280-4211. UNDERWRITING LIMITATION ^{b/}: \$19,447,000. SURETY LICENSES ^{c/}: AZ,
AR, CA, CO, DC, ID, IL, IN, IA, KS, KY, MI, MN, MO, MT, NE, NV, NM, ND, OH,
OK, OR, SD, TN, TX, UT, WA, WI, WY. INCORPORATED IN: Iowa.

ALLSTATE INSURANCE COMPANY

BUSINESS ADDRESS: 3075 Sanders Rd. STE H1A, Northbrook, IL 60062-7127.
PHONE: (847) 402-5000. UNDERWRITING LIMITATION ^{b/}: \$808,517,000. SURETY
LICENSES ^{c/}: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN,
IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND,
OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY.
INCORPORATED IN: Illinois.

AMCO Insurance Company

BUSINESS ADDRESS: 701 5th Avenue, Des Moines, IA 50391-2007. PHONE: (515)
280-4211. UNDERWRITING LIMITATION ^{b/}: \$15,688,000. SURETY LICENSES ^{c/}: AZ,
CA, CO, DC, ID, IL, IN, IA, KS, KY, MI, MN, MO, MT, NE, NM, ND, OH, OR, SD,
TN, TX, UT, WA, WI, WY. INCORPORATED IN: Iowa.

AMERICAN ALLIANCE INSURANCE COMPANY

BUSINESS ADDRESS: 580 Walnut Street, Cincinnati, OH 45202. PHONE: (513) 369-
5000. UNDERWRITING LIMITATION ^{b/}: \$712,000. SURETY LICENSES ^{c/}: AL, AK, AS,
AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, MD,
MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI,
SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Arizona.

American Automobile Insurance Company

BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. PHONE: (415) 899-
2000. UNDERWRITING LIMITATION ^{b/}: \$4,427,000. SURETY LICENSES ^{c/}: AL, AK, AZ,
AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA,
MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC,
SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA

BUSINESS ADDRESS: 11222 Quail Roost Dr., Miami, FL 33157. PHONE: (305) 253-
2244. UNDERWRITING LIMITATION ^{b/}: \$3,322,000. SURETY LICENSES ^{c/}: AL, AK, AZ,
AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD,
MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR,
RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Florida.

American Casualty Company of Reading, Pennsylvania

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000.
UNDERWRITING LIMITATION ^{b/}: \$27,814,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR,
CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI,
MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC,
SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

AMERICAN CONTRACTORS INDEMNITY COMPANY

BUSINESS ADDRESS: 9841 Airport Blvd., Suite 1414, Los Angeles, CA 90045.
PHONE: (310) 649-0990. UNDERWRITING LIMITATION ^{b/}: \$291,000. SURETY LICENSES
^{c/}: CA, NM. INCORPORATED IN: California.

See Footnotes/Notes at end of Circular

American Economy Insurance Company

BUSINESS ADDRESS: 500 North Meridian Street, Indianapolis, IN 46204-1275.
PHONE: (317) 262-6262. UNDERWRITING LIMITATION ^{b/}: \$38,424,000. SURETY
LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA,
KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK,
OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN:
Indiana.

American Employers' Insurance Company

BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. PHONE: (617) 725-
6000. UNDERWRITING LIMITATION ^{b/}: \$20,119,000. SURETY LICENSES ^{c/}: AL, AK,
AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD,
MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI,
SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN:
Massachusetts.

American Fidelity Insurance Company

BUSINESS ADDRESS: P.O. Box 25523, Oklahoma City, OK 73125-0523. PHONE: (405)
523-2000. UNDERWRITING LIMITATION ^{b/}: \$2,952,000. SURETY LICENSES ^{c/}: AZ, AR,
CA, CO, GA, ID, IA, KS, LA, MS, MO, MT, NE, NV, NJ, NM, ND, OK, OR, PA, SD,
TN, TX, UT, VA, WA, WI. INCORPORATED IN: Oklahoma.

American Fire and Casualty Company

BUSINESS ADDRESS: 136 North Third Street, Hamilton, OH 45025. PHONE: (513)
867-3000. UNDERWRITING LIMITATION ^{b/}: \$6,345,000. SURETY LICENSES ^{c/}: AL, AR,
CO, DC, FL, GA, KS, KY, LA, MD, MS, NC, SC, TN, TX, VA. INCORPORATED IN:
Ohio.

American Guarantee and Liability Insurance Company

BUSINESS ADDRESS: 1400 American Lane, Schaumburg, IL 60196. PHONE: (847)
605-6000. UNDERWRITING LIMITATION ^{b/}: \$18,478,000. SURETY LICENSES ^{c/}: AL,
AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME,
MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA,
RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

American Home Assurance Company

BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000.
UNDERWRITING LIMITATION ^{b/}: \$170,300,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR,
CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA,
MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC,
SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

American Insurance Company (The)

BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. PHONE: (415) 899-
3200. UNDERWRITING LIMITATION ^{b/}: \$32,834,000. SURETY LICENSES ^{c/}: AL, AK,
AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD,
MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR,
RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

American International Pacific Insurance Company

BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000.
UNDERWRITING LIMITATION ^{b/}: \$1,678,000. SURETY LICENSES ^{c/}: AK, CO, CT, DC,
IA, ME, MD, MA, MS, NE, NH, ND, RI, SD, UT, VT, WV. INCORPORATED IN:
Colorado.

American Manufacturers Mutual Insurance Company

BUSINESS ADDRESS: 1 Kemper Drive, Long Grove, IL 60049-0001. PHONE: (847)
320-2000. UNDERWRITING LIMITATION ^{b/}: \$19,248,000. SURETY LICENSES ^{c/}: AL,
AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME,
MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA,
RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN:
Illinois.

See Footnotes/Notes at end of Circular

American Motorists Insurance Company

BUSINESS ADDRESS: 1 Kemper Drive, Long Grove, IL 60049-0001. PHONE: (847) 320-2000. UNDERWRITING LIMITATION ^{b/}: \$25,311,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

American National Fire Insurance Company

BUSINESS ADDRESS: 580 Walnut Street, Cincinnati, OH 45202. PHONE: (513) 369-5000. UNDERWRITING LIMITATION ^{b/}: \$2,181,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

American Re-Insurance Company

BUSINESS ADDRESS: 555 College Road East, P.O. Box 5241, Princeton, NJ 08543. PHONE: (609) 243-4200. UNDERWRITING LIMITATION ^{b/}: \$110,027,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

AMERICAN RELIABLE INSURANCE COMPANY

BUSINESS ADDRESS: 8655 East Via De Ventura, Scottsdale, AZ 85258. PHONE: (602) 483-8666. UNDERWRITING LIMITATION ^{b/}: \$2,651,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Arizona.

American Safety Casualty Insurance Company

BUSINESS ADDRESS: 1845 The Exchange, Suite 200, Atlanta, GA 30339. PHONE: (770) 916-1908. UNDERWRITING LIMITATION ^{b/}: \$766,000. SURETY LICENSES ^{c/}: AL, AK, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, MD, MN, MS, MO, MT, NE, NV, NM, ND, OH, OK, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI. INCORPORATED IN: Delaware.

American States Insurance Company

BUSINESS ADDRESS: 500 North Meridian Street, Indianapolis, IN 46204-1275. PHONE: (317) 262-6262. UNDERWRITING LIMITATION ^{b/}: \$101,099,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

American Surety and Casualty Company

BUSINESS ADDRESS: P.O. Box 24827, Jacksonville, FL 32241-4827. PHONE: (904) 733-6661. UNDERWRITING LIMITATION ^{b/}: \$427,000. SURETY LICENSES ^{c/}: AL, FL, GA. INCORPORATED IN: Florida.

American Surety Company

BUSINESS ADDRESS: 3901 West 86th Street, Suite 450, Indianapolis, IN 46268-0932. PHONE: (317) 875-8700. UNDERWRITING LIMITATION ^{b/}: \$384,000. SURETY LICENSES ^{c/}: AL, CA, FL, MD, NV, ND, TN, TX. INCORPORATED IN: California.

Amwest Surety Insurance Company

BUSINESS ADDRESS: P.O. Box 4500, Woodland Hills, CA 91365-4500. PHONE: (818) 704-1111. UNDERWRITING LIMITATION ^{b/}: \$3,095,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

Antilles Insurance Company

BUSINESS ADDRESS: P.O. Box 3507, Old San Juan, PR 00902. PHONE: (809) 721-4900. UNDERWRITING LIMITATION ^{b/}: \$1,829,000. SURETY LICENSES ^{c/}: PR. INCORPORATED IN: Puerto Rico.

See Footnotes/Notes at end of Circular

Arkwright Mutual Insurance Company

BUSINESS ADDRESS: 225 Wyman Street, P.O. Box 9198, Waltham, MA 02254-9198.
PHONE: (617) 890-9300. UNDERWRITING LIMITATION *b/*: \$69,488,000. SURETY
LICENSES *c/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA,
KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND,
OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY.
INCORPORATED IN: Massachusetts.

Associated Indemnity Corporation

BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. PHONE: (415) 899-
2000. UNDERWRITING LIMITATION *b/*: \$3,033,000. SURETY LICENSES *c/*: AL, AK, AZ,
AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA,
MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC,
SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

ATLANTIC ALLIANCE FIDELITY AND SURETY COMPANY

BUSINESS ADDRESS: P.O. Box 985, Cherry Hill, NJ 08003. PHONE: (609) 795-
5575. UNDERWRITING LIMITATION *b/*: \$369,000. SURETY LICENSES *c/*: AL, AZ, CT,
DE, DC, FL, GA, IL, KY, MD, MA, MO, NJ, NY, PA, TN, TX. INCORPORATED IN: New
Jersey.

Atlantic Mutual Insurance Company

BUSINESS ADDRESS: 100 Wall Street, New York, NY 10005. PHONE: (212) 943-
1800. UNDERWRITING LIMITATION *b/*: \$28,971,000. SURETY LICENSES *c/*: AK, AS,
AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD,
MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR,
RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New
York.

Auto-Owners Insurance Company

BUSINESS ADDRESS: P.O. Box 30660, Lansing, MI 48909. PHONE: (517) 323-1200.
UNDERWRITING LIMITATION *b/*: \$142,590,000. SURETY LICENSES *c/*: AL, AZ, CO, FL,
GA, IL, IN, IA, KS, KY, MI, MN, MO, NE, NM, NC, ND, OH, OR, SC, SD, TN, TX,
VA, WI. INCORPORATED IN: Michigan.

BANKERS INSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 15707, St. Petersburg, FL 33733-5707. PHONE:
(813) 823-4000. UNDERWRITING LIMITATION *b/*: \$3,037,000. SURETY LICENSES *c/*:
AL, AZ, AR, CA, CT, DE, DC, FL, GA, HI, ID, IL, IA, KY, LA, MD, MS, MO, MT,
NE, NV, NM, NC, OH, OK, PA, SC, SD, TN, TX, VA, WY. INCORPORATED IN: Florida.

BITUMINOUS CASUALTY CORPORATION

BUSINESS ADDRESS: 320 - 18th Street, Rock Island, IL 61201. PHONE: (309)
786-5401 x-268. UNDERWRITING LIMITATION *b/*: \$13,287,000. SURETY LICENSES *c/*:
AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME,
MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI,
SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

BOND SAFEGUARD INSURANCE COMPANY

BUSINESS ADDRESS: 246 E. Janata Blvd., Lombard, IL 60148. PHONE: (708) 495-
9380. UNDERWRITING LIMITATION *b/*: \$417,000. SURETY LICENSES *c/*: IL, IN, KS,
MO, NC, OK, TN, TX. INCORPORATED IN: Illinois.

Boston Old Colony Insurance Company

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000.
UNDERWRITING LIMITATION *b/*: \$1,028,000. SURETY LICENSES *c/*: AL, AK, AZ, AR,
CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI,
MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC,
SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

Buckeye Union Insurance Company (The)

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000.
UNDERWRITING LIMITATION *b/*: \$31,549,000. SURETY LICENSES *c/*: AK, DC, FL, IL,
IN, IA, KS, KY, MD, MI, MO, NY, OH, PA, RI, SD, VA, WV. INCORPORATED IN:
Ohio.

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Capitol Indemnity Corporation

BUSINESS ADDRESS: P.O. Box 5900, Madison, WI 53705-0900. PHONE: (608) 231-4450. UNDERWRITING LIMITATION ^{b/}: \$6,262,000. SURETY LICENSES ^{c/}: AZ, AR, CO, DE, FL, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, MT, NE, NV, NM, ND, OH, OK, OR, PA, SD, TX, UT, WA, WI, WY. INCORPORATED IN: Wisconsin.

Carolina Casualty Insurance Company

BUSINESS ADDRESS: P.O. Box 2575, Jacksonville, FL 32203. PHONE: (904) 363-0900. UNDERWRITING LIMITATION ^{b/}: \$4,917,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Florida.

Centennial Insurance Company

BUSINESS ADDRESS: 100 Wall Street, New York, NY 10005. PHONE: (212) 943-1800. UNDERWRITING LIMITATION ^{b/}: \$16,638,000. SURETY LICENSES ^{c/}: AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

CENTURY SURETY COMPANY

BUSINESS ADDRESS: P.O. Box 163340, Columbus, OH 43216-3340. PHONE: (614) 895-2000. UNDERWRITING LIMITATION ^{b/}: \$2,032,000. SURETY LICENSES ^{c/}: AZ, IN, OH, WV, WI. INCORPORATED IN: Ohio.

Charter Oak Fire Insurance Company (The)

BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION ^{b/}: \$12,717,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Chartwell Reinsurance Company

BUSINESS ADDRESS: 300 Atlantic Street, Suite 400, Stamford, CT 06901. PHONE: (203) 961-7300. UNDERWRITING LIMITATION ^{b/}: \$8,901,000. SURETY LICENSES ^{c/}: AK, AZ, CA, DE, DC, GA, HI, ID, KS, MD, MS, MT, NE, NV, NJ, NM, NY, ND, OH, PA, TN, TX, UT, WA, WI. INCORPORATED IN: Minnesota.

Chatham Reinsurance Corporation

BUSINESS ADDRESS: 100 Campus Drive, Florham Park, NJ 07932-1006. PHONE: (201) 443-0443. UNDERWRITING LIMITATION ^{b/}: \$3,060,000. SURETY LICENSES ^{c/}: AK, AZ, CA, CO, DC, ID, IL, IA, MD, MA, MN, NE, NJ, NY, OK, OR, PA, SC, SD, TX, UT, WA, WI. INCORPORATED IN: California.

CHRISTIANIA GENERAL INSURANCE CORPORATION OF NEW YORK

BUSINESS ADDRESS: 120 White Plains Road, Tarrytown, NY 10591-0005. PHONE: (914) 333-9200. UNDERWRITING LIMITATION ^{b/}: \$10,640,000. SURETY LICENSES ^{c/}: AL, AK, AR, CA, DC, IA, KY, MD, MS, NV, NY, ND, OH, PA, SD, TN, TX, UT, WA, WI, WY. INCORPORATED IN: New York.

CHRYSLER INSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 5168, Southfield, MI 48086-5168. PHONE: (810) 948-3443. UNDERWRITING LIMITATION ^{b/}: \$11,347,000. SURETY LICENSES ^{c/}: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Michigan.

CHUBB INDEMNITY INSURANCE COMPANY

BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (908) 903-2000. UNDERWRITING LIMITATION ^{b/}: \$1,113,000. SURETY LICENSES ^{c/}: AK, AZ, CA, CT, DE, DC, GA, IL, IN, IA, KY, LA, ME, MD, MA, MI, MN, MO, MT, NJ, NY, NC, OH, OK, OR, PA, RI, SC, SD, TN, TX, VA, WA, WI. INCORPORATED IN: New York.

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CIGNA INDEMNITY INSURANCE COMPANY 1

BUSINESS ADDRESS: 1601 Chestnut Street, P.O. Box 7716, Philadelphia, PA 19192. PHONE: (215) 761-1000. UNDERWRITING LIMITATION ^{b/}: \$2,569,000. SURETY LICENSES ^{c/}: AK, AZ, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NJ, NM, NY, OH, OR, PA, RI, SC, SD, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

CIGNA Insurance Company of Illinois

BUSINESS ADDRESS: 8755 West Higgins Rd., Chicago, IL 60631. PHONE: (312) 380-8100. UNDERWRITING LIMITATION ^{b/}: \$3,105,000. SURETY LICENSES ^{c/}: IL. INCORPORATED IN: Illinois.

CIGNA Insurance Company of Texas

BUSINESS ADDRESS: 600 East Las Colinas Blvd., Suite 620, Irving, TX 75039. PHONE: (214) 869-8500. UNDERWRITING LIMITATION ^{b/}: \$3,019,000. SURETY LICENSES ^{c/}: NM, OK, TX. INCORPORATED IN: Texas.

CIGNA Insurance Company of the Midwest

BUSINESS ADDRESS: 9200 Keystone Crossing, P.O. Box 80995, Suite 303, Indianapolis, IN 46240. PHONE: (215) 761-1000. UNDERWRITING LIMITATION ^{b/}: \$2,509,000. SURETY LICENSES ^{c/}: IN. INCORPORATED IN: Indiana.

Cincinnati Casualty Company (The)

BUSINESS ADDRESS: P.O. Box 145496, Cincinnati, OH 45250-5496. PHONE: (513) 870-2000. UNDERWRITING LIMITATION ^{b/}: \$10,684,000. SURETY LICENSES ^{c/}: AL, AZ, CO, FL, GA, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, NE, NM, NC, OH, OK, PA, SC, SD, TN, TX, UT, VA, WV, WI, WY. INCORPORATED IN: Ohio.

Cincinnati Insurance Company (The)

BUSINESS ADDRESS: P.O. Box 145496, Cincinnati, OH 45250-5496. PHONE: (513) 870-2000. UNDERWRITING LIMITATION ^{b/}: \$113,660,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

COLONIAL AMERICAN CASUALTY AND SURETY COMPANY

BUSINESS ADDRESS: 210 North Charles Street, Baltimore, MD 21201. PHONE: (410) 539-0800. UNDERWRITING LIMITATION ^{b/}: \$1,563,000. SURETY LICENSES ^{c/}: DC, FL, IL, IN, IA, KS, MD, MI, MO, NJ, NY, OH, OK, TN, TX, VA. INCORPORATED IN: Maryland.

COLONIAL SURETY COMPANY

BUSINESS ADDRESS: 50 Chestnut Ridge Road, Montvale, NJ 07645. PHONE: (201) 573-8788. UNDERWRITING LIMITATION ^{b/}: \$256,000. SURETY LICENSES ^{c/}: CT, DE, DC, MD, MA, NJ, NM, NY, PA. INCORPORATED IN: Pennsylvania.

Commercial Casualty Insurance Company of Georgia

BUSINESS ADDRESS: 160 Technology Parkway, Norcross, GA 30092-2911. PHONE: (770) 729-8101. UNDERWRITING LIMITATION ^{b/}: \$ 725,000. SURETY LICENSES ^{c/}: FL, GA. INCORPORATED IN: Georgia.

Commercial Insurance Company of Newark, New Jersey

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION ^{b/}: \$4,035,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Jersey.

Commercial Union Insurance Company

BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. PHONE: (617) 725-6000. UNDERWRITING LIMITATION ^{b/}: \$48,884,000. SURETY LICENSES ^{c/}: AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

CONNECTICUT INDEMNITY COMPANY (THE)

BUSINESS ADDRESS: P.O. Box 420, Hartford, CT 06141. PHONE: (860) 674-6600. UNDERWRITING LIMITATION ^{b/}: \$5,925,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Connecticut Surety Company (The)

BUSINESS ADDRESS: City Place II 185 Asylum Street, Hartford, CT 06103-3403. PHONE: (860) 527-7806. UNDERWRITING LIMITATION ^{b/}: \$942,000. SURETY LICENSES ^{c/}: AR, CA, CT, DE, DC, LA, NE, NY, ND, OH, PA, SC, TX. INCORPORATED IN: Connecticut.

Continental Casualty Company

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION ^{b/}: \$350,353,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Continental Insurance Company (The)

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION ^{b/}: \$43,603,000. SURETY LICENSES ^{c/}: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

CONTINENTAL INSURANCE COMPANY OF PUERTO RICO (THE)

BUSINESS ADDRESS: B 2 Calle Tabonuco, PMC - Suite 431, Guaynabo, PR 00968-3004. PHONE: (809) 793-6111. UNDERWRITING LIMITATION ^{b/}: \$14,266,000. SURETY LICENSES ^{c/}: PR. INCORPORATED IN: Puerto Rico.

Continental Reinsurance Corporation

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION ^{b/}: \$21,227,000. SURETY LICENSES ^{c/}: AK, AZ, AR, CA, CO, DC, FL, HI, ID, IL, IN, IA, LA, MI, MS, MT, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, TX, UT, VA, WA, WY. INCORPORATED IN: California.

Continental Western Insurance Company

BUSINESS ADDRESS: P.O. Box 1594, Des Moines, IA 50306. PHONE: (515) 278-3000. UNDERWRITING LIMITATION ^{b/}: \$8,110,000. SURETY LICENSES ^{c/}: AZ, AR, CO, ID, IL, IN, IA, KS, KY, ME, MI, MN, MS, MO, MT, NE, NV, NM, ND, OH, OK, OR, SD, TN, TX, UT, VA, WI, WY. INCORPORATED IN: Iowa.

CONTRACTORS BONDING AND INSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 9271, Seattle, WA 98109-0271. PHONE: (206) 622-7053. UNDERWRITING LIMITATION ^{b/}: \$1,878,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Washington.

Cooperativa de Seguros Multiples de Puerto Rico

BUSINESS ADDRESS: G.P.O. Box 363846, San Juan, PR 00936-3846. PHONE: (809) 758-8585. UNDERWRITING LIMITATION ^{b/}: \$10,372,000. SURETY LICENSES ^{c/}: PR. INCORPORATED IN: Puerto Rico.

See Footnotes/Notes at end of Circular

CREDIT GENERAL INSURANCE COMPANY

BUSINESS ADDRESS: 3201 Enterprise Pkwy, Beachwood, OH 44122. PHONE: (216) 778-6920. UNDERWRITING LIMITATION ^{b/}: \$2,173,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NM, ND, OH, OK, PA, SC, SD, TN, UT, VA, WA, WV, WI. INCORPORATED IN: Ohio.

CUMBERLAND CASUALTY & SURETY COMPANY

BUSINESS ADDRESS: 4311 West Waters Avenue, Suite 401, Tampa, FL 33614. PHONE: (813) 885-2112. UNDERWRITING LIMITATION ^{b/}: \$513,000. SURETY LICENSES ^{c/}: DE, DC, FL, GA, GU, ID, IN, LA, MD, MA, MO, MT, NE, NV, ND, OR, SC, SD, TX, WY. INCORPORATED IN: Florida.

Cumberland Surety Insurance Company, Inc.

BUSINESS ADDRESS: 367 West Short Street, Lexington, KY 40507. PHONE: (800) 767-8622. UNDERWRITING LIMITATION ^{b/}: \$269,000. SURETY LICENSES ^{c/}: DC, FL, IL, IN, KY, MS, OH, TN. INCORPORATED IN: Kentucky.

CUMIS INSURANCE SOCIETY, INC.

BUSINESS ADDRESS: Post Office Box 1084, Madison, WI 53701. PHONE: (608) 238-5851. UNDERWRITING LIMITATION ^{b/}: \$21,667,000. SURETY LICENSES ^{c/}: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

DAIRYLAND INSURANCE COMPANY

BUSINESS ADDRESS: 1800 North Point Drive, Stevens Point, WI 54481. PHONE: (715) 346-6000. UNDERWRITING LIMITATION ^{b/}: \$7,378,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, DE, FL, GA, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

DEVELOPERS INSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 19725, Irvine, CA 92713. PHONE: (714) 263-3300. UNDERWRITING LIMITATION ^{b/}: \$678,000. SURETY LICENSES ^{c/}: AK, AZ, CA, HI, ID, NV, OR, UT, WA. INCORPORATED IN: California.

Developers Surety and Indemnity Company

BUSINESS ADDRESS: 1603 22nd Street Suite 200, West Des Moines, IA 50266. PHONE: (515) 267-9070. UNDERWRITING LIMITATION ^{b/}: \$524,000. SURETY LICENSES ^{c/}: AZ, CO, DC, ID, IL, IA, KS, MN, MO, MT, NE, NM, ND, OK, SD, WI, WY. INCORPORATED IN: Iowa.

DIAMOND STATE INSURANCE COMPANY

BUSINESS ADDRESS: Three Bala Plaza East, Suite 300, Bala Cynwyd, PA 19004. PHONE: (610) 664-1500. UNDERWRITING LIMITATION ^{b/}: \$2,535,000. SURETY LICENSES ^{c/}: AL, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NC, ND, OH, OK, OR, RI, SC, SD, TN, UT, VT, VA, WA, WV, WY. INCORPORATED IN: Indiana.

Empire Fire and Marine Insurance Company

BUSINESS ADDRESS: 1624 Douglas Street, Omaha, NE 68102. PHONE: (402) 341-0135. UNDERWRITING LIMITATION ^{b/}: \$11,532,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, DE, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

EMPLOYERS INSURANCE OF WAUSAU A Mutual Company

BUSINESS ADDRESS: P.O. Box 8017, Wausau, WI 54402-8017. PHONE: (715) 845-5211. UNDERWRITING LIMITATION ^{b/}: \$43,790,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

Employers Mutual Casualty Company

BUSINESS ADDRESS: P.O. Box 712, Des Moines, IA 50303-0712. PHONE: (515) 280-2511. UNDERWRITING LIMITATION ^{b/}: \$35,930,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

Employers Reinsurance Corporation

BUSINESS ADDRESS: P.O. Box 2991, Overland Park, KS 66201-1391. PHONE: (913) 676-5200. UNDERWRITING LIMITATION ^{b/}: \$323,598,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

EMPLOYERS' FIRE INSURANCE COMPANY (THE)

BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. PHONE: (617) 725-6000. UNDERWRITING LIMITATION ^{b/}: \$7,535,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

Erie Insurance Company

BUSINESS ADDRESS: 100 Erie Insurance Place, Erie, PA 16530. PHONE: (814) 870-2000. UNDERWRITING LIMITATION ^{b/}: \$4,672,000. SURETY LICENSES ^{c/}: DC, IN, KY, MD, NY, NC, OH, PA, TN, VA, WV. INCORPORATED IN: Pennsylvania.

Everest Reinsurance Company

BUSINESS ADDRESS: 3 Gateway Center, Newark, NJ 07102-4082. PHONE: (201) 802-8000. UNDERWRITING LIMITATION ^{b/}: \$54,464,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WI. INCORPORATED IN: Delaware.

Evergreen National Indemnity Company

BUSINESS ADDRESS: P.O. Box 18295, Columbus, OH 43218. PHONE: (614) 895-1773. UNDERWRITING LIMITATION ^{b/}: \$1,077,000. SURETY LICENSES ^{c/}: AL, AK, CO, DE, DC, GA, ID, IA, KY, MI, MN, MT, NJ, NM, ND, OH, OK, PA, SC, SD, TN, UT, WA, WI. INCORPORATED IN: Ohio.

EXPLORER INSURANCE COMPANY (THE)

BUSINESS ADDRESS: P.O. Box 85563, San Diego, CA 92186-5563. PHONE: (619) 546-2400. UNDERWRITING LIMITATION ^{b/}: \$2,041,000. SURETY LICENSES ^{c/}: AZ, CA, ID, IL, IA, MT, NV, NM, OR, TX, UT, WA. INCORPORATED IN: Arizona.

FAR WEST INSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 4500, Woodland Hills, CA 91365-4500. PHONE: (818) 704-1111. UNDERWRITING LIMITATION ^{b/}: \$587,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, DE, DC, HI, ID, IL, IN, IA, KS, KY, MD, MA, MN, MO, MT, NE, NV, NJ, NM, NC, ND, OH, OR, PA, RI, SC, SD, TX, UT, WA, WI, WY. INCORPORATED IN: Nebraska.

Farmers Alliance Mutual Insurance Company

BUSINESS ADDRESS: 1122 North Main Street, McPherson, KS 67460. PHONE: (316) 241-2200. UNDERWRITING LIMITATION ^{b/}: \$5,819,000. SURETY LICENSES ^{c/}: AZ, CO, ID, IN, IA, KS, MN, MO, MT, NE, NM, ND, OK, SD, TX, WY. INCORPORATED IN: Kansas.

Farmington Casualty Company

BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-9062. PHONE: (860) 277-0111. UNDERWRITING LIMITATION ^{b/}: \$13,035,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

See Footnotes/Notes at end of Circular

Farmland Mutual Insurance Company

BUSINESS ADDRESS: 1963 Bell Avenue, Des Moines, IA 50315. PHONE: (515) 245-8800. UNDERWRITING LIMITATION ^{b/}: \$6,493,000. SURETY LICENSES ^{c/}: CO, ID, IL, IN, IA, KS, KY, MI, MN, MS, MO, MT, NE, NV, ND, OH, OK, OR, SC, SD, TX, UT, WA, WI, WY. INCORPORATED IN: Iowa.

Federal Insurance Company

BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (908) 903-2000. UNDERWRITING LIMITATION ^{b/}: \$226,745,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Indiana.

FEDERATED MUTUAL INSURANCE COMPANY

BUSINESS ADDRESS: 121 East Park Square, Owatonna, MN 55060. PHONE: (507) 455-5200. UNDERWRITING LIMITATION ^{b/}: \$61,810,000. SURETY LICENSES ^{c/}: AL, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

Fidelity and Casualty Company of New York (The)

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION ^{b/}: \$13,868,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

Fidelity and Deposit Company of Maryland

BUSINESS ADDRESS: 210 North Charles Street, Baltimore, MD 21201. PHONE: (410) 539-0800. UNDERWRITING LIMITATION ^{b/}: \$26,458,000. SURETY LICENSES ^{c/}: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Maryland.

FIDELITY AND GUARANTY INSURANCE COMPANY

BUSINESS ADDRESS: TW3001, P.O. Box 1138, Baltimore, MD 21203-1138. PHONE: (410) 547-3000. UNDERWRITING LIMITATION ^{b/}: \$1,254,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

Fidelity and Guaranty Insurance Underwriters, Inc.

BUSINESS ADDRESS: TW3001, P.O. Box 1138, Baltimore, MD 21203-1138. PHONE: (410) 547-3000. UNDERWRITING LIMITATION ^{b/}: \$1,538,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, ME, MD, MA, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

Financial Pacific Insurance Company

BUSINESS ADDRESS: P.O. Box 292220, Sacramento, CA 95829-2220. PHONE: (916) 381-8067. UNDERWRITING LIMITATION ^{b/}: \$1,239,000. SURETY LICENSES ^{c/}: CA, OR. INCORPORATED IN: California.

Fireman's Fund Insurance Company

BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. PHONE: (415) 899-2000. UNDERWRITING LIMITATION ^{b/}: \$186,323,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: California.

Firemen's Insurance Company of Newark, New Jersey

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000.
UNDERWRITING LIMITATION ^{b/}: \$30,962,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR,
CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI,
MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD,
TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Jersey.

First Community Insurance Company

BUSINESS ADDRESS: 360 Central Avenue, St. Petersburg, FL 33701. PHONE: (813)
823-4000. UNDERWRITING LIMITATION ^{b/}: \$751,000. SURETY LICENSES ^{c/}: AL, AZ,
DC, FL, HI, ID, IL, IN, IA, KS, KY, MD, MA, MS, MT, NE, NV, NH, NJ, NM, NY,
NC, ND, OH, OK, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED
IN: New York.

First Excess and Reinsurance Corporation

BUSINESS ADDRESS: P.O. Box 419369, Kansas City, MO 64141-6369. PHONE: (913)
676-5520. UNDERWRITING LIMITATION ^{b/}: \$23,689,000. SURETY LICENSES ^{c/}: AK,
AZ, CA, CT, DC, GA, ID, IL, IN, IA, KS, KY, MI, MS, MO, MT, NE, NM, NY, OH,
OK, SD, TX, WA, WV, WI. INCORPORATED IN: Missouri.

FIRST FINANCIAL INSURANCE COMPANY

BUSINESS ADDRESS: 238 Smith School Road, Burlington, NC 27215. PHONE: (910)
538-2800. UNDERWRITING LIMITATION ^{b/}: \$3,041,000. SURETY LICENSES ^{c/}: AL, AK,
AZ, AR, CA, CO, DE, FL, GA, HI, ID, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO,
MT, NE, NV, NM, NY, ND, OH, OR, RI, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY.
INCORPORATED IN: Illinois.

First Insurance Company of Hawaii, Ltd.

BUSINESS ADDRESS: P.O. Box 2866, Honolulu, HI 96803. PHONE: (808) 527-7777.
UNDERWRITING LIMITATION ^{b/}: \$8,373,000. SURETY LICENSES ^{c/}: GU, HI.
INCORPORATED IN: Hawaii.

First Liberty Insurance Corporation (The)

BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. PHONE: (617) 357-
9500. UNDERWRITING LIMITATION ^{b/}: \$1,408,000. SURETY LICENSES ^{c/}: AL, AK, AZ,
AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA,
MI, MN, MS, MO, MT, NE, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD,
TN, TX, UT, VT, VA, VI, WV, WI, WY. INCORPORATED IN: Iowa.

First National Insurance Company of America

BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545-5000.
UNDERWRITING LIMITATION ^{b/}: \$7,410,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR,
CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN,
MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX,
UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Washington.

FRONTIER INSURANCE COMPANY 2

BUSINESS ADDRESS: 195 Lake Louise Marie Road, Rock Hill, NY 12775-8000.
PHONE: (914) 796-2100. UNDERWRITING LIMITATION ^{b/}: \$12,546,000. SURETY
LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA,
KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND,
OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY.
INCORPORATED IN: New York.

Frontier Pacific Insurance Company

BUSINESS ADDRESS: 4250 Executive Square, Suite 200, La Jolla, CA 92037.
PHONE: (619) 642-5000. UNDERWRITING LIMITATION ^{b/}: \$1,716,000. SURETY
LICENSES ^{c/}: CA, NV. INCORPORATED IN: California.

GENERAL ACCIDENT INSURANCE COMPANY (PUERTO RICO) LIMITED

BUSINESS ADDRESS: P.O. Box 363786, San Juan, PR 00936-3786. PHONE: (809)
765-8700. UNDERWRITING LIMITATION ^{b/}: \$6,035,000. SURETY LICENSES ^{c/}: PR, VI.
INCORPORATED IN: Puerto Rico.

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GENERAL ACCIDENT INSURANCE COMPANY OF AMERICA

BUSINESS ADDRESS: 436 Walnut Street, P.O. Box 1109, Philadelphia, PA 19105-1109. PHONE: (215) 625-1000. UNDERWRITING LIMITATION ^{b/}: \$139,650,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

General Insurance Company of America

BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION ^{b/}: \$69,298,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Washington.

General Reinsurance Corporation

BUSINESS ADDRESS: 695 East Main Street, P.O. Box 10350, Stamford, CT 06904-2350. PHONE: (203) 328-5000. UNDERWRITING LIMITATION ^{b/}: \$459,667,000. SURETY LICENSES ^{c/}: AL, AK, AZ, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Glens Falls Insurance Company (The)

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION ^{b/}: \$1,469,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Global Surety & Insurance Co.

BUSINESS ADDRESS: 3555 Farnam Street, Omaha, NE 68131. PHONE: (402) 271-2846. UNDERWRITING LIMITATION ^{b/}: \$1,795,000. SURETY LICENSES ^{c/}: AZ, CA, CO, NE. INCORPORATED IN: Nebraska.

Grain Dealers Mutual Insurance Company

BUSINESS ADDRESS: P.O. Box 1747, Indianapolis, IN 46206. PHONE: (317) 923-2453. UNDERWRITING LIMITATION ^{b/}: \$2,922,000. SURETY LICENSES ^{c/}: AZ, AR, CO, GA, IL, IN, IA, KS, KY, LA, MN, MS, MO, NE, NV, NM, NC, OH, OK, OR, SD, TN, TX, VA, WA, WI, WY. INCORPORATED IN: Indiana.

GRAMERCY INSURANCE COMPANY

BUSINESS ADDRESS: 110 South French Street, #404, Wilmington, DE 19801. PHONE: (302) 571-0525. UNDERWRITING LIMITATION ^{b/}: \$217,000. SURETY LICENSES ^{c/}: DE, LA, MD, NM, OK, TX. INCORPORATED IN: Delaware.

GRANITE RE, INC.

BUSINESS ADDRESS: P.O. Box 26967, Oklahoma City, OK 73126. PHONE: (405) 524-7811. UNDERWRITING LIMITATION ^{b/}: \$140,000. SURETY LICENSES ^{c/}: MN, ND, OK, SD. INCORPORATED IN: Oklahoma.

Granite State Insurance Company

BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION ^{b/}: \$1,705,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Great American Insurance Company

BUSINESS ADDRESS: 580 Walnut Street, Cincinnati, OH 45202. PHONE: (513) 369-5000. UNDERWRITING LIMITATION ^{b/}: \$71,514,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

See Footnotes/Notes at end of Circular

Great Northern Insurance Company

BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615.
 PHONE: (908) 903-2000. UNDERWRITING LIMITATION ^{b/}: \$10,489,000. SURETY
 LICENSES ^{c/}: AL, AK, AZ, AR, CO, CT, DC, FL, GA, HI, IL, IN, IA, KS, KY, LA,
 ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, ND, OH, OK, OR, PA,
 RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

Gulf Insurance Company

BUSINESS ADDRESS: P.O. Box 1771, Dallas, TX 75221-1771. PHONE: (214) 650-
 2800. UNDERWRITING LIMITATION ^{b/}: \$26,918,000. SURETY LICENSES ^{c/}: AL, AK,
 AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME,
 MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA,
 PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN:
 Missouri.

Hamilton Mutual Insurance Company of Cincinnati, Ohio (The)

BUSINESS ADDRESS: 1520 Madison Road, Cincinnati, OH 45206-1787. PHONE: (513)
 221-6010. UNDERWRITING LIMITATION ^{b/}: \$500,000. SURETY LICENSES ^{c/}: IN, KY,
 MI, OH, TN. INCORPORATED IN: Ohio.

Hanover Insurance Company (The)

BUSINESS ADDRESS: 100 North Parkway, Worcester, MA 01605. PHONE: (508) 853-
 7200. UNDERWRITING LIMITATION ^{b/}: \$98,953,000. SURETY LICENSES ^{c/}: AL, AK,
 AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD,
 MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI,
 SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

HARCO NATIONAL INSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 68309, Schaumburg, IL 60168-0309. PHONE: (847)
 734-4100. UNDERWRITING LIMITATION ^{b/}: \$4,725,000. SURETY LICENSES ^{c/}: AL, AK,
 AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA,
 MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC,
 SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Harleysville Mutual Insurance Company

BUSINESS ADDRESS: 355 Maple Avenue, Harleysville, PA 19438-2297. PHONE:
 (215) 256-5000. UNDERWRITING LIMITATION ^{b/}: \$30,707,000. SURETY LICENSES ^{c/}:
 AR, CA, CO, DE, DC, GA, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, NJ, NM, NC,
 OH, PA, SC, TN, TX, UT, VA, WV, WI. INCORPORATED IN: Pennsylvania.

Hartford Accident and Indemnity Company

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000.
 UNDERWRITING LIMITATION ^{b/}: \$176,288,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR,
 CA, CO, CT, DE, DC, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN,
 MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD,
 TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Hartford Casualty Insurance Company

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000.
 UNDERWRITING LIMITATION ^{b/}: \$28,507,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR,
 CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI,
 MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD,
 TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Hartford Fire Insurance Company

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (203) 547-5000.
 UNDERWRITING LIMITATION ^{b/}: \$360,512,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR,
 CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA,
 MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI,
 SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Hartford Insurance Company of Illinois

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000.
 UNDERWRITING LIMITATION ^{b/}: \$38,490,000. SURETY LICENSES ^{c/}: IL, PA.
 INCORPORATED IN: Illinois.

See Footnotes/Notes at end of Circular

Hartford Insurance Company of the Midwest

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000.
UNDERWRITING LIMITATION ^{b/}: \$4,120,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, CT, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MT, NE, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Hartford Insurance Company of the Southeast

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000.
UNDERWRITING LIMITATION ^{b/}: \$2,405,000. SURETY LICENSES ^{c/}: CT, FL, GA, LA, PA. INCORPORATED IN: Florida.

Hartford Underwriters Insurance Company

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000.
UNDERWRITING LIMITATION ^{b/}: \$20,895,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Heritage Mutual Insurance Company ²

BUSINESS ADDRESS: 2800 South Taylor Drive, P.O. Box 58, Sheboygan, WI 53082-0058. PHONE: (414) 458-9131. UNDERWRITING LIMITATION ^{b/}: \$7,291,000. SURETY LICENSES ^{c/}: AZ, AR, CO, DE, FL, GA, ID, IL, IN, IA, KS, KY, MI, MN, MO, NE, NV, ND, OH, OR, PA, SD, TN, TX, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

Highlands Insurance Company

BUSINESS ADDRESS: 10370 Richmond Avenue, Houston, TX 77042-4123. PHONE: (713) 952-9555. UNDERWRITING LIMITATION ^{b/}: \$12,010,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Texas.

Highlands Underwriters Insurance Company

BUSINESS ADDRESS: 10370 Richmond Avenue, Houston, TX 77042-4123. PHONE: (713) 952-9555. UNDERWRITING LIMITATION ^{b/}: \$3,005,000. SURETY LICENSES ^{c/}: AK, AZ, AR, CA, FL, GA, ME, MS, NM, OR, TX. INCORPORATED IN: Texas.

Houston General Insurance Company

BUSINESS ADDRESS: P.O. Box 2932, Fort Worth, TX 76113-2932. PHONE: (817) 377-6000. UNDERWRITING LIMITATION ^{b/}: \$4,476,000. SURETY LICENSES ^{c/}: AL, AK, AZ, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, MT, NJ, NM, NY, NC, ND, OH, OR, PA, SC, SD, TN, TX, UT, VA, WA, WI, WY. INCORPORATED IN: Texas.

ILLINOIS NATIONAL INSURANCE CO.

BUSINESS ADDRESS: 500 West Madison Street, Chicago, IL 60606-2511. PHONE: (312) 930-5417. UNDERWRITING LIMITATION ^{b/}: \$2,293,000. SURETY LICENSES ^{c/}: AK, IL, IN, IA, KY, MD, MI, MO, MT, NE, NV, NH, NM, NY, ND, OH, RI, SD, TX, UT, VT, WV, WY. INCORPORATED IN: Illinois.

Indemnity Company of California

BUSINESS ADDRESS: P.O. Box 19725, Irvine, CA 92713. PHONE: (714) 263-3300. UNDERWRITING LIMITATION ^{b/}: \$1,098,000. SURETY LICENSES ^{c/}: AK, AZ, CA, HI, ID, NV, OR, UT, WA. INCORPORATED IN: California.

Indemnity Insurance Company of North America ⁴

BUSINESS ADDRESS: 1601 Chestnut St., P.O. Box 7716, Philadelphia, PA 19192. PHONE: (215) 761-1000. UNDERWRITING LIMITATION ^{b/}: \$27,688,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

See Footnotes/Notes at end of Circular

Independence Casualty and Surety Company

BUSINESS ADDRESS: P.O. Box 85563, San Diego, CA 92186-5563. PHONE: (619) 546-2400. UNDERWRITING LIMITATION ^{b/}: \$219,000. SURETY LICENSES ^{c/}: TX. INCORPORATED IN: Texas.

Indiana Lumbermens Mutual Insurance Company

BUSINESS ADDRESS: P.O. Box 68600, Indianapolis, IN 46268-1168. PHONE: (800) 428-1441 x-710. UNDERWRITING LIMITATION ^{b/}: \$2,524,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Inland Insurance Company

BUSINESS ADDRESS: P.O. Box 80468, Lincoln, NE 68501. PHONE: (402) 435-4302. UNDERWRITING LIMITATION ^{b/}: \$4,920,000. SURETY LICENSES ^{c/}: AZ, CO, IA, KS, MN, MT, NE, ND, OK, SD, WY. INCORPORATED IN: Nebraska.

Insurance Company of North America

BUSINESS ADDRESS: 1601 Chestnut St., P.O. Box 7716, Philadelphia, PA 19192. PHONE: (215) 761-1000. UNDERWRITING LIMITATION ^{b/}: \$30,492,000. SURETY LICENSES ^{c/}: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Insurance Company of the State of Pennsylvania

BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION ^{b/}: \$51,806,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Insurance Company of the West

BUSINESS ADDRESS: P.O. Box 85563, San Diego, CA 92186-5563. PHONE: (619) 546-2400. UNDERWRITING LIMITATION ^{b/}: \$15,722,000. SURETY LICENSES ^{c/}: AK, AZ, CA, CO, HI, ID, IL, IA, KS, KY, MD, MI, MN, MS, MO, MT, NE, NV, NM, NC, OH, OK, OR, RI, SC, SD, TN, TX, UT, VA, WA, WI, WY. INCORPORATED IN: California.

Insurers Indemnity Company

BUSINESS ADDRESS: P.O. Box 23004, Waco, TX 76702-3004. PHONE: (817) 750-8128. UNDERWRITING LIMITATION ^{b/}: \$207,000. SURETY LICENSES ^{c/}: TX. INCORPORATED IN: Texas.

INTEGRAND ASSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 70128, San Juan, PR 00936-8128. PHONE: (787) 781-0707 x-269. UNDERWRITING LIMITATION ^{b/}: \$3,739,000. SURETY LICENSES ^{c/}: PR, VI. INCORPORATED IN: Puerto Rico.

Intercargo Insurance Company

BUSINESS ADDRESS: 1450 East American Lane, 20th Floor, Schaumburg, IL 60173. PHONE: (847) 517-2990. UNDERWRITING LIMITATION ^{b/}: \$2,664,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, VI, WA, WI, WY. INCORPORATED IN: Illinois.

International Business & Mercantile REassurance Company

BUSINESS ADDRESS: 307 N. Michigan Ave., Chicago, IL 60601. PHONE: (312) 346-8100. UNDERWRITING LIMITATION ^{b/}: \$8,896,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

International Fidelity Insurance Company

BUSINESS ADDRESS: One Newark Center, 20th Floor, Newark, NJ 07102-5207.
PHONE: (201) 624-7200 x-226. UNDERWRITING LIMITATION ^{b/}: \$3,035,000. SURETY
LICENSES ^{c/}: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS,
KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK,
OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WY. INCORPORATED IN: New
Jersey.

ISLAND INSURANCE COMPANY, LIMITED

BUSINESS ADDRESS: P.O. Box 1520, Honolulu, HI 96806. PHONE: (808) 531-1311.
UNDERWRITING LIMITATION ^{b/}: \$8,481,000. SURETY LICENSES ^{c/}: HI. INCORPORATED
IN: Hawaii.

ITT Lyndon Property Insurance Company ⁵**John Deere Insurance Company**

BUSINESS ADDRESS: 3400 80th Street, Moline, IL 61265. PHONE: (800) 447-0633.
UNDERWRITING LIMITATION ^{b/}: \$11,898,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR,
CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI,
MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD,
TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Kansas Bankers Surety Company (The)

BUSINESS ADDRESS: P. O. Box 1654, Topeka, KS 66601-1654. PHONE: (913) 234-
2631. UNDERWRITING LIMITATION ^{b/}: \$4,275,000. SURETY LICENSES ^{c/}: AR, CO, ID,
IL, IN, IA, KS, KY, MI, MN, MO, MT, NE, NM, ND, OK, SD, TN, WI, WY.
INCORPORATED IN: Kansas.

Kansas City Fire and Marine Insurance Company

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000.
UNDERWRITING LIMITATION ^{b/}: \$1,613,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR,
CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN,
MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN,
TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

KEMPER REINSURANCE COMPANY

BUSINESS ADDRESS: 1 Kemper Drive, Long Grove, IL 60049. PHONE: (847) 320-
2600. UNDERWRITING LIMITATION ^{b/}: \$46,027,000. SURETY LICENSES ^{c/}: AL, AK,
AZ, AR, CA, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, NE,
NV, NJ, NM, OH, OK, OR, PA, RI, TN, UT, WA, WI. INCORPORATED IN: Illinois.

Liberty Mutual Insurance Company

BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. PHONE: (617) 357-
9500. UNDERWRITING LIMITATION ^{b/}: \$281,809,000. SURETY LICENSES ^{c/}: AL, AK,
AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD,
MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR,
RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN:
Massachusetts.

Lincoln General Insurance Company

BUSINESS ADDRESS: 3350 Whiteford Road, York, PA 17402. PHONE: (717) 757-
0000. UNDERWRITING LIMITATION ^{b/}: \$2,266,000. SURETY LICENSES ^{c/}: AL, CO, DE,
GA, ID, IN, IA, KS, KY, LA, ME, MD, MN, MS, MO, MT, NE, NV, NJ, NM, NC, ND,
OH, OK, OR, PA, SC, SD, TN, UT, VA, WA, WV, WI, WY. INCORPORATED IN:
Pennsylvania.

LM Insurance Corporation

BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. PHONE: (617) 357-
9500. UNDERWRITING LIMITATION ^{b/}: \$1,408,000. SURETY LICENSES ^{c/}: AL, AK, AZ,
AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA,
MI, MN, MS, MO, MT, NE, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD,
TN, TX, UT, VT, VA, VI, WV, WI, WY. INCORPORATED IN: Iowa.

London Assurance of America Inc. (The)

BUSINESS ADDRESS: 25 Independence Blvd., Warren, NJ 07059. PHONE: (212) 753-8130. UNDERWRITING LIMITATION ^{b/}: \$24,363,000. SURETY LICENSES ^{c/}: AK, IA, ME, MI, MN, NJ, NY, ND, OH, UT, VT. INCORPORATED IN: New York.

Lumbermens Mutual Casualty Company

BUSINESS ADDRESS: 1 Kemper Drive, Long Grove, IL 60049-0001. PHONE: (847) 320-2000. UNDERWRITING LIMITATION ^{b/}: \$80,330,000. SURETY LICENSES ^{c/}: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Lyndon Property Insurance Company ²

BUSINESS ADDRESS: 645 Maryville Centre Drive, St. Louis, MO 63141. PHONE: (314) 275-5200. UNDERWRITING LIMITATION ^{b/}: \$4,251,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

MARKEL INSURANCE COMPANY

BUSINESS ADDRESS: Shand Morahan Plaza, Evanston, IL 60201. PHONE: (847) 866-2800. UNDERWRITING LIMITATION ^{b/}: \$3,905,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Massachusetts Bay Insurance Company

BUSINESS ADDRESS: 100 North Parkway, Worcester, MA 01605. PHONE: (508) 853-7200. UNDERWRITING LIMITATION ^{b/}: \$1,582,000. SURETY LICENSES ^{c/}: AL, AR, CA, CO, CT, DC, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NH, NJ, NY, NC, OH, OK, OR, PA, RI, SC, TN, TX, VT, VA, WA, WV, WI. INCORPORATED IN: New Hampshire.

Merchants Bonding Company (Mutual)

BUSINESS ADDRESS: 2100 Fleur Drive, Des Moines, IA 50321-1158. PHONE: (515) 243-8171. UNDERWRITING LIMITATION ^{b/}: \$1,504,000. SURETY LICENSES ^{c/}: AL, AZ, AR, CA, CO, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WI, WY. INCORPORATED IN: Iowa.

Michigan Millers Mutual Insurance Company

BUSINESS ADDRESS: P.O. Box 30060, Lansing, MI 48909-7560. PHONE: (517) 482-6211. UNDERWRITING LIMITATION ^{b/}: \$6,900,000. SURETY LICENSES ^{c/}: AZ, AR, CA, CO, ID, IN, KS, KY, MI, MO, NE, NY, NC, OH, OK, PA, VA, WI. INCORPORATED IN: Michigan.

Mid-Century Insurance Company

BUSINESS ADDRESS: P. O. Box 2478, Terminal Annex, Los Angeles, CA 90051. PHONE: (213) 932-3200. UNDERWRITING LIMITATION ^{b/}: \$51,474,000. SURETY LICENSES ^{c/}: AZ, AR, CA, CO, FL, GA, ID, IL, IN, IA, KS, KY, MI, MN, MO, MT, NE, NV, NM, NY, ND, OH, OK, OR, SD, TN, TX, UT, VT, VA, WA, WI, WY. INCORPORATED IN: California.

MID-CONTINENT CASUALTY COMPANY

BUSINESS ADDRESS: P.O. Box 1409, Tulsa, OK 74101. PHONE: (918) 587-7221 x-200. UNDERWRITING LIMITATION ^{b/}: \$5,505,000. SURETY LICENSES ^{c/}: AL, AZ, AR, CO, IL, IN, IA, KS, MN, MS, MO, MT, NE, NM, ND, OK, TX, UT, WA. INCORPORATED IN: Oklahoma.

Mid-State Surety Corporation

BUSINESS ADDRESS: 3400 East Lafayette, Detroit, MI 48207. PHONE: (313) 882-7979. UNDERWRITING LIMITATION ^{b/}: \$599,000. SURETY LICENSES ^{c/}: KY, MI, OH, PA. INCORPORATED IN: Michigan.

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MIDWESTERN INDEMNITY COMPANY (THE) 6

BUSINESS ADDRESS: 1700 Edison Drive, Milford, OH 45150. PHONE: (513) 576-3200. UNDERWRITING LIMITATION *b/*: \$2,034,000. SURETY LICENSES *c/*: AL, GA, IL, IA, KS, KY, MI, MN, MS, MO, NE, NJ, NC, OH, PA, TN, VA, WV, WI. INCORPORATED IN: Ohio.

Millers Mutual Fire Insurance Company (The)

BUSINESS ADDRESS: P.O. Box 2269, Fort Worth, TX 76113-2269. PHONE: (817) 332-7761. UNDERWRITING LIMITATION *b/*: \$5,661,000. SURETY LICENSES *c/*: AL, AZ, AR, CA, CO, DC, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, MT, NE, NM, ND, OH, OK, OR, SC, SD, TN, TX, UT, WA, WI, WY. INCORPORATED IN: Texas.

Millers Mutual Insurance Association

BUSINESS ADDRESS: 111 East Fourth Street, P.O. Box 9006, Alton, IL 62002-9006. PHONE: (618) 463-3636. UNDERWRITING LIMITATION *b/*: \$3,672,000. SURETY LICENSES *c/*: AL, AR, CO, GA, IL, IN, IA, KS, KY, LA, MN, MS, MO, MT, NE, NC, ND, OH, SD, TN, TX, WI. INCORPORATED IN: Illinois.

Minnesota Trust Company of Austin

BUSINESS ADDRESS: P.O. Box 463, Austin, MN 55912-0463. PHONE: (507) 437-3231. UNDERWRITING LIMITATION *b/*: \$155,000. SURETY LICENSES *c/*: CO, MN, MT, ND, SD, UT. INCORPORATED IN: Minnesota.

MOTORS INSURANCE CORPORATION

BUSINESS ADDRESS: 3044 West Grand Bld., Detroit, MI 48202. PHONE: (313) 556-5000. UNDERWRITING LIMITATION *b/*: \$84,022,000. SURETY LICENSES *c/*: AL, AK, AZ, AR, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Mountbatten Surety Company, Inc. (The)

BUSINESS ADDRESS: 33 Rock Hill Road, Bala Cynwyd, PA 19004. PHONE: (610) 664-2259. UNDERWRITING LIMITATION *b/*: \$669,000. SURETY LICENSES *c/*: DE, DC, KY, MD, NJ, NY, OH, PA, VA. INCORPORATED IN: Pennsylvania.

Munich American Reinsurance Company

BUSINESS ADDRESS: 560 Lexington Avenue, New York, NY 10022. PHONE: (212) 310-1600. UNDERWRITING LIMITATION *b/*: \$32,309,000. SURETY LICENSES *c/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, GA, HI, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, MT, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: New York.

MUTUAL SERVICE CASUALTY INSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 64035, St. Paul, MN 55164-0035. PHONE: (612) 631-7000. UNDERWRITING LIMITATION *b/*: \$9,257,000. SURETY LICENSES *c/*: AL, AK, AZ, AR, CA, CO, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

NAC Reinsurance Corporation

BUSINESS ADDRESS: One Greenwich Plaza, P.O. Box 2568, Greenwich, CT 06836-2568. PHONE: (203) 622-5200. UNDERWRITING LIMITATION *b/*: \$61,543,000. SURETY LICENSES *c/*: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

National American Insurance Company

BUSINESS ADDRESS: 1008 Manvel Avenue, Chandler, OK 74834. PHONE: (405) 258-0804. UNDERWRITING LIMITATION *b/*: \$3,034,000. SURETY LICENSES *c/*: AL, AK, AZ, AR, CA, CO, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, NY, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

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National Fire Insurance Company of Hartford

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000.
 UNDERWRITING LIMITATION ^{b/}: \$49,618,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR,
 CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI,
 MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC,
 SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

National Grange Mutual Insurance Company

BUSINESS ADDRESS: 55 West Street, Keene, NH 03431. PHONE: (603) 352-4000.
 UNDERWRITING LIMITATION ^{b/}: \$14,180,000. SURETY LICENSES ^{c/}: CT, DE, DC, ME,
 MD, MA, MI, NH, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, WI. INCORPORATED IN:
 New Hampshire.

National Indemnity Company

BUSINESS ADDRESS: 3024 Harney Street, Omaha, NE 68131. PHONE: (402) 536-
 3000. UNDERWRITING LIMITATION ^{b/}: \$704,423,000. SURETY LICENSES ^{c/}: AL, AK,
 AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI,
 MN, MS, MO, MT, NE, NV, NH, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX,
 UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

NATIONAL REINSURANCE CORPORATION

BUSINESS ADDRESS: 777 Long Ridge Road, Stamford, CT 06904-2167. PHONE: (203)
 329-7700. UNDERWRITING LIMITATION ^{b/}: \$43,230,000. SURETY LICENSES ^{c/}: AK,
 AZ, AR, CA, CO, DE, DC, FL, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI,
 MN, MS, MT, NE, NV, NJ, NY, NC, ND, OH, OK, PA, PR, RI, SC, TN, TX, UT, VT,
 VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

National Surety Corporation

BUSINESS ADDRESS: 233 South Wacker Drive, Suite 2000, Chicago, IL 60606-6308.
 PHONE: (312) 441-5400. UNDERWRITING LIMITATION ^{b/}: \$7,486,000. SURETY
 LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA,
 KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND,
 OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY.
 INCORPORATED IN: Illinois.

National Union Fire Insurance Company of Pittsburgh, PA

BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000.
 UNDERWRITING LIMITATION ^{b/}: \$149,948,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR,
 CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA,
 MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI,
 SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

National-Ben Franklin Insurance Company of Illinois

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000.
 UNDERWRITING LIMITATION ^{b/}: \$5,575,000. SURETY LICENSES ^{c/}: DC, IL, IN, IA,
 KY, MD, MI, MN, NY, NC, ND, RI, SD, WI. INCORPORATED IN: Illinois.

Nationwide Mutual Insurance Company

BUSINESS ADDRESS: One Nationwide Plaza, Columbus, OH 43216. PHONE: (614)
 249-7111. UNDERWRITING LIMITATION ^{b/}: \$208,992,000. SURETY LICENSES ^{c/}: AL,
 AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME,
 MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, PR,
 RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Ohio.

NAVIGATORS INSURANCE COMPANY

BUSINESS ADDRESS: 123 William Street, New York, NY 10038. PHONE: (212) 406-
 2900. UNDERWRITING LIMITATION ^{b/}: \$6,796,000. SURETY LICENSES ^{c/}: AL, AK, AZ,
 CT, DE, DC, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, NE, NV,
 NJ, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WI, WY.
 INCORPORATED IN: New York.

Netherlands Insurance Company (The)

BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. PHONE: (603) 352-3221.
 UNDERWRITING LIMITATION ^{b/}: \$1,269,000. SURETY LICENSES ^{c/}: AZ, CA, CT, DC,
 GA, HI, ID, IL, IN, IA, KY, ME, MD, MI, NV, NH, NJ, NY, NC, OH, RI, SC, UT,
 VT, VA, VI, WA, WI. INCORPORATED IN: New Hampshire.

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New Hampshire Insurance Company

BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000.
UNDERWRITING LIMITATION $\frac{b}{/}$: \$26,349,000. SURETY LICENSES $\frac{c}{/}$: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Nobel Insurance Company

BUSINESS ADDRESS: 8001 LBJ Freeway - Suite 300, Dallas, TX 75251-1301.
PHONE: (214) 644-0434. UNDERWRITING LIMITATION $\frac{b}{/}$: \$3,362,000. SURETY LICENSES $\frac{c}{/}$: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Texas.

NORTH AMERICAN SPECIALTY INSURANCE COMPANY

BUSINESS ADDRESS: 650 Elm Street, Manchester, NH 03101-2524. PHONE: (603) 644-6600. UNDERWRITING LIMITATION $\frac{b}{/}$: \$4,794,000. SURETY LICENSES $\frac{c}{/}$: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

North Star Reinsurance Corporation

BUSINESS ADDRESS: P.O. Box 120052, Stamford, CT 06912-0052. PHONE: (203) 328-5000. UNDERWRITING LIMITATION $\frac{b}{/}$: \$1,000,000. SURETY LICENSES $\frac{c}{/}$: AL, AK, AZ, AR, CA, CO, CT, DE, DC, GA, ID, IL, IN, IA, KS, KY, MD, MI, MN, MS, MT, NE, NV, NJ, NM, NY, ND, OH, OK, OR, PA, RI, SC, SD, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Delaware.

NORTHBROOK PROPERTY AND CASUALTY INSURANCE COMPANY

BUSINESS ADDRESS: 3075 Sanders Rd., STE H1A, Northbrook, IL 60062-7127.
PHONE: (847) 551-2000. UNDERWRITING LIMITATION $\frac{b}{/}$: \$20,728,000. SURETY LICENSES $\frac{c}{/}$: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Northern Assurance Company of America (The)

BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. PHONE: (617) 725-6000. UNDERWRITING LIMITATION $\frac{b}{/}$: \$20,134,000. SURETY LICENSES $\frac{c}{/}$: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

NORTHWESTERN PACIFIC INDEMNITY COMPANY

BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615.
PHONE: (908) 903-2000. UNDERWRITING LIMITATION $\frac{b}{/}$: \$2,486,000. SURETY LICENSES $\frac{c}{/}$: CA, OR, TX, WA. INCORPORATED IN: Oregon.

Ohio Casualty Insurance Company (The)

BUSINESS ADDRESS: 136 North Third Street, Hamilton, OH 45025. PHONE: (513) 867-3000. UNDERWRITING LIMITATION $\frac{b}{/}$: \$69,104,000. SURETY LICENSES $\frac{c}{/}$: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Ohio Farmers Insurance Company

BUSINESS ADDRESS: P.O. Box 5001, Westfield Center, OH 44251-5001. PHONE: (216) 887-0101. UNDERWRITING LIMITATION $\frac{b}{/}$: \$46,987,000. SURETY LICENSES $\frac{c}{/}$: AL, AK, AZ, AR, CO, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

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Oklahoma Surety Company

BUSINESS ADDRESS: P.O. Box 1409, Tulsa, OK 74101. PHONE: (918) 587-7221 x-200. UNDERWRITING LIMITATION ^{b/}: \$700,000. SURETY LICENSES ^{c/}: AR, KS, OK, TX. INCORPORATED IN: Oklahoma.

Old Republic Insurance Company

BUSINESS ADDRESS: P.O. Box 789, Greensburg, PA 15601-0789. PHONE: (412) 834-5000. UNDERWRITING LIMITATION ^{b/}: \$37,231,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Old Republic Surety Company

BUSINESS ADDRESS: P.O. Box 1635, Milwaukee, WI 53201. PHONE: (414) 797-2640. UNDERWRITING LIMITATION ^{b/}: \$1,458,000. SURETY LICENSES ^{c/}: AL, AZ, AR, CA, CO, DC, FL, GA, ID, IL, IN, IA, KS, MD, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

Pacific Employers Insurance Company

BUSINESS ADDRESS: 1601 Chestnut Street, P.O. Box 7716, Philadelphia, PA 19192. PHONE: (215) 761-1000. UNDERWRITING LIMITATION ^{b/}: \$16,811,000. SURETY LICENSES ^{c/}: AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: California.

Pacific Indemnity Company

BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (908) 903-2000. UNDERWRITING LIMITATION ^{b/}: \$50,083,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

Pacific Insurance Company, Limited

BUSINESS ADDRESS: 150 Federal Street, Boston, MA 02110. PHONE: (617) 526-7600. UNDERWRITING LIMITATION ^{b/}: \$31,112,000. SURETY LICENSES ^{c/}: CT, HI. INCORPORATED IN: Connecticut.

Peerless Insurance Company

BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. PHONE: (603) 352-3221. UNDERWRITING LIMITATION ^{b/}: \$8,386,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

Pekin Insurance Company

BUSINESS ADDRESS: 2505 Court Street, Pekin, IL 61558. PHONE: (309) 346-1161. UNDERWRITING LIMITATION ^{b/}: \$3,824,000. SURETY LICENSES ^{c/}: IL, IN, IA, WI. INCORPORATED IN: Illinois.

Pennsylvania General Insurance Company

BUSINESS ADDRESS: 436 Walnut Street, P.O. Box 1109, Philadelphia, PA 19105-1109. PHONE: (215) 625-1000. UNDERWRITING LIMITATION ^{b/}: \$12,189,000. SURETY LICENSES ^{c/}: AL, AZ, AR, CA, CO, CT, DE, DC, GA, IL, IN, KS, KY, LA, MD, MA, MI, MN, MS, MO, NE, NH, NJ, NM, NY, NC, OH, OR, PA, RI, SC, TN, TX, VA, WA, WV, WI. INCORPORATED IN: Pennsylvania.

Pennsylvania Manufacturers' Association Insurance Company

BUSINESS ADDRESS: 380 Sentry Parkway, Blue Bell, PA 19422-2328. PHONE: (800) 222-2749. UNDERWRITING LIMITATION ^{b/}: \$22,502,000. SURETY LICENSES ^{c/}: CA, CO, CT, DE, DC, FL, GA, ID, IL, IA, KY, LA, MD, MA, MI, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, WA, WV. INCORPORATED IN: Pennsylvania.

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Pennsylvania Millers Mutual Insurance Company

BUSINESS ADDRESS: P. O. Box P, Wilkes-Barre, PA 18773-0016. PHONE: (717) 822-8111. UNDERWRITING LIMITATION ^{b/}: \$3,994,000. SURETY LICENSES ^{a/}: AL, AR, CT, DC, FL, GA, IL, IN, KS, KY, ME, MD, MA, MS, MO, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA. INCORPORATED IN: Pennsylvania.

Pennsylvania National Mutual Casualty Insurance Company

BUSINESS ADDRESS: P.O. Box 2361, Harrisburg, PA 17105-2361. PHONE: (717) 234-4941. UNDERWRITING LIMITATION ^{b/}: \$17,709,000. SURETY LICENSES ^{a/}: AL, AK, AZ, AR, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NJ, NM, NY, NC, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Pennsylvania.

Phoenix Assurance Company of New York

BUSINESS ADDRESS: 25 Independence Boulevard, Warren, NJ 07059. PHONE: (212) 753-8130. UNDERWRITING LIMITATION ^{b/}: \$5,825,000. SURETY LICENSES ^{a/}: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

Phoenix Insurance Company (The)

BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION ^{b/}: \$53,060,000. SURETY LICENSES ^{a/}: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Pioneer General Insurance Company

BUSINESS ADDRESS: 3900 East Mexico Avenue, Suite 330, Denver, CO 80210. PHONE: (303) 758-8122. UNDERWRITING LIMITATION ^{b/}: \$141,000. SURETY LICENSES ^{a/}: CO. INCORPORATED IN: Colorado.

PLANET INDEMNITY COMPANY

BUSINESS ADDRESS: 216 Sixteenth Street, Suite 1300, Denver, CO 80202. PHONE: (303) 534-5300. UNDERWRITING LIMITATION ^{b/}: \$665,000. SURETY LICENSES ^{a/}: CO. INCORPORATED IN: Colorado.

PREFERRED NATIONAL INSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 407003, Ft. Lauderdale, FL 33340-7003. PHONE: (954) 752-1222. UNDERWRITING LIMITATION ^{b/}: \$2,048,000. SURETY LICENSES ^{a/}: FL, SC. INCORPORATED IN: Florida.

Progressive Casualty Insurance Company

BUSINESS ADDRESS: 6300 Wilson Mills Road, Mayfield Village, OH 44143-2182. PHONE: (216) 461-5000. UNDERWRITING LIMITATION ^{b/}: \$8,141,000. SURETY LICENSES ^{a/}: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Ohio.

PROTECTION MUTUAL INSURANCE COMPANY

BUSINESS ADDRESS: 300 S. Northwest Highway, Park Ridge, IL 60068. PHONE: (847) 825-4474. UNDERWRITING LIMITATION ^{b/}: \$38,259,000. SURETY LICENSES ^{a/}: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

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Protective Insurance Company

BUSINESS ADDRESS: 1099 North Meridian Street, Indianapolis, IN 46204. PHONE: (317) 636-9800. UNDERWRITING LIMITATION *b/*: \$18,742,000. SURETY LICENSES *c/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Providence Washington Insurance Company

BUSINESS ADDRESS: P.O. Box 518, Providence, RI 02901-0518. PHONE: (401) 453-7000. UNDERWRITING LIMITATION *b/*: \$6,230,000. SURETY LICENSES *c/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Rhode Island.

Ranger Insurance Company

BUSINESS ADDRESS: P.O. Box 2807, Houston, TX 77252. PHONE: (713) 954-8100. UNDERWRITING LIMITATION *b/*: \$8,333,000. SURETY LICENSES *c/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Reinsurance Corporation of New York (The)

BUSINESS ADDRESS: 80 Maiden Lane, New York, NY 10038. PHONE: (212) 363-4440. UNDERWRITING LIMITATION *b/*: \$2,455,000. SURETY LICENSES *c/*: AL, AK, AZ, AR, CA, CO, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Reliance Insurance Company

BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. PHONE: (215) 864-4000. UNDERWRITING LIMITATION *b/*: \$73,555,000. SURETY LICENSES *c/*: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Reliance Insurance Company of Illinois Z

BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. PHONE: (215) 864-4000. UNDERWRITING LIMITATION *b/*: \$2,526,000. SURETY LICENSES *c/*: IL. INCORPORATED IN: Illinois.

Reliance National Indemnity Company

BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. PHONE: (215) 864-4000. UNDERWRITING LIMITATION *b/*: \$4,234,000. SURETY LICENSES *c/*: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

Reliance Surety Company

BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. PHONE: (215) 864-4000. UNDERWRITING LIMITATION *b/*: \$2,135,000. SURETY LICENSES *c/*: AL, AK, AZ, AR, CA, CO, DE, DC, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MN, MS, MO, MT, NE, NV, NJ, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Republic Western Insurance Company

BUSINESS ADDRESS: 2721 North Central Avenue, Phoenix, AZ 85004-1163. PHONE: (602) 263-6755. UNDERWRITING LIMITATION *b/*: \$9,827,000. SURETY LICENSES *c/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Arizona.

RLI INSURANCE COMPANY

BUSINESS ADDRESS: 9025 N. Lindbergh Drive, Peoria, IL 61615. PHONE: (309) 692-1000. UNDERWRITING LIMITATION *b/*: \$15,265,000. SURETY LICENSES *c/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Royal Indemnity Company

BUSINESS ADDRESS: 9300 Arrowpoint Boulevard, P.O. Box 1000, Charlotte, NC 28201-1000. PHONE: (704) 522-2000. UNDERWRITING LIMITATION *b/*: \$16,450,000. SURETY LICENSES *c/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

SAFECO Insurance Company of America

BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION *b/*: \$92,236,000. SURETY LICENSES *c/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Washington.

SAFECO Insurance Company of Illinois

BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (708) 490-2900. UNDERWRITING LIMITATION *b/*: \$11,308,000. SURETY LICENSES *c/*: AZ, CO, IL, KS, KY, MD, MI, MN, MS, NE, NM, OH, OR, PA, TN, TX, UT, WI, WY. INCORPORATED IN: Illinois.

SAFECO National Insurance Company

BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION *b/*: \$5,715,000. SURETY LICENSES *c/*: CO, KY, MD, MO, NY, UT, WI, WY. INCORPORATED IN: Missouri.

SCOR REINSURANCE COMPANY

BUSINESS ADDRESS: 2 World Trade Center, New York, NY 10048. PHONE: (212) 390-5200. UNDERWRITING LIMITATION *b/*: \$27,237,000. SURETY LICENSES *c/*: AL, AK, AZ, CA, DE, ID, IL, IN, IA, MI, MS, NE, NM, NY, NC, ND, OH, OK, OR, PA, TN, TX, UT, WV. INCORPORATED IN: New York.

Sea Insurance Company of America (The)

BUSINESS ADDRESS: 25 Independence Blvd., Warren, NJ 07059. PHONE: (212) 753-8130. UNDERWRITING LIMITATION *b/*: \$14,269,000. SURETY LICENSES *c/*: AK, AZ, AR, CA, CT, DE, FL, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SD, TN, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Seaboard Surety Company

BUSINESS ADDRESS: Burnt Mills Road and Route 206, Bedminster, NJ 07921. PHONE: (908) 658-3500. UNDERWRITING LIMITATION *b/*: \$13,895,000. SURETY LICENSES *c/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

SECURITY INSURANCE COMPANY OF HARTFORD

BUSINESS ADDRESS: P.O. Box 420, Hartford, CT 06141. PHONE: (860) 674-6600. UNDERWRITING LIMITATION *b/*: \$14,486,000. SURETY LICENSES *c/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Security National Insurance Company

BUSINESS ADDRESS: P.O. Box 655028, Dallas, TX 75265-5028. PHONE: (214) 360-8000. UNDERWRITING LIMITATION *b/*: \$1,418,000. SURETY LICENSES *c/*: AL, AR, CA, CO, GA, ID, IL, IN, IA, KS, KY, MS, MO, MT, NE, NM, OH, OK, OR, TX, WA, WI, WY. INCORPORATED IN: Texas.

See Footnotes/Notes at end of Circular

Select Insurance Company

BUSINESS ADDRESS: P.O. Box 1771, Dallas, TX 75221-1771. PHONE: (214) 650-2800. UNDERWRITING LIMITATION *b/*: \$2,997,000. SURETY LICENSES *c/*: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, MD, MI, MS, MO, MT, NE, NV, NM, NC, OH, OR, SC, SD, TN, TX, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Texas.

Selective Insurance Company of America

BUSINESS ADDRESS: Wantage Avenue, Branchville, NJ 07890. PHONE: (201) 948-3000. UNDERWRITING LIMITATION *b/*: \$18,694,000. SURETY LICENSES *c/*: AL, DE, DC, GA, MD, MS, NJ, NY, NC, PA, SC, TX, VA. INCORPORATED IN: New Jersey.

SENTINEL INSURANCE COMPANY, LTD.

BUSINESS ADDRESS: 1001 Bishop Street, Honolulu, HI 96807. PHONE: (808) 546-5700. UNDERWRITING LIMITATION *b/*: \$1,881,000. SURETY LICENSES *c/*: HI. INCORPORATED IN: Hawaii.

Sentry Insurance A Mutual Company

BUSINESS ADDRESS: 1800 North Point Drive, Stevens Point, WI 54481. PHONE: (715) 346-6000. UNDERWRITING LIMITATION *b/*: \$113,684,000. SURETY LICENSES *c/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

Signet Star Reinsurance Company

BUSINESS ADDRESS: 100 Campus Drive, P.O. Box 853, Florham Park, NJ 07932-0853. PHONE: (201) 301-8000. UNDERWRITING LIMITATION *b/*: \$24,373,000. SURETY LICENSES *c/*: AK, CA, CO, DE, DC, FL, ID, IL, IA, LA, MD, MI, MN, NE, OH, OK, OR, SD, TN, TX, UT, WA. INCORPORATED IN: Delaware.

Skandia America Reinsurance Corporation

BUSINESS ADDRESS: One Liberty Plaza, New York, NY 10006. PHONE: (212) 978-4700. UNDERWRITING LIMITATION *b/*: \$22,931,000. SURETY LICENSES *c/*: AL, AZ, CA, DE, DC, GA, ID, IL, IN, IA, MI, MS, MT, NE, NY, OH, OK, OR, PA, TN, TX, UT, VA, WA, WI. INCORPORATED IN: Delaware.

SOREMA NORTH AMERICA REINSURANCE COMPANY

BUSINESS ADDRESS: 199 Water Street, New York, NY 10038-3526. PHONE: (212) 480-1900. UNDERWRITING LIMITATION *b/*: \$16,012,000. SURETY LICENSES *c/*: AK, AZ, CA, CO, CT, DE, DC, FL, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, WA, WV, WI, WY. INCORPORATED IN: New York.

St. Paul Fire and Marine Insurance Company

BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (612) 310-7911. UNDERWRITING LIMITATION *b/*: \$120,687,000. SURETY LICENSES *c/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

ST. PAUL GUARDIAN INSURANCE COMPANY

BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (612) 310-7911. UNDERWRITING LIMITATION *b/*: \$3,050,000. SURETY LICENSES *c/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NM, NY, NC, ND, OH, OK, OR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

St. Paul Mercury Insurance Company

BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (612) 310-7911. UNDERWRITING LIMITATION *b/*: \$5,814,000. SURETY LICENSES *c/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

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Standard Fire Insurance Company (The)

BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-9062. PHONE: (860) 277-0111. UNDERWRITING LIMITATION ^{b/}: \$59,191,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Star Insurance Company

BUSINESS ADDRESS: 26600 Telegraph Road, Southfield, MI 48034. PHONE: (810) 358-4020. UNDERWRITING LIMITATION ^{b/}: \$5,530,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Michigan.

State Automobile Mutual Insurance Company

BUSINESS ADDRESS: 518 East Broad Street, Columbus, OH 43215-3976. PHONE: (614) 464-5000. UNDERWRITING LIMITATION ^{b/}: \$50,098,000. SURETY LICENSES ^{c/}: AL, AZ, AR, CA, CO, FL, GA, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, MT, NE, NC, ND, OH, OK, PA, SC, SD, TN, VA, WV, WI, WY. INCORPORATED IN: Ohio.

State Farm Fire and Casualty Company

BUSINESS ADDRESS: 112 East Washington Street, Bloomington, IL 61701. PHONE: (309) 766-2311. UNDERWRITING LIMITATION ^{b/}: \$159,668,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Statewide Insurance Company

BUSINESS ADDRESS: 325 North Genesee Street, Waukegan, IL 60085. PHONE: (847) 662-0073. UNDERWRITING LIMITATION ^{b/}: \$1,044,000. SURETY LICENSES ^{c/}: AZ, AR, IL, IN, IA, KY, MN, MO, MT, NE, NV, NC, OH, SD, TN, WI. INCORPORATED IN: Illinois.

Sun Insurance Office of America Inc.

BUSINESS ADDRESS: 25 Independence Blvd., Warren, NJ 07059. PHONE: (212) 753-8130. UNDERWRITING LIMITATION ^{b/}: \$17,756,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Surety Company of the Pacific

BUSINESS ADDRESS: P.O. Box 10289, Van Nuys, CA 91410-0289. PHONE: (818) 609-9232. UNDERWRITING LIMITATION ^{b/}: \$761,000. SURETY LICENSES ^{c/}: CA. INCORPORATED IN: California.

Swiss Reinsurance America Corporation

BUSINESS ADDRESS: 237 Park Avenue, New York, NY 10017. PHONE: (212) 907-8000. UNDERWRITING LIMITATION ^{b/}: \$85,452,000. SURETY LICENSES ^{c/}: AL, AK, AZ, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WI. INCORPORATED IN: New York.

TEXAS PACIFIC INDEMNITY COMPANY

BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (908) 903-2000. UNDERWRITING LIMITATION ^{b/}: \$745,000. SURETY LICENSES ^{c/}: AR, TX. INCORPORATED IN: Texas.

TIG Insurance Company

BUSINESS ADDRESS: P. O. Box 152870, Irving, TX 75015-8810. PHONE: (214) 831-5000. UNDERWRITING LIMITATION ^{b/}: \$71,284,000. SURETY LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

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TIG Insurance Company of Michigan

BUSINESS ADDRESS: 70 West Michigan Avenue, Battle Creek, MI 49017. PHONE: (214) 831-5000. UNDERWRITING LIMITATION *b/*: \$2,085,000. SURETY LICENSES *c/*: AR, ID, IL, IN, IA, KS, KY, MI, MN, NY, SD, TX, UT, WY. INCORPORATED IN: Michigan.

TIG Premier Insurance Company

BUSINESS ADDRESS: P.O. BOX 152870, IRVING, TX 75015. PHONE: (214) 831-5000. UNDERWRITING LIMITATION *b/*: \$2,701,000. SURETY LICENSES *c/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: California.

TRANSATLANTIC REINSURANCE COMPANY

BUSINESS ADDRESS: 80 Pine Street, New York, NY 10005. PHONE: (212) 770-2000. UNDERWRITING LIMITATION *b/*: \$71,171,000. SURETY LICENSES *c/*: AK, AZ, CO, DE, DC, GA, ID, IL, IN, IA, KY, LA, MS, NE, NV, NM, NY, OH, OK, PA, UT, WA, WI. INCORPORATED IN: New York.

Transcontinental Insurance Company

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION *b/*: \$18,253,000. SURETY LICENSES *c/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Transportation Insurance Company

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION *b/*: \$6,874,000. SURETY LICENSES *c/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Travelers Indemnity Company (The)

BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION *b/*: \$160,592,000. SURETY LICENSES *c/*: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

TRAVELERS INDEMNITY COMPANY OF AMERICA (THE)

BUSINESS ADDRESS: 211 Perimeter Center Parkway, Atlanta, GA 30346. PHONE: (860) 277-0111. UNDERWRITING LIMITATION *b/*: \$8,331,000. SURETY LICENSES *c/*: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Georgia.

Travelers Indemnity Company of Connecticut (The)

BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION *b/*: \$21,517,000. SURETY LICENSES *c/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Travelers Indemnity Company of Illinois (The)

BUSINESS ADDRESS: 2500 Cabot Drive, Lisle, IL 60532. PHONE: (860) 277-0111. UNDERWRITING LIMITATION *b/*: \$5,453,000. SURETY LICENSES *c/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Tri-State Insurance Company of Minnesota

BUSINESS ADDRESS: One Roundwind Road, Luverne, MN 56156. PHONE: (507) 283-9561. UNDERWRITING LIMITATION *b/*: \$3,714,000. SURETY LICENSES *c/*: CO, IL, IN, IA, MI, MN, MO, NE, ND, OH, SD, WI. INCORPORATED IN: Minnesota.

Trinity Universal Insurance Company

BUSINESS ADDRESS: P.O. Box 655028, Dallas, TX 75265-5028. PHONE: (214) 360-8000. UNDERWRITING LIMITATION *b/*: \$28,138,000. SURETY LICENSES *c/*: AL, AZ, AR, CA, CO, GA, ID, IL, IN, IA, KS, KY, LA, MI, MS, MO, MT, NE, NM, OH, OK, OR, TN, TX, WA, WI, WY. INCORPORATED IN: Texas.

Trinity Universal Insurance Company of Kansas, Inc.

BUSINESS ADDRESS: P.O. Box 655028, Dallas, TX 75265-5028. PHONE: (214) 360-8000. UNDERWRITING LIMITATION *b/*: \$920,000. SURETY LICENSES *c/*: AL, AZ, CO, GA, ID, IN, IA, KS, KY, LA, MS, MO, MT, NE, OH, OK, OR, TX, WA, WI, WY. INCORPORATED IN: Kansas.

Trumbull Insurance Company

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION *b/*: \$2,418,000. SURETY LICENSES *c/*: AL, AK, CO, CT, DE, DC, ID, IL, IN, IA, MA, MI, MN, MO, NE, NJ, ND, OH, OK, RI, SC, SD, TX, VT, VA, WY. INCORPORATED IN: Connecticut.

Twin City Fire Insurance Company

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION *b/*: \$10,816,000. SURETY LICENSES *c/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

ULICO CASUALTY COMPANY

BUSINESS ADDRESS: 111 Massachusetts Avenue, NW, Washington, DC 20001. PHONE: (202) 682-0900. UNDERWRITING LIMITATION *b/*: \$4,904,000. SURETY LICENSES *c/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Underwriters Indemnity Company

BUSINESS ADDRESS: 8 Greenway Plaza, Suite 400, Houston, TX 77046. PHONE: (713) 961-1300. UNDERWRITING LIMITATION *b/*: \$368,000. SURETY LICENSES *c/*: AL, GA, KY, MS, NM, NC, SC, TX, WY. INCORPORATED IN: Texas.

UNDERWRITERS REINSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 4030, Woodland Hills, CA 91365. PHONE: (818) 225-1000. UNDERWRITING LIMITATION *b/*: \$30,069,000. SURETY LICENSES *c/*: AZ, CA, DE, DC, ID, IL, IN, IA, KY, MI, MS, NE, NV, NM, NY, OH, PA, RI, TX, UT, WI, WY. INCORPORATED IN: New Hampshire.

Unigard Security Insurance Company

BUSINESS ADDRESS: 1215 Fourth Avenue, Suite 1800, Seattle, WA 98161-0196. PHONE: (206) 292-7861. UNDERWRITING LIMITATION *b/*: \$9,011,000. SURETY LICENSES *c/*: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, IN, IA, KS, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Washington.

Union Insurance Company

BUSINESS ADDRESS: P.O. Box 80439, Lincoln, NE 68501-0439. PHONE: (402) 423-7688. UNDERWRITING LIMITATION *b/*: \$3,070,000. SURETY LICENSES *c/*: AR, CO, DC, ID, IA, KS, MD, MN, MS, MO, MT, NE, ND, OK, SD, TX, UT, VA, WA, WY. INCORPORATED IN: Nebraska.

United Capitol Insurance Company ²

BUSINESS ADDRESS: 400 Perimeter Center Terrace, Suite 345, Atlanta, GA 30346. PHONE: (770) 677-0330. UNDERWRITING LIMITATION *b/*: \$6,803,000. SURETY LICENSES *c/*: AZ, WI. INCORPORATED IN: Wisconsin.

See Footnotes/Notes at end of Circular

United Coastal Insurance Company 2

BUSINESS ADDRESS: 233 Main Street, P.O. Box 2350, New Britain, CT 06050-2350.
PHONE: (860) 223-5000. UNDERWRITING LIMITATION *b/*: \$4,048,000. SURETY
LICENSES *c/*: AZ. INCORPORATED IN: Arizona.

United Fire & Casualty Company

BUSINESS ADDRESS: P.O. Box 73909, Cedar Rapids, IA 52407. PHONE: (319) 399-
5700. UNDERWRITING LIMITATION *b/*: \$15,805,000. SURETY LICENSES *c/*: AK, AZ,
AR, CA, CO, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NJ,
NM, NY, ND, OH, OK, OR, SC, SD, TX, UT, WA, WI, WY. INCORPORATED IN: Iowa.

UNITED NATIONAL INSURANCE COMPANY

BUSINESS ADDRESS: Three Bala Plaza East, Suite 300, Bala Cynwyd, PA 19004.
PHONE: (610) 664-1500. UNDERWRITING LIMITATION *b/*: \$11,093,000. SURETY
LICENSES *c/*: PA. INCORPORATED IN: Pennsylvania.

United Pacific Insurance Company

BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. PHONE: (215)
864-4000. UNDERWRITING LIMITATION *b/*: \$5,528,000. SURETY LICENSES *c/*: AL, AK,
AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA,
ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR,
PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN:
Pennsylvania.

United States Fidelity and Guaranty Company

BUSINESS ADDRESS: TW3001, P.O. Box 1138, Baltimore, MD 21203-1138. PHONE:
(410) 547-3000. UNDERWRITING LIMITATION *b/*: \$72,225,000. SURETY LICENSES *c/*:
AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY,
LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK,
OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED
IN: Maryland.

UNITED STATES FIRE INSURANCE COMPANY

BUSINESS ADDRESS: 6 Sylvan Way, Parsippany, NJ 07054. PHONE: (201) 285-9300.
UNDERWRITING LIMITATION *b/*: \$49,428,000. SURETY LICENSES *c/*: AL, AK, AZ, AR,
CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA,
MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI,
SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

UNITED SURETY AND INDEMNITY COMPANY

BUSINESS ADDRESS: P.O. Box 2111, San Juan, PR 00922-2111. PHONE: (809) 273-
1818. UNDERWRITING LIMITATION *b/*: \$706,000. SURETY LICENSES *c/*: PR.
INCORPORATED IN: Puerto Rico.

UNIVERSAL BONDING INSURANCE COMPANY

BUSINESS ADDRESS: 518 Stuyvesant Avenue, Lyndhurst, NJ 07071. PHONE: (201)
438-7223. UNDERWRITING LIMITATION *b/*: \$1,177,000. SURETY LICENSES *c/*: NJ, NY.
INCORPORATED IN: New Jersey.

UNIVERSAL INSURANCE COMPANY

BUSINESS ADDRESS: G.P.O. Box 71338, San Juan, PR 00936. PHONE: (809) 793-
7202. UNDERWRITING LIMITATION *b/*: \$6,509,000. SURETY LICENSES *c/*: PR.
INCORPORATED IN: Puerto Rico.

Universal Surety Company

BUSINESS ADDRESS: P.O. Box 80468, Lincoln, NE 68501. PHONE: (402) 435-4302.
UNDERWRITING LIMITATION *b/*: \$2,883,000. SURETY LICENSES *c/*: AZ, AR, CO, ID,
IL, IA, KS, MI, MN, MO, MT, NE, NM, ND, OH, OK, OR, SD, UT, WA, WI, WY.
INCORPORATED IN: Nebraska.

Universal Surety of America

BUSINESS ADDRESS: P.O. Box 1068, Houston, TX 77251-1068. PHONE: (713) 722-4600. UNDERWRITING LIMITATION *b/*: \$918,000. SURETY LICENSES *c/*: AL, AK, AR, CA, CO, DC, FL, GA, IN, IA, KS, KY, LA, MI, MS, MO, NE, NV, NM, NC, OK, SC, SD, TN, TX, VA. INCORPORATED IN: Texas.

UNIVERSAL UNDERWRITERS INSURANCE COMPANY

BUSINESS ADDRESS: 6363 College Blvd., Overland Park, KS 66211. PHONE: (913) 339-1000. UNDERWRITING LIMITATION *b/*: \$46,793,000. SURETY LICENSES *c/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

Utica Mutual Insurance Company

BUSINESS ADDRESS: P.O. Box 530, Utica, NY 13503-0530. PHONE: (315) 734-2000. UNDERWRITING LIMITATION *b/*: \$25,818,000. SURETY LICENSES *c/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Valley Forge Insurance Company

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION *b/*: \$14,562,000. SURETY LICENSES *c/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

VAN TOL SURETY COMPANY, INCORPORATED

BUSINESS ADDRESS: 424 Fifth Street, Brookings, SD 57006. PHONE: (605) 692-6294. UNDERWRITING LIMITATION *b/*: \$218,000. SURETY LICENSES *c/*: SD. INCORPORATED IN: South Dakota.

VESTA FIRE INSURANCE CORPORATION

BUSINESS ADDRESS: P.O. Box 43360, Birmingham, AL 35243-3360. PHONE: (205) 970-7000. UNDERWRITING LIMITATION *b/*: \$31,900,000. SURETY LICENSES *c/*: AL, AK, AZ, AR, CA, CO, DC, IL, IN, IA, KS, KY, LA, MA, MN, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Alabama.

Vigilant Insurance Company

BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (908) 903-2000. UNDERWRITING LIMITATION *b/*: \$43,574,000. SURETY LICENSES *c/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

Washington International Insurance Company

BUSINESS ADDRESS: 1930 Thoreau Drive, Suite 101, Schaumburg, IL 60173. PHONE: (847) 490-1850. UNDERWRITING LIMITATION *b/*: \$1,789,000. SURETY LICENSES *c/*: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WI, WY. INCORPORATED IN: Arizona.

West American Insurance Company ¹⁰

BUSINESS ADDRESS: 136 North Third Street, Hamilton, OH 45025. PHONE: (513) 867-3000. UNDERWRITING LIMITATION *b/*: \$52,095,000. SURETY LICENSES *c/*: AL, AZ, AR, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Westchester Fire Insurance Company

BUSINESS ADDRESS: Six Concourse Parkway, Suite 2700, Atlanta, GA 30328-5346.
PHONE: (770) 393-9955. UNDERWRITING LIMITATION ^{b/}: \$19,425,000. SURETY
LICENSES ^{c/}: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN,
IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC,
ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY.
INCORPORATED IN: New York.

Western Surety Company

BUSINESS ADDRESS: P.O. Box 5077, Sioux Falls, SD 57117-5077. PHONE: (605)
336-0850. UNDERWRITING LIMITATION ^{b/}: \$3,335,000. SURETY LICENSES ^{c/}: AL, AK,
AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD,
MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI,
SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: South Dakota.

Westfield Insurance Company

BUSINESS ADDRESS: P.O. Box 5001, Westfield Center, OH 44251-5001. PHONE:
(216) 887-0101. UNDERWRITING LIMITATION ^{b/}: \$25,269,000. SURETY LICENSES ^{c/}:
AL, AZ, AR, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN,
MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT,
VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Westfield National Insurance Company

BUSINESS ADDRESS: P.O. Box 5001, Westfield Center, OH 44251-5001. PHONE:
(216) 887-0101. UNDERWRITING LIMITATION ^{b/}: \$7,055,000. SURETY LICENSES ^{c/}:
CA, IA, OH. INCORPORATED IN: Ohio.

WINTERTHUR REINSURANCE CORPORATION OF AMERICA

BUSINESS ADDRESS: Two World Financial Ctr, 225 Liberty Street, 42 Fl, New
York, NY 10281. PHONE: (212) 416-5700. UNDERWRITING LIMITATION ^{b/}:
\$24,220,000. SURETY LICENSES ^{c/}: AL, AZ, CA, DE, DC, IL, IN, IA, KY, MD, MI,
MN, MS, MT, NE, NJ, NM, NY, ND, OH, OK, OR, PA, RI, SC, SD, TX, UT, VT, WA,
WV, WI. INCORPORATED IN: New York.

ZENITH INSURANCE COMPANY

BUSINESS ADDRESS: 21255 Califa Street, Woodland Hills, CA 91367. PHONE:
(818) 713-1000. UNDERWRITING LIMITATION ^{b/}: \$20,156,000. SURETY LICENSES ^{c/}:
AL, AZ, AR, CA, CO, FL, GA, HI, ID, IL, IN, IA, KY, LA, MA, MS, NE, NJ, NM,
OK, OR, PA, SC, SD, TX, UT. INCORPORATED IN: California.

**COMPANIES HOLDING CERTIFICATES OF AUTHORITY AS ACCEPTABLE
REINSURING COMPANIES UNDER SECTION 223.3(b) OF TREASURY
CIRCULAR NO. 297, REVISED SEPTEMBER 1, 1978 [See Note (e)]**

Capital Reinsurance Company

BUSINESS ADDRESS: 1325 Avenue of the Americas, New York, NY 10019. PHONE: (212) 974-0100. UNDERWRITING LIMITATION ^{b/}: \$28,804,000.

European Reinsurance Corporation of America ¹¹

BUSINESS ADDRESS: 380 Madison Avenue, New York, NY 10017. PHONE: (212) 973-5800. UNDERWRITING LIMITATION ^{b/}: \$11,448,000.

FOLKSAMERICA REINSURANCE COMPANY

BUSINESS ADDRESS: One Liberty Plaza, 19th Floor, New York, NY 10006. PHONE: (212) 312-2500. UNDERWRITING LIMITATION ^{b/}: \$12,002,000.

Generali - U.S. Branch

BUSINESS ADDRESS: One Liberty Plaza, New York, NY 10006. PHONE: (212) 602-7600. UNDERWRITING LIMITATION ^{b/}: \$8,120,000.

GREAT LAKES AMERICAN REINSURANCE COMPANY

BUSINESS ADDRESS: 88 Pine Street, New York, NY 10005. PHONE: (212) 809-1061. UNDERWRITING LIMITATION ^{b/}: \$10,152,000.

Munich Reinsurance Company, U.S. Branch

BUSINESS ADDRESS: 560 Lexington Ave., New York, NY 10022. PHONE: (212) 310-1800. UNDERWRITING LIMITATION ^{b/}: \$53,281,000.

Tokio Marine and Fire Insurance Company, Limited (The), U.S. Branch

BUSINESS ADDRESS: 101 Park Avenue, New York, NY 10178. PHONE: (212) 297-6600. UNDERWRITING LIMITATION ^{b/}: \$19,867,000.

Western Atlantic Reinsurance Corporation ¹¹

Zurich Insurance Company, U.S. Branch

BUSINESS ADDRESS: 1400 American Lane, Schaumburg, IL 60196. PHONE: (847) 605-6000. UNDERWRITING LIMITATION ^{b/}: \$61,034,000.

FOOTNOTES

- 1** CIGNA INDEMNITY INSURANCE COMPANY changed its state of incorporation from Iowa to Pennsylvania, effective October 16, 1995.
- 2** FRONTIER INSURANCE COMPANY is required by state law to conduct business in the states of Arkansas, Florida, Louisiana, North Dakota, Texas and Utah as Frontier Insurance Company, DBA Frontier Insurance Company of New York. In Missouri, FRONTIER INSURANCE COMPANY is required by state law to conduct business as New York Frontier Insurance Company.
- 3** This Company has a name very similar to another company that is NOT certified by this Department. Please ensure that the name of the Company and the state of incorporation are exactly as they appear in this Circular.
- 4** Indemnity Insurance Company of North America changed its state of incorporation from New York to Pennsylvania, effective December 31, 1995.
- 5** ITT Lyndon Property Insurance Company changed its name to Lyndon Property Insurance Company, effective December 1, 1995.
- 6** This Company has a name very similar to another company that is NOT certified by this Department. Please ensure that the name of the Company and the state of incorporation are exactly as they appear in this Circular.
- 7** Reliance Insurance Company of Illinois is an approved surplus lines carrier. Such approval by the State Insurance Department may indicate that the Company is authorized to write surety in a particular state, even though the Company is not licensed in the state. Questions related to this, may be directed to the appropriate State Insurance Department. Refer to the list of the Departments at the end of this publication.
- 8** United Capitol Insurance Company is an approved surplus lines carrier. Such approval by the State Insurance Department may indicate that the Company is authorized to write surety in a particular state, even though the Company is not licensed in the state. Questions related to this, may be directed to the appropriate State Insurance Department. Refer to the list of the Departments at the end of this publication.
- 9** United Coastal Insurance Company is an approved surplus lines carrier. Such approval by the State Insurance Department may indicate that the Company is authorized to write surety in a particular state, even though the Company is not licensed in the state. Questions related to this, may be directed to the appropriate State Insurance Department. Refer to the list of the Departments at the end of this publication.
- 10** West American Insurance Company changed its state of incorporation from California to Indiana, effective April 17, 1995.
- 11** Western Atlantic Reinsurance Corporation changed its name to European Reinsurance Corporation of America, effective May 17, 1996.

NOTES

(a) All Certificates of Authority expire June 30, and are renewable July 1, annually. Companies holding Certificates of Authority as acceptable sureties on Federal bonds are also acceptable as reinsuring companies.

(b) The Underwriting Limitations published herein are on a per bond basis. Treasury requirements do not limit the penal sum (face amount) of bonds which surety companies may provide. However, when the penal sum exceeds a company's Underwriting Limitation, the excess must be protected by co-insurance, reinsurance, or other methods in accordance with Treasury Circular 297, Revised September 1, 1978 (31 CFR Section 223.10, Section 223.11). Treasury refers to a bond of this type as an Excess Risk. When Excess Risks on bonds in favor of the United States are protected by reinsurance, such reinsurance is to be effected by use of a Federal reinsurance form to be filed with the bond or within 45 days thereafter. In protecting such excess risks, the underwriting limitation in force on the day in which the bond was provided will govern absolutely.

(c) A surety company must be licensed in the State or other area in which it provides a bond, but need not be licensed in the State or other area in which the principal resides or where the contract is to be performed [28 Op. Atty. Gen. 127, Dec. 24, 1909; 31 CFR Section 223.5 (b)]. The term "other area" includes the District of Columbia, American Samoa, Guam, Puerto Rico, and the Virgin Islands.

License information in this Circular is provided to the Treasury Department by the companies themselves. For updated license information, you may contact the company directly or the applicable State Insurance Department. For further assistance, contact the Surety Bond Branch.

(d) **FEDERAL PROCESS AGENTS:** Treasury approved surety companies are required to appoint Federal process agents in accord with 31 U.S.C. 9306 and 31 CFR 224 in the following districts: Where the principal resides; where the obligation is to be performed; and in the District of Columbia where the bond is returnable or filed. No process agent is required in the State or other area where the company is incorporated (31 CFR Section 224.2). The name and address of a particular surety's process agent in a particular Federal Judicial District may be obtained from the Clerk of the U.S. District Court in that district. (The appointment documents are on file with the clerks.) (NOTE: A surety company's underwriting agent who furnishes its bonds may or may not be its authorized process agent.)

SERVICE OF PROCESS: Process should be served on the Federal process agent appointed by a surety in a judicial district, except where the appointment of such agent is pending or during the absence of such agent from the district. Only in the event an agent has not been duly appointed, or the appointment is pending, or the agent is absent from the district, should process be served directly on the Clerk of the court pursuant to the provisions of 31 U.S.C. 9306.

(e) Companies holding Certificates of Authority as acceptable reinsuring companies are acceptable only as reinsuring companies on Federal bonds.

(f) Some companies may be approved surplus lines carriers in various states. Such approval may indicate that the company is authorized to write surety in a particular state, even though the company is not licensed in the state. Questions related to this may be directed to the appropriate State Insurance Department.

<u>STATE INSURANCE DEPARTMENTS</u>	<u>TELEPHONE NO.</u>
Alabama, Montgomery 36130-3401	(205) 269-3550
Alaska, Juneau 99811-0805	(907) 465-2515
Arizona, Phoenix 85012	(602) 912-8420
Arkansas, Little Rock 72204	(501) 686-2900
California, Sacramento 95814	(916) 445-5544
Colorado, Denver 80202	(303) 894-7499
Connecticut, Hartford 06142-0816	(203) 297-3802
Delaware, Dover 19901	(302) 739-4251
D. C., Washington 20013-7200	(202) 727-8000
Florida, Tallahassee 32399-0300	(904) 922-3100
Georgia, Atlanta 30334	(404) 656-2056
Hawaii, Honolulu 96811	(808) 586-2799
Idaho, Boise 83720	(208) 334-2250
Illinois, Springfield 62767	(217) 782-4515
Indiana, Indianapolis 46204-2787	(317) 232-2385
Iowa, Des Moines 50319	(515) 281-5705
Kansas, Topeka 66612	(913) 296-7801
Kentucky, Frankfort 40602	(502) 564-3630
Louisiana, Baton Rouge 70804	(504) 342-5900
Maine, Augusta 04333	(207) 582-8707
Maryland, Baltimore 21202	(410) 333-6300
Massachusetts, Boston 02114	(617) 521-7794
Michigan, Lansing 48909	(517) 373-9273
Minnesota, St. Paul 55101	(612) 296-6848
Mississippi, Jackson 39205	(601) 359-3569
Missouri, Jefferson City 65102-0690	(314) 751-4126
Montana, Helena 59604-4009	(406) 444-2040
Nebraska, Lincoln 68508	(402) 471-2201
Nevada, Carson City 89710	(702) 687-4270
New Hampshire, Concord 03301	(603) 271-2261
New Jersey, Trenton 08625	(609) 292-5360
New Mexico, Santa Fe 87504-1269	(505) 827-4500
New York, New York 10013	(518) 474-6630
North Carolina, Raleigh 27611	(919) 733-7349
North Dakota, Bismarck 58505	(701) 224-2440
Ohio, Columbus 43266-0566	(614) 644-2651
Oklahoma, Oklahoma City 73152-3408	(405) 521-2828
Oregon, Salem 97310	(503) 378-4271
Pennsylvania, Harrisburg 17120	(717) 787-5173
Puerto Rico, Santurce 00910-8330	(809) 722-8686
Rhode Island, Providence 02903	(401) 277-2223
South Carolina, Columbia 29202-3105	(803) 737-6117
South Dakota, Pierre 57501	(605) 773-3563
Tennessee, Nashville 37243-0565	(615) 741-2241
Texas, Austin 78714-9104	(512) 463-6464
Utah, Salt Lake City 84114-1201	(801) 538-3800
Vermont, Montpelier 05620-3101	(802) 828-3301
Virginia, Richmond 23209	(804) 371-9741
Virgin Islands, St. Thomas 00802	(809) 774-2991
Washington, Olympia 98504	(206) 753-7301
West Virginia, Charleston 25305	(304) 558-3394
Wisconsin, Madison 53707-7873	(608) 266-0102
Wyoming, Cheyenne 82002	(307) 777-7401

Registered Federal

Monday
July 1, 1996

Part VII

Department of Education

Postsecondary Education Programs for
Individuals with Disabilities; Notices

DEPARTMENT OF EDUCATION**Office of Special Education and Rehabilitative Services; Postsecondary Education Programs for Individuals With Disabilities**

AGENCY: Department of Education.

ACTION: Notice of a final funding priority.

SUMMARY: The Secretary announces a final funding priority for four Regional Centers on Postsecondary Education for Individuals who are Deaf, a program administered by the Office of Special Education and Rehabilitative Services (OSERS) under the Individuals with Disabilities Education Act. The Secretary may use this priority in Fiscal Year 1996 and subsequent years. The Secretary takes this action to focus Federal assistance on identified needs to improve educational opportunities and outcomes for postsecondary students who are deaf and hard of hearing. The final funding priority is intended to ensure wide and effective use of program funds. The Secretary also announces selection criteria that will be applied in evaluating applications submitted for this competition.

EFFECTIVE DATE: This priority takes effect on July 31, 1996.

FOR FURTHER INFORMATION CONTACT: Ramon Rodriguez, U.S. Department of Education, 600 Independence Avenue, SW., Switzer Building, Room 3125, Washington, DC 20202-2524. Telephone: (202) 205-8555. Fax: (202) 205-9252. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205-9156. Internet: Ramon_Rodriguez@ed.gov

SUPPLEMENTARY INFORMATION: This notice contains information on the Regional Centers on Postsecondary Education for Individuals who are Deaf, authorized under section 625 of the Individuals with Disabilities Education Act, the Postsecondary Education Program for Individuals with Disabilities. The purpose of this program is to provide assistance for the development, operation, and dissemination of specially designed model programs of postsecondary, academic, vocational, technical, continuing, or adult education for individuals with disabilities.

This final funding priority supports the National Education Goal of every adult American being literate and possessing the knowledge and skills necessary to compete in a global economy by helping students who are deaf and hard of hearing to reach higher levels of academic achievement.

Funding of particular projects depends on the availability of funds, the content of the final funding priority, and the quality of the applications received. Further, the activities of the projects funded under this priority could be affected by the enactment of legislation reauthorizing the program. The publication of the final funding priority does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements.

Note: This notice of final funding priority does not solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the Federal Register.

Analysis of Comments and Changes

On March 18, 1996, the Secretary published a notice of proposed priority for this program in the Federal Register (61 FR 11086).

It was brought to our attention during the comment period that it is necessary to clarify what population is to be served by the regional centers. These centers have traditionally served individuals who are deaf and hard of hearing. This priority is not intended to change the population being served by the centers. The Secretary has therefore added references to individuals who are hard of hearing throughout the priority.

In response to the Secretary's invitation in the notice of proposed priority, 28 comments were received. All 28 commenters expressed interest in the Department holding a competition under the proposed priority. Eleven of the commenters suggested changes in the activities the regional centers must complete. An analysis of the comments and of the changes in the proposed priority follows. Technical and other minor changes—as well as suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Comment: Eight commenters recommended that the Secretary fund direct student support services programs such as interpreting and notetaking at current levels.

Discussion: Although funding of direct student support services such as interpreting and notetaking was allowed through this program in the past, the Secretary believes that the limited funds available to support four regional centers are more effectively used for the activities described in the priority, including assisting institutions of higher education that are currently not serving students who are deaf and hard of hearing. Each of the currently funded regional centers has developed a model

of providing support services to students who are deaf and hard of hearing, and provided limited technical assistance and outreach services to other postsecondary institutions. The Secretary believes a technical assistance model will most efficiently use scarce resources and is the most effective strategy to ultimately increase postsecondary educational opportunities for students who are deaf and hard of hearing. Further, under Section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act (ADA), institutions of higher education have the responsibility to provide these direct services. Under paragraph (e) of the priority, each center is required to disseminate information about these responsibilities and financial and other resources available for such purposes.

Changes: None.

Comment: Nineteen commenters recommended that the Secretary continue funding the current regional centers located at St. Paul Technical College, Seattle Community College, California State University at Northridge and the University of Tennessee at Knoxville.

Discussion: The Secretary does not have authority to non-competitively continue the current grantees. Section 625(a)(6) of the Individuals with Disabilities Education Act required the Secretary to continue to provide assistance to the current grantees operating the four regional centers for the deaf through September 30, 1995. Because current law does not provide authority for continuation of the current grantees, the Secretary must conduct a competition for fiscal year 1996 funds for this activity.

Change: None.

Comment: Three commenters suggested that the priority address the need to recruit or train interpreters, stenographers and other service specialists to provide services at a reasonable cost. In addition, an effort should be made to standardize training and develop compensation policies for interpreters and other support services personnel.

Discussion: The Secretary is aware of the need to train more interpreters and other service providers. The Office of Special Education Programs, Division of Personnel Preparation, and the Rehabilitation Services Administration have specific authorities to train both educational and general-service interpreters and are currently funding 28 projects for this purpose. It is anticipated that through technical assistance and outreach, the regional centers will be able to assist these

institutions in locating resources and to provide leadership to address support service issues.

Changes: None.

Comment: Twelve commenters strongly stressed that the needs assessment to be performed by each regional center should also address the technical assistance needs of postsecondary institutions related to retaining and instructing students who are deaf and hard of hearing.

Discussion: The Secretary agrees with the commenters that the centers must identify the needs of institutions related to retaining and instructing deaf and hard of hearing students in order to provide assistance to postsecondary education institutions in developing strategies that will result in more deaf and hard of hearing students completing their programs.

Changes: The issue of retaining and instructing deaf and hard of hearing students has been added to the list of areas in paragraph (a) of the priority that must be addressed in the technical needs assessment to be performed by each regional center.

Comment: One commenter recommended that the Secretary add "and accommodation" to paragraph (b). The commenter states that the Secretary should distinguish between "access" and "accommodation." If this is not stressed, he suspects that many applications will focus on recruitment and admission variables, and give inadequate attention to factors which sustain the student throughout his or her postsecondary educational experiences. The commenter indicated also that the ability of applicants to articulate what "accommodation" means will help distinguish between strong and weak applications.

Discussion: The Secretary agrees with the commenter that adding "and accommodation of individuals who are deaf and hard of hearing throughout their postsecondary educational experiences," to paragraph (b) will clarify the distinction between "access" and "accommodation." Furthermore, it will ensure that the regional centers will not only provide postsecondary institutions with consultation and technical assistance related to special needs such as interpreters, notetakers, assistive devices and other essential aids, but continue providing accommodation support throughout the students' postsecondary educational programs.

Change: The phrase "and accommodation of individuals who are deaf and hard of hearing, including traditionally underserved populations who are deaf and hard of hearing,

throughout their postsecondary educational experiences" has been added to paragraph (b).

Comment: One commenter asked the Secretary to clarify what is meant by "develop training materials" in paragraph (f) and expressed concern that resources could be drained unless the regional centers collaborate on what materials should be developed and cooperate in their dissemination. Five commenters recommended that the Secretary require the centers to plan for national networking, coordination and collaboration to expand and share resources. These commenters expressed concern that the centers will duplicate many activities and that the centers should coordinate activities.

Discussion: The Secretary agrees with the commenters that clarification is needed regarding paragraph (f) and the phrase "develop training materials." It is the intent of the Secretary to have the regional centers make available, through development or acquisition, awareness-training materials for administration, faculty, and staff of postsecondary education institutions. It is anticipated that the regional centers will cooperate and collaborate in developing materials, standards, and other criteria that are needed. The regional centers are expected to collaborate in developing and conducting all major activities, such as the content of needs assessment and other instruments to be used, information about postsecondary education programs, administration/faculty/staff orientation materials used in serving students who are deaf and hard of hearing, training materials, evaluation criteria and instruments and other similar materials.

Change: Paragraph (f) is changed by deleting "develop training materials" and inserting: "Make available through development and acquisition, awareness-training materials for administrators, faculty and staff * * *." In order to ensure coordination and collaboration among the regions, paragraph (j) has been changed to: "Coordinate and collaborate on the development and establishment of needs-assessment activities, material development, technical assistance, outreach, information dissemination, and evaluation of the regional center's activities for the purpose of avoiding overlap and duplication of efforts * * *."

Comment: One commenter recommended that three regional centers and a national center be funded. Another commenter suggested that the Secretary fund six regional centers. Two commenters recommended five centers, two to be located in the southwest. They

also suggested that a national research and evaluation component be added.

Discussion: The Secretary is aware that the centers will need to form a network for intra/inter-regional cooperation. As noted in paragraphs (d) and (j) of the priority, the centers must undertake such efforts. The centers are also required to carry out evaluation activities, as described in paragraph (i). Finally, the Secretary believes that four regional centers, rather than three or six as suggested, represents the best combination of effort and national scope.

Changes: None.

Comments: One commenter recommended that the northeast region could be served by the two national institutions, Gallaudet University and the National Technical Institute for the Deaf at the Rochester Institute of Technology and, instead, the Secretary should create an additional region in the west. Four commenters recommended that the States in the four proposed regions be realigned. They indicated that the southern region accounted for approximately 33 percent of the Nation's population.

Discussion: The Secretary believes that the proposed regions represent a fair and reasonable geographical distribution. However, he agrees that each application must be assessed for the evidence of need in the target area and scope of work proposed by the project. The application notice, published elsewhere in this issue of the Federal Register, specifies a range of award amounts to allow the Secretary to take these factors into consideration in making awards.

Changes: None.

Comment: One commenter recommended that the priority stress cooperation with participating postsecondary educational institutions within each region in order to develop consistent outreach strategies and disseminate information to individuals who are deaf and hard of hearing to enhance their awareness of available postsecondary educational opportunities both within and outside the region.

Discussion: The Secretary agrees with the commenter on the need for coordination and collaboration of major center activities within each region and the need to develop consistent outreach strategies and disseminate information to individuals who are deaf and hard of hearing to enhance their awareness of available postsecondary educational opportunities both within and outside the region.

Change: Language has been added to paragraph (d) to ensure cooperation

with participating postsecondary educational institutions within the region in developing outreach strategies and disseminating information to individuals who are deaf and hard of hearing to enhance their awareness of available postsecondary educational opportunities, both within and outside the region.

Comment: Two commenters recommended that the Secretary require the centers to provide technical assistance and transitional outreach services to secondary schools serving students who are deaf and hard of hearing, and linkages with other programs. One of the commenters indicated that there is no mention of a job-placement component to ensure linkages to employment opportunities. The commenter added that emphasis should be placed on these activities because, at the present time, there are few programs that offer strong job-placement activities for individuals graduating from postsecondary institutions.

Discussion: In paragraph (g), the Secretary directs the centers to "address the educational, remedial, support service, transitional, independent living, and employment needs of individuals who are deaf and hard of hearing." While the Secretary is aware of the need for comprehensive transitional services for students who are deaf and hard of hearing in secondary schools, scarce resources limit the level of regional centers' interaction with these schools to providing information about postsecondary educational opportunities. In order to ensure linkages to employment opportunities, the Secretary anticipates that the regional centers will coordinate their programs and activities with vocational rehabilitation and independent living agencies.

Change: None.

Comment: Two commenters recommended that the Secretary direct the centers to provide technical assistance to postsecondary education institutions in implementing strategies that will enhance the integration of students who are deaf and hard of hearing with other students.

Discussion: The Secretary expects the regional centers to provide training materials and disseminate information about proven models, components of models, and other exemplary practices that enhance the integration of students who are deaf and hard of hearing with other students. The Secretary believes that this issue is adequately addressed in paragraph (f).

Change: None.

Comments: Three commenters recommended the utilization of distance learning and other technologies in order to provide consultation and support services to a variety of postsecondary institutions regarding technical accommodations and model service programs.

Discussion: The Secretary anticipates that applicants will recommend creative and innovative ways that postsecondary institutions can provide services to students who are deaf and hard of hearing. Distance learning technology would be one appropriate method. However, the Secretary does not believe that it is appropriate to suggest or limit the potential methods for meeting the needs of students who are deaf and hard of hearing.

Changes: None.

Comments: Nine commenters indicated that for a support services program to be efficient and cost beneficial, a "critical mass" or significant number of deaf and hard of hearing students is required.

Discussion: The Department's survey, *Deaf and Hard of Hearing Students in Postsecondary Education*, by the National Center for Education Statistics through its postsecondary education quick information system (PEQIS), indicated that 1,850 institutions were providing services to varying numbers of deaf and hard of hearing students. The Secretary believes that many of these institutions, including those who do not have a significant number of deaf and hard of hearing students, need assistance. The type of assistance needed will depend on the type and size of the program and needs of the students enrolled. The centers will be able to provide technical assistance and outreach services to many institutions that wish to develop or improve service delivery.

Changes: None.

Comment: Three commenters recommended that the centers emphasize services to individuals from traditionally underserved populations. These individuals are late-deafened, deaf-blind, have multiple disabilities, or are from minority populations, including language minorities, who typically do not have services or resources readily available to them.

Discussion: The Secretary believes that the technical assistance needs assessments to be performed by each center will identify the technical assistance needs of the institutions of higher education, including how to serve deaf and hard of hearing populations that may be underserved. These identified needs will generate the necessary technical assistance services.

However, the Secretary agrees that it is important to emphasize that technical assistance to enhance the access and accommodation of individuals who are deaf and hard of hearing to postsecondary education and training must include individuals from traditionally underserved populations.

Changes: In order to address the needs of individuals from traditionally underserved populations, "including those from language minorities" has been added to paragraph (a), and "including traditionally underserved populations who are deaf and hard of hearing" has been added to paragraph (b).

Comment: One commenter recommended that the Secretary include a provision to involve families of students who are deaf and hard of hearing, and students themselves, and to include parent training and information centers and the National Parent Network on Disabilities among the organizations listed in paragraph (h).

Discussion: The majority of students who are deaf and hard of hearing have reached the age of maturity as they prepare to attend postsecondary education programs. Therefore, they are the primary targets of this assistance. The Secretary anticipates that information about postsecondary education opportunities provided to students who are deaf and hard of hearing and their teachers and counselors in secondary programs through informational materials and orientation as indicated in paragraphs (d), (e), and (g) also will be shared with parents and families. Further, information for parents and families will be available through the clearinghouses and organizations listed in paragraph (h).

Change: None.

Priority

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet this priority. The Secretary will fund under this competition only applications that meet the priority.

Absolute Priority—Regional Centers on Postsecondary Education for Individuals who are Deaf.

Purpose

The purpose of this priority is to support projects that assist educational institutions to implement proven models, components of models, and other exemplary practices, including innovative technology, to increase and

improve postsecondary educational opportunities for individuals who are deaf and hard of hearing.

Background

This priority would support four regional centers on postsecondary education for individuals who are deaf and hard of hearing. Each center will provide technical assistance to a range of postsecondary institutions, including academic, vocational, technical, continuing, and adult education programs, to expand the array of educational opportunities within the region that are available to students who are deaf and hard of hearing. The centers must provide technical assistance to institutions currently not serving students who are deaf and hard of hearing to assist them to develop services. The centers must also provide technical assistance to institutions currently serving students who are deaf and hard of hearing to assist them to improve existing programs. In carrying out the objectives of this priority, projects must distribute technical assistance services and resources equitably, taking into account population and geographic size, within each State in its targeted geographic region.

Each regional center must:

- (a) Conduct assessments of the technical assistance needs of postsecondary education institutions related to recruiting; enrolling; retaining; instructing; addressing the varying communication needs and methods used by individuals who are deaf and hard of hearing, including those from language minorities; and, otherwise effectively serving students who are deaf and hard of hearing;
- (b) Provide consultation, in-service training, and planning and development assistance to postsecondary education institutions and their staff to enhance the access and accommodation of individuals who are deaf and hard of hearing, including traditionally underserved populations who are deaf and hard of hearing, throughout their postsecondary educational experiences, to postsecondary education and training;
- (c) Provide technical assistance on the responsibilities of postsecondary education institutions under Federal statutes, including Section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act;
- (d) Cooperate with participating postsecondary educational institutions within the region in developing outreach strategies and disseminating information to individuals who are deaf and hard of hearing to enhance their

awareness of available postsecondary educational opportunities, both within and outside the regions;

(e) Disseminate information about financial and other resources available to students who are deaf and hard of hearing and to postsecondary institutions to help them accommodate these students;

(f) Make available, through development and acquisition, awareness-training materials for administrators, faculty and staff, and disseminate information on proven models, components of models, and other exemplary practices, including innovative technology, among postsecondary educational programs to assist them in implementing effective and cost-efficient service-delivery systems that foster integration of students who are deaf and hard of hearing with other students;

(g) Encourage the use of consortia of postsecondary education institutions and other cooperative arrangements to provide services and assistance to students who are deaf and hard of hearing, including coordination of postsecondary education options with existing public and private community services that may address the educational, remedial, support service, transitional, independent living, and employment needs of individuals who are deaf and hard of hearing;

(h) Coordinate technical assistance and dissemination activities with relevant information clearinghouses and organizations such as the National Clearinghouse on Postsecondary Education for Individuals with Disabilities (HEATH), National Information Center for Children and Youth with Disabilities, National Transition Alliance, and Association of Higher Education and Disability;

(i) Evaluate the impact, effectiveness, and results of postsecondary institutions within the region in accommodating students who are deaf and hard of hearing; and

(j) Coordinate and collaborate on the development and establishment of needs-assessment activities, material development, technical assistance, outreach, information dissemination, and evaluation of the regional centers' activities for the purpose of avoiding overlap and duplication of efforts; ensuring that individuals who are deaf and hard of hearing have information on postsecondary programs throughout the country that provide accommodations; and ensuring that information on proven models, components of models, and other exemplary practices, including innovative technology, are equally available in each of the four

regions. This coordination must include carrying out collaborative activities and cross-regional initiatives, where appropriate.

The Secretary anticipates funding four cooperative agreements, each for a project period of up to 60 months, subject to the requirements of 34 CFR 75.253(a), for continuation awards. In determining whether to continue a center for the fourth and fifth years of the project period, in addition to applying the requirements of 34 CFR 75.253(a), the Secretary will consider the recommendations of a review team consisting of three experts selected by the Secretary. The services of the review team, including a two-day visit to the center, are to be performed during the last half of the center's second year and must be included in that year's evaluation required under 34 CFR 75.590. Funds to cover the costs of the review team must be included in the center's budget for year two. These costs are estimated to be approximately \$4,000.

To ensure that all States benefit from these projects, the Secretary intends to support four projects which will be required to serve each State within one of the following geographic regions:

Northeast Region—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, and Vermont.

Southern Region—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, Virgin Islands, and West Virginia.

Midwest Region—Iowa, Illinois, Indiana, Kansas, Ohio, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, and Wisconsin.

Western Region—Alaska, American Samoa, Arizona, California, Colorado, Guam, Hawaii, Idaho, Northern Marinas Islands, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

Selection Criteria for Evaluating Applications

The Secretary will use the following weighted criteria to evaluate an application under the Regional Centers on Postsecondary Education for Individuals who are Deaf competition.

The maximum score for all the criteria is 100 points.

(a) *Project design.* (40 points)

(1) The Secretary reviews each application to evaluate the quality of the proposed technical assistance project design.

(2) The Secretary determines the extent to which—

(i) The technical assistance objectives are designed to meet the purpose of the priority and are clearly defined, measurable, and achievable; and

(ii) The proposed technical assistance addresses the needs of a range of postsecondary institutions, including academic, vocational, technical, continuing, and adult education programs.

(3) The Secretary determines the extent to which each application provides for—

(i) Use of current research findings and information on model practices;

(ii) Methods for linking postsecondary institutions in need of technical assistance;

(iii) Innovative procedures for disseminating information and imparting skills to postsecondary institutions, staff of these institutions, and postsecondary students and potential postsecondary students who are deaf and hard of hearing; and

(iv) Innovative procedures for collaborating and coordinating with other entities that are involved with broader technical assistance efforts.

(b) *Plan of operation.* (20 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary considers—

(i) The extent to which the management plan will ensure proper and efficient administration of the project;

(ii) The quality of the activities proposed to accomplish the goals and objectives;

(iii) The adequacy of proposed timelines for accomplishing those activities; and

(iv) Effectiveness in the ways in which the applicant plans to use the resources and personnel to accomplish the program's goals and objectives.

(3) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(c) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use.

(2) The Secretary considers—

(i) The qualifications of the project director and project coordinator (if one is used);

(ii) The qualifications of each of the other key project personnel;

(iii) The time that each person referred in paragraphs (b)(2) (i) and (ii) plans to commit to the project; and

(iv) How the applicant will ensure that personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(3) To determine personnel qualifications under (b)(2) (i) and (ii), the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(d) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application to determine whether the project has an adequate budget and is cost-effective.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application to determine the quality of the evaluation plan for the project.

(2) The Secretary considers—

(i) The extent to which the applicant's methods of evaluation are appropriate to the project; and

(ii) To the degree possible, the extent to which the applicant's methods of evaluation are objective and produce data that are quantifiable.

(f) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine whether the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the adequacy of the facilities and the technology, equipment, and supplies the applicant plans to use.

Intergovernmental Review

This notice is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Program Authority: 20 U.S.C. 1424a. (Catalog of Federal Domestic Assistance Number: Regional Postsecondary Centers for Individuals Who are Deaf, 84.078A)

Dated: June 25, 1996.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 96-16640 Filed 6-28-96; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.078A]

Postsecondary Education Programs for Individuals with Disabilities; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1996

Purpose of Program: To support projects that assist educational institutions to implement proven models, components of models, and other exemplary practices, including innovative technology, to increase and improve postsecondary opportunities for individuals who are deaf and hard of hearing.

This program supports the National Education Goal of every adult American being literate and possessing the knowledge and skills necessary to compete in a global economy by helping students who are deaf and hard of hearing to reach higher levels of academic achievement.

Eligible Applicants: Eligible applicants are State educational agencies, institutions of higher education, junior and community colleges, vocational and technical institutions, and other nonprofit educational agencies.

Applicable Regulations: (a) The regulations in part 338; and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Note: The regulations in 34 CFR Part 86 apply to institutions of higher education only.

Applications Available: July 2, 1996.

Priority:

(a) The priority in the notice of final funding priority for this program, as published elsewhere in this issue of the Federal Register, applies to this competition.

(b) Within this priority, the Secretary particularly invites applications for projects from consortia or partnerships with expertise in accommodating students who are deaf and hard of hearing in a variety of academic, vocational, technical, continuing, and adult education environments. However, in accordance with EDGAR at 34 CFR 75.105 (c)(1), an application that meets this invitational priority receives no competitive or absolute preference

over applications that otherwise meet the priority.

Deadline for Transmittal of Applications: August 2, 1996.

Deadline for Intergovernmental Review: September 5, 1996.

Estimated Number of Awards: 4.

Project Period: Up to 60 months.

Available Funds: In fiscal year 1996, the Department proposes to allocate approximately \$4,000,000 to support an estimated 4 projects, with a range of awards of approximately \$800,000–\$1,200,000 for the first twelve months of the project. Multi-year projects will be level funded unless there are increases in costs attributable to significant changes in activity level.

Average Award: \$1,000,000.

Note: The Department of Education is not bound by any estimates in this notice.

For Applications and General Information Contact: Requests for applications and general information should be addressed to: Ramon F. Rodriguez, U.S. Department of Education, 600 Independence Avenue, S.W., Switzer Building, Room 3125, Washington, D.C. 20202–2526. Telephone: (202) 205–8555. FAX: (202) 205–9252. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9156. Internet: Ramon_Rodriguez@ed.gov

For Technical Information Contact: Michael Ward, U.S. Department of Education, 600 Independence Avenue, S.W., Switzer Building, Room 4624, Washington, D.C. 20202–2732. Telephone: (202) 205–8163. FAX: (202) 205–8971.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases); or on the World Wide Web at (<http://www.ed.gov/money.html>). However, the official application notice for a discretionary grant competition is the notice published in the Federal Register.

Program Authority: 20 U.S.C. 1424a.

Dated: June 25, 1996.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitation Services.

[FR Doc. 96–16639 Filed 6–28–96; 8:45 am]

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Registered
Federal

Monday
July 1, 1996

Part VIII

**Department of
Education**

**Applications Invitation for New Awards
Under Certain Programs for Fiscal Year
1997; Notice**

DEPARTMENT OF EDUCATION**[CFDA Nos.: 84.133F, 84.133G, and 84.133P]****Office of Special Education and
Rehabilitative Services National
Institute on Disability and
Rehabilitation Research Notice Inviting
Applications for New Awards Under
Certain Programs for Fiscal Year 1997**

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the programs and applicable regulations governing the programs, including the Education Department General Administrative Regulations (EDGAR), this notice contains information, application forms, and instructions needed to apply for a grant under these competitions.

These programs support the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The estimated funding levels in this notice do not bind the Department of Education to make awards in any of these categories, or to

any specific number of awards or funding levels, unless otherwise specified in statute.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, and 86; and the following program regulations:

Research Fellowships—34 CFR Part 356.

Field Initiated Research—34 CFR Parts 357.

Research Training and Career Development Program—34 CFR Part 360.

Program Title: Rehabilitation Research Fellowships.

CFDA Number: 84.133F.

Purpose: The purpose of this program is to build research capacity by providing support to highly qualified individuals to perform research on the rehabilitation of disabled persons.

Selection Criteria: The Secretary evaluates applications for fellowships according to the following criteria in 34 CFR 356.30.

(a) Quality and level of formal education, previous work experience, and recommendations of present or former supervisors or colleagues that include an indication of the applicant's ability to work creatively in scientific research; and

(b) The quality of a research proposal of no more than 12 pages containing the following information:

(1) The importance of the problem to be investigated to the purpose of the Act and the mission of NIDRR.

(2) The research hypotheses or related objectives and the methodology and design to be followed.

(3) Assurance of the availability of any necessary data resources, equipment, or institutional support, including technical consultation and support where appropriate, required to carry out the proposed activity.

Eligible Applicants: Individuals only are eligible to apply for research fellowships under this program.

Program Authority: 29 U.S.C. 761a(d).

APPLICATION NOTICE FOR FISCAL YEAR 1997 RESEARCH FELLOWSHIPS, CFDA NO. 84.133F

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Maximum award amount (per year)*	Project period (months)
Research Fellowships	8/30/96	10	Merit: \$30,000 Distinguished: \$40,000	12

Note: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount (See 34 CFR 75.104(b)).

Program Title: Field-Initiated Research.

CFDA Number: 84.133G.

Purpose: This program is designed to encourage eligible parties to originate valuable ideas for research and demonstration, development, or knowledge dissemination projects to improve the lives of individuals with disabilities, and to support research and demonstration, development, or knowledge dissemination projects as described in program regulations that address important activities not supported by Institute-funded research or that complement that research in a promising way.

Note: The "Design of the project" section of the selection criteria for the Field-Initiated Research (FIR) program (Section 357.32(b)) includes different sets of selection criteria relating to three types of projects: research and demonstration projects, knowledge dissemination projects, and development projects. An applicant for an FIR grant should clearly identify on the cover page of the application which *one* of the three types of projects is being proposed. The "Design of project" selection criteria that will be used to review an application will be based on the

applicant's identification of the type of project that is being proposed.

Selection Criteria: The Secretary uses the following criteria to evaluate an application under this program.

(a) *Importance of the problem.* (20 points) The Secretary reviews each application to determine the extent to which—

(1) The proposed project addresses a problem that is significant to persons with disabilities or to those who provide services to them;

(2) The proposed project is likely to produce new and useful knowledge, techniques, or devices that will develop or disseminate solutions to problems confronting persons with disabilities; and

(3) The application addresses the needs of individuals with disabilities from minority backgrounds.

(b) *Design of the project.* (45 points)
(1) The Secretary reviews each application for a research and demonstration project to determine the extent to which—

(i) The review of the literature is appropriate and indicates familiarity with the relevant current research;

(ii) The research hypotheses are theoretically sound and based on current knowledge;

(iii) The sample populations are adequate and appropriately selected;

(iv) The data collection instruments and methods are appropriate and likely to be successful;

(v) The data analysis measures are appropriate; and

(vi) The application discusses the anticipated research results and demonstrates how those results would satisfy the original hypotheses.

(2) The Secretary reviews each application for a knowledge dissemination project to determine the extent to which—

(i) The need for the information has been demonstrated;

(ii) The target populations are appropriately specified;

(iii) The dissemination methods are appropriate to the target population;

(iv) The materials for dissemination are prepared in media accessible to the target population; and

(v) There are adequate means of documenting and evaluating the effectiveness of the dissemination activity.

(3) The Secretary reviews each application for a development project to determine the extent to which—

(i) The proposed project will use the most effective and appropriate technology available in developing the new device or technique;

(ii) The proposed development is based on a sound conceptual model that demonstrates an awareness of the state-of-the-art in technology;

(iii) Devices or techniques will be developed and tested in an appropriate environment;

(iv) The applicant considers the cost-effectiveness and usefulness of the device or technique to be developed for persons with disabilities; and

(v) The applicant discusses the potential for commercial or private manufacture, marketing, and distribution of the product.

(c) *Personnel.* (20 points) The Secretary reviews each application to determine the extent to which—

(1) The key personnel have adequate training and experience in the required discipline to conduct the proposed activities;

(2) The allotment of staff time is adequate to accomplish the proposed activities; and

(3) The applicant ensures that personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping conditions.

(d) *Management and Evaluation.* (15 points) The Secretary reviews each application to determine the extent to which—

(1) The resources of the applicant are adequate, appropriate, and accessible to individuals with disabilities;

(2) The proposed budget is adequate and appropriate for the activities to be carried out;

(3) There is a plan, appropriate to the type of field-initiated project, to evaluate the effectiveness of the project in accomplishing its goals and objectives;

(4) The applicant provides a plan of operations, appropriate to the type of field-initiated project, indicating that it will achieve the project objectives in a timely and effective manner; and

(5) Appropriate collaboration with other agencies is assured.

Eligible Applicants: Public and private organizations, including institutions of higher education and Indian tribes and tribal organizations, are eligible to apply for awards under this program.

Program Authority: 29 U.S.C. 762.

APPLICATION NOTICE FOR FISCAL YEAR 1997 FIELD-INITIATED RESEARCH, CFDA NO. 84.133G

Funding Priority	Deadline for transmittal of applications	Estimated number of awards	Maximum award amount (per year)*	Project period (months)
Field-Initiated Research	9/30/96	25	\$125,000	36

NOTE: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount (See 34 CFR 75.104(b)).

Program Title: Research Training and Career Development Program
CFDA Number: 84.133P.

Purpose: The purpose of this program is to expand capability in the field of rehabilitation research by supporting projects that provide advanced training in rehabilitation research. These projects provide research training and experience at an advanced level to individuals with doctorates or similar advanced degrees who have clinical or other relevant experience, including experience in management or basic science research, in fields pertinent to rehabilitation, in order to qualify those individuals to conduct independent research on problems related to disability and rehabilitation.

Invitational Priorities: The Secretary is particularly interested in applications that address one of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets an invitational priority does not receive competitive or absolute preference over other applications. The invitational priorities are:

1. Training individuals with disabilities in advanced research in disability and rehabilitation-related fields.
2. Training individuals from minority backgrounds, particularly individuals with disabilities from minority

backgrounds, in advanced disability and rehabilitation research.

Selection Criteria: The Secretary uses the following criteria in 34 CFR 360.31 to evaluate applications under this program.

(a) *Importance and potential contribution.* (20 points) The Secretary reviews each application to determine to what degree—

(1) The applicant is responsive to any priority established under § 360.32;

(2) The applicant proposes to provide training in a rehabilitation discipline or area of study in which there is a shortage of qualified researchers, or to provide training to a trainee population in which there is a need for more qualified researchers, such as clinicians in rural areas, or clinicians who are directly experienced with underserved populations; and

(3) The applicant is likely to make a significant increase in the number of trained rehabilitation researchers.

(b) *Quality of proposed training program.* (40 points) The Secretary reviews each application to determine to what degree—

(1) The applicant's proposed recruitment program is likely to be effective in recruiting highly qualified trainees;

(2) The proposed didactic and classroom training programs emphasize

scientific methodology are multidisciplinary, comprehensive, and appropriate to the level of the trainees, and are likely to produce qualified independent researchers;

(3) The quality and extent of the academic mentorship, guidance, and supervision to be provided to each individual trainee are of a high level and are likely to produce highly qualified researchers;

(4) The type, extent, and quality of the proposed clinical and laboratory research experience, including the opportunity to participate in research on meaningful topics at an advanced level, are likely to develop individuals with the capacity to perform independent research; and

(5) The opportunities for collegial and collaborative activities, exposure to outstanding scientists in the field, and opportunities to participate in the preparation of scholarly or scientific publications and presentations are extensive and appropriate.

(c) *Personnel and resources committed to the project.* (30 points) The Secretary evaluates each application to determine to what degree—

(1) The activities of the project will be implemented by sufficient and qualified staff who are outstanding scientists in the field;

(2) The project director and other key staff are experienced in the delivery of advanced research training as well as knowledgeable about the methodology and literature of pertinent subject areas;

(3) All required disciplines are effectively included; and

(4) The applicant possesses the appropriate facilities, laboratories, and access to clinical populations and organizations representing persons with disabilities to support the conduct of advanced clinical rehabilitation research.

(d) Management and operating plans. (10 points) The Secretary evaluates each

application to determine to what degree—

(1) There is an effective plan of operation that ensures proper and efficient administration of the project;

(2) There is an effective plan for collaboration with other institutions of higher education and organizations whose participation is necessary to ensure effective classroom and clinical research training;

(3) The applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected without regard to race,

color, national origin, gender, age or handicapping condition;

(4) The applicant has provided an adequate plan for the use of facilities, resources, supplies and equipment;

(5) The budget for the project is reasonable and adequate to support the proposed activities; and

(6) The applicant provides an appropriate plan for the evaluation of all phases of the project.

Eligible Applicants: Institutions of higher education are eligible to receive awards under this program.

Program Authority: 29. U.S.C. 761a(k).

APPLICATION NOTICE FOR FISCAL YEAR 1997 RESEARCH TRAINING AND CAREER DEVELOPMENT PROGRAM, CFDA NO. 84.133P

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Maximum award amount (per year)*	Project period (months)
Research Training and Career Development Program	8/30/96	3	\$150,000	60

Note: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount (See 34 CFR 75.104(b)).

Instructions for Application Narrative

The Secretary strongly recommends that the narrative for Field-Initiated Research and Research Training and Career Development applications be limited to no more than 40 double-spaced, typed pages (on one side only), not including appendices. This recommended page limit applies only to the narrative and not to the application forms, assurances, certifications and attachments to those forms, assurances, and certifications.

The research proposal for a Fellowship application must be limited to no more than 12 pages (34 CFR 356.30(b)).

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Washington, DC 20202-4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. [Washington, DC time] on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Forms and Instructions

The appendix to this application is divided into four parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

PART I: Application for Federal Assistance (Standard Form 424 (Rev. 4-88)) and instructions.

PART II: Budget Form—Non-Construction Programs (Standard Form 524A) and instructions.

PART III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters: and Drug-Free Work-Place Requirements (ED Form 80-0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80-0014) and instructions. (NOTE: ED Form GCS-014 is intended for the use of primary participants and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL (if applicable) and instruction. This document has been marked to reflect statutory changes. See the notice published by the Office of Management and Budget at 61 FR 1413 (January 19, 1996).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an

original signature. No grant may be awarded unless a completed application form has been received.

For Applications Contact: In order to obtain an application package, contact William H. Whalen, U.S. Department of Education, 600 Independence Avenue SW., Switzer Building, Room 3411, Washington, DC 20202. Telephone: (202) 205-9141. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205-8887.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260-9950; on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases); or on the World Wide Web at <http://www.ed.gov/.money.html>.

However, the official application notice for a discretionary grant competition is the notice published in the Federal Register.

Program Authority: 29 U.S.C. 760-762.

Dated: June 19, 1996.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix

Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this Section. Applicants are required to submit an original and two copies of each application as provided in this Section.

Frequent Questions

1. CAN I GET AN EXTENSION OF THE DUE DATE?

No! On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the Federal Register. However, there are no extensions or exceptions to the due date made for individual applicants.

2. WHAT SHOULD BE INCLUDED IN THE APPLICATION?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and all subsequent project years should be included.

If collaboration with another organization is involved in the proposed

activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is *not* useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. WHAT FORMAT SHOULD BE USED FOR THE APPLICATION?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. MAY I SUBMIT APPLICATIONS TO MORE THAN ONE NIDRR PROGRAM COMPETITION OR MORE THAN ONE APPLICATION TO A PROGRAM?

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. WHAT IS THE ALLOWABLE INDIRECT COST RATE?

The limits on indirect costs vary according to the program and the type of application. Applicants in the Research Training and Career Development program should limit indirect charges to 8 percent. Applicants in the Field-Initiated Research program should limit indirect charges to the organization's approved rate. If the organization does not have an approved rate, the application should include an estimated actual rate. Fellowship awards are made to individuals, therefore indirect cost rates do not apply.

6. CAN PROFITMAKING BUSINESSES APPLY FOR GRANTS?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will

be required to share in the costs of the project.

7. CAN INDIVIDUALS APPLY FOR GRANTS?

No. Only organizations are eligible to apply for *grants* under NIDRR programs. However, individuals are the only entities eligible to apply for fellowships.

8. CAN NIDRR STAFF ADVISE ME WHETHER MY PROJECT IS OF INTEREST TO NIDRR OR LIKELY TO BE FUNDED?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

9. HOW DO I ASSURE THAT MY APPLICATION WILL BE REFERRED TO THE MOST APPROPRIATE PANEL FOR REVIEW?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including a project title that describes the project.

10. HOW SOON AFTER SUBMITTING MY APPLICATION CAN I FIND OUT IF IT WILL BE FUNDED?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

11. CAN I CALL NIDRR TO FIND OUT IF MY APPLICATION IS BEING FUNDED?

No. When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

12. IF MY APPLICATION IS SUCCESSFUL, CAN I ASSUME I WILL GET THE REQUESTED BUDGET AMOUNT IN SUBSEQUENT YEARS?

No. Funding in subsequent years is subject to availability of funds and project performance.

13. WILL ALL APPROVED APPLICATIONS BE FUNDED?

No. It often happens that the peer review panels approve for funding more

applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000-01-P

OMB Approval No. 0348-0043

**APPLICATION FOR
FEDERAL ASSISTANCE**

1. TYPE OF SUBMISSION: <i>Application</i> ☐ Construction ☐ Non-Construction		2. DATE SUBMITTED		Applicant Identifier																													
Preapplication ☐ Construction ☐ Non-Construction		3. DATE RECEIVED BY STATE		State Application Identifier																													
		4. DATE RECEIVED BY FEDERAL AGENCY		Federal Identifier																													
5. APPLICANT INFORMATION																																	
Legal Name:			Organizational Unit:																														
Address (give city, county, state, and zip code):			Name and telephone number of the person to be contacted on matters involving this application (give area code)																														
6. EMPLOYER IDENTIFICATION NUMBER (EIN): 			7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐ A. State B. County C. Municipal D. Township E. Interstate F. Intermunicipal G. Special District H. Independent School Dist. I. State Controlled Institution of Higher Learning J. Private University K. Indian Tribe L. Individual M. Profit Organization N. Other (Specify): _____																														
8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision If Revision, enter appropriate letter(s) in box(es): ☐ ☐ A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify): _____			9. NAME OF FEDERAL AGENCY:																														
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 		11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:																															
12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.): 																																	
13. PROPOSED PROJECT: Start Date: _____ Ending Date: _____ 14. CONGRESSIONAL DISTRICTS OF: a. Applicant _____ b. Project _____																																	
15. ESTIMATED FUNDING: <table border="1" style="width: 100%; border-collapse: collapse; font-size: x-small;"> <tr> <td style="width: 20%;">a. Federal</td> <td style="width: 10%;">\$</td> <td style="width: 10%;"></td> <td style="width: 10%;">.00</td> </tr> <tr> <td>b. Applicant</td> <td>\$</td> <td></td> <td>.00</td> </tr> <tr> <td>c. State</td> <td>\$</td> <td></td> <td>.00</td> </tr> <tr> <td>d. Local</td> <td>\$</td> <td></td> <td>.00</td> </tr> <tr> <td>e. Other</td> <td>\$</td> <td></td> <td>.00</td> </tr> <tr> <td>f. Program Income</td> <td>\$</td> <td></td> <td>.00</td> </tr> <tr> <td>g. TOTAL</td> <td>\$</td> <td></td> <td>.00</td> </tr> </table>		a. Federal	\$		.00	b. Applicant	\$		.00	c. State	\$		.00	d. Local	\$		.00	e. Other	\$		.00	f. Program Income	\$		.00	g. TOTAL	\$		.00	16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS? a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____ b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW			
a. Federal	\$		.00																														
b. Applicant	\$		.00																														
c. State	\$		.00																														
d. Local	\$		.00																														
e. Other	\$		.00																														
f. Program Income	\$		.00																														
g. TOTAL	\$		.00																														
17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? ☐ Yes If "Yes," attach an explanation. ☐ No																																	
18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED																																	
a. Typed Name of Authorized Representative			b. Title		c. Telephone number																												
d. Signature of Authorized Representative			e. Date Signed																														

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:	Item:	Entry:
1.	Self-explanatory.	12.	List only the largest political entities affected (e.g., State, counties, cities).
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).	13.	Self-explanatory.
3.	State use only (if applicable).	14.	List the applicant's Congressional District and any District(s) affected by the program or project.
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.	15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate <u>only</u> the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.	16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.	17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
7.	Enter the appropriate letter in the space provided.	18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: — "New" means a new assistance award. — "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. — "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.		
9.	Name of Federal agency from which assistance is being requested with this application.		
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.		
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.		

Name of Institution/Organization		Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.				
SECTION B - BUDGET SUMMARY NON-FEDERAL FUNDS						
Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						
SECTION C - OTHER BUDGET INFORMATION (see instructions)						

ED FORM NO. 524

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1820-0027 (Expiration date 11/28/97). The time required to complete this information collection is estimated to average 30 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651. If you have comments or concerns regarding the status of your individual submission of this form, write directly to: William H. Whalen, U.S. Department of Education, 600 Independence Avenue, SW., Switzer Building, Room 3411, Washington, DC 20202.

Research Fellowships (CFDA No. 84.133F) 34 CFR Part 356.

Field-Initiated Research (CFDA No. 84.133G) 34 CFR Parts 350 and 357.

Research Training and Career Development Program—34 CFR Part 360.

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection

of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, D.C. 20503.

Instructions for ED Form No. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A—Budget Summary—U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e):

For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f):

Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e):

Show the total budget request for each project year for which funding is requested.

Line 12, column (f):

Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B—Budget Summary—Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-

Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e):

For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f):

Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e):

Show the total matching or other contribution for each project year.

Line 12, column (f):

Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C—Other Budget Information—Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

BILLING CODE 4000-01-P

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE	
APPLICANT ORGANIZATION		DATE SUBMITTED

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;
- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
- (c) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 -

A. The applicant certifies that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing an on-going drug-free awareness program to inform employees about--
 - (1) The dangers of drug abuse in the workplace;
 - (2) The grantee's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--
 - (1) Abide by the terms of the statement; and
 - (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
- (e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, CSA Regional Office Building No. 3),

Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

DISCLOSURE OF LOBBYING ACTIVITIESApproved by OMB
0348-0046Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract ☐ b. grant ☐ c. cooperative agreement ☐ d. loan ☐ e. loan guarantee ☐ f. loan insurance	2. Status of Federal Action: ☐ a. bid/offer/application ☐ b. initial award ☐ c. post-award	3. Report Type: ☐ a. Initial filing ☐ b. material change For Material Change Only: year _____ quarter _____ date of last report _____		
4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, if known: Congressional District, if known: _____	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known: _____			
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable: _____			
8. Federal Action Number, if known:	9. Award Amount, if known: \$ _____			
<table border="1"> <tr> <td data-bbox="203 850 787 1060"> 10. a. Name and Address of Lobbying Entity Registrant (if individual, last name, first name, MI): </td> <td data-bbox="787 850 1383 1060"> b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI): </td> </tr> </table>			10. a. Name and Address of Lobbying Entity Registrant (if individual, last name, first name, MI):	b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):
10. a. Name and Address of Lobbying Entity Registrant (if individual, last name, first name, MI):	b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):			
(attach Continuation Sheet(s) SF-LLL-A, if necessary)				
11. Amount of Payment (check all that apply): \$ _____ ☐ actual ☐ planned	13. Type of Payment (check all that apply): ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other: specify: _____			
12. Form of Payment (check all that apply): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____				
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11: (attach Continuation Sheet(s) SF-LLL-A, if necessary)				
15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No				
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____			
Federal Use Only.		Authorized for Local Reproduction Standard Form - LLL		

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. ~~Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate.~~ Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

Registered
Particulars

Monday
July 1, 1996

Part IX

**Department of
Health and Human
Services**

Health Care Financing Administration
Medicare Program; Schedule of Limits on
Home Health Agency Costs Per Visit for
Cost Reporting Periods Beginning On or
After July 1, 1996; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPD-867-NC]

RIN 0938-AH54

Medicare Program; Schedule of Limits on Home Health Agency Costs Per Visit for Cost Reporting Periods Beginning On or After July 1, 1996

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice with comment period.

SUMMARY: This notice sets forth a revised schedule of limits on home health agency costs that may be paid under the Medicare program. These limits replace the per-visit limits that were set forth in our February 14, 1995 notice with comment period (60 FR 8389). This notice also responds to comments on the February 14, 1995 notice. This notice does not provide for a permanent extension of the provision of the Omnibus Budget Reconciliation Act of 1993 (OBRA '93) that there be no changes in the home health agency cost limits for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996. However, a proposal to extend the effects of the OBRA '93 freeze is included in President Clinton's FY 1997 Budget.

DATES: *Effective Date:* The schedule of limits is effective for cost reporting periods beginning on or after July 1, 1996.

Comment Date: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on August 30, 1996.

ADDRESSES: Mail comments (one original and three copies) to the following address:

Health Care Financing Administration,
Department of Health and Human Services,
Attention: BPD-867-NC
P.O. Box 7517
Baltimore, MD 21207-0517

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20221, or
Room C5-09-26, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In

commenting please refer to file code BPD-867-NC. 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 309-G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (Phone: (202) 690-7890).

Copies: To order copies of the Federal Register containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 783-3238 or by faxing to (202) 275-6802. The cost for each copy is \$8.00. As an alternative, you may view and photocopy the Federal Register document at most libraries designated as U.S. Government Depository Libraries and at many other public and academic libraries throughout the country that receive the Federal Register.

FOR FURTHER INFORMATION CONTACT: Michael Bussacca, (410) 786-4602.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1861(v)(1)(A) of the Social Security Act (the Act) authorizes the Secretary to establish limits on allowable costs incurred by a provider of services that may be paid under the Medicare program, based on estimates of the costs necessary in the efficient delivery of needed health services. Under this authority, we have maintained limits on home health agency (HHA) per-visit costs since 1979. The limits may be applied to direct or indirect overall costs or to the costs incurred for specific items or services furnished by the provider. Implementing regulations are located at 42 CFR 413.30. Additional statutory provisions specifically governing the limits applicable to HHAs are contained at section 1861(v)(1)(L) of the Act. Section 1861(v)(1)(L)(i) of the Act specifies that the cost limits are not to exceed 112 percent of the mean of the labor-related and nonlabor per-visit costs for freestanding HHAs. For cost reporting periods beginning on or after July 1, 1986, and before October 1, 1993, section 1861(v)(1)(L)(ii) of the Act requires that the Secretary make an adjustment to the cost limits for the

administrative and general (A&G) costs of hospital-based HHAs. Section 1861(v)(1)(L)(iii) of the Act requires that the Secretary establish HHA cost limits on an annual basis for cost reporting periods beginning on or after July 1 of each year (except for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996). In establishing these limits, the Act directs the Secretary to use the applicable hospital wage index, as discussed below.

On February 14, 1995, we published in the Federal Register (60 FR 8389) a notice with comment period that set forth a revised schedule of limits on HHA costs that may be paid under the Medicare program for cost reporting periods beginning on or after July 1, 1993. These limits replaced the per-visit limits that were set forth in our July 8, 1993 notice with comment period (58 FR 36748). Like the July 8, 1993 limits, the February 14, 1995 limits were computed using the actual cost-per-visit data from cost reporting periods ending on or after June 30, 1989, and before May 31, 1991, and were adjusted by later estimates in the "market basket" index to reflect changes in the prices of goods and services furnished by HHAs. The February 14, 1995 notice also provided, in accordance with section 13564(a) of the Omnibus Budget Reconciliation Act of 1993 (OBRA '93) (Public Law 103-66), that there be no changes in the HHA costs limits for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996 (except as needed to take into account the elimination of the A&G add-on for hospital-based HHAs, effective for cost reporting periods beginning on or after October 1, 1993).

This notice with comment period sets forth cost limits for cost reporting periods beginning on or after July 1, 1996. As required by section 1861(v)(1)(L)(iii) of the Act, we are using the area wage index applicable under section 1886(d)(3)(E) of the Act determined using the survey of the most recent available wages and wage-related costs of hospitals located in the geographic area in which the HHA is located. For purposes of this notice, the HHA wage index is based on the most recent hospital wage index, that is, the hospital wage index effective for hospital discharges on or after October 1, 1995, which uses FY 1992 wage data. As the statute also specifies, in applying the hospital wage index to HHAs, no adjustments are to be made to account for hospital reclassifications under section 1886(d)(8)(B) of the Act, decisions of the Medicare Geographic Classification Review Board under

section 1886(d)(10) of the Act, or decisions by the Secretary.

II. Analysis of and Response to Public Comments

We received 14 items of timely correspondence on the February 14, 1995 notice with comment period. These comments and our responses are discussed below.

Comment: Nine commenters stated that, in view of the elimination, effective for cost reporting periods beginning on or after October 1, 1993, of the payment adjustment for the A&G cost of hospital-based HHAs, it was no longer appropriate to establish cost limits based only on cost reporting data from freestanding HHAs. Although the commenters acknowledged that section 1861(v)(1)(L)(i) of the Act continues to require that the limits be based on the “* * * per visit costs for freestanding home health agencies”, they suggested that this provision was inconsistent with the elimination of the A&G add-on under section 13564(b) of OBRA '93 and requested that cost reporting data from both hospital-based and freestanding agencies be used in establishing the limits.

Response: As the commenters noted, section 1861(v)(1)(L)(i) of the Act specifies that the Secretary is to establish a single schedule of HHA cost limits based on the mean per-visit costs of freestanding agencies. Although section 13564(b) of OBRA '93 amended section 1861(v)(1)(L)(ii) of the Act to provide that, effective for cost reporting periods beginning on or after October 1, 1993, we no longer make a payment adjustment to the limits to account for the A&G costs of hospital-based agencies, this provision of OBRA '93 did not amend the explicit requirement of section 1861(v)(1)(L)(i) of the Act concerning the agency costs upon which the limits are to be based. Therefore, the limits continue to be based on the costs of freestanding home health agencies, as required by the Act. We have no discretion to include hospital-based providers in the calculation of HHA limits.

Comment: One commenter suggested that certain services be allowed when provided by a pharmacist in the patient's home such as patient counseling/education, clinical assessment, drug regimen review and drug therapy monitoring.

Response: Section 1861(m) of the Act provides for per-visit payment to HHAs solely for those services provided by the six home health disciplines. Current policy does not provide for payment for home visits by pharmacists as suggested by the commenter.

Comment: One commenter asked if the special adjustment factors for cost reporting periods of other than 12 months would have to be revised because of the changes in the revised schedule of limits published on February 14, 1995.

Response: The projected annual rates of inflation used in the July 8, 1993 and February 14, 1995 notices were the same, as were the adjustment factors in both notices. Therefore, no change in the special adjustment factors to be applied by the intermediaries was necessary.

Comment: Two commenters requested clarification on how HCFA applies the add-on adjustment to the limits for those agencies with costs in excess of their limit that are attributable to the Occupational Safety and Health Administration (OSHA) universal precaution requirement.

Response: As discussed in detail later, the OSHA add-on is no longer necessary for cost reporting periods beginning on or after July 1, 1996. Even for cost reporting periods prior to that date, the OSHA add-on is not an automatic adjustment to the home health agency cost limits. An agency must apply to the intermediary for the add-on amount and the agency must demonstrate that it will exceed its cost limit and provide adequate documentation to support the add-on adjustment. The agency must show that it has incurred expenses to comply with the OSHA requirements.

Documentation should include copies of the agency's infection control procedure, invoices documenting the purchase of gloves, gowns and other disposable items. The costs of inoculations of hepatitis B vaccine can also be used to support the adjustment. An HHA can also provide documentation that it has given training to the employees concerning blood-borne pathogens. We provided instructions to HCFA's intermediaries spelling out these requirements in a 1994 program memorandum.

Comment: One commenter stated that the HHA market basket increases have consistently lagged behind actual cost-per-visit increases.

Response: As discussed in detail below in section IV of this notice and the Appendix, we have used a revised and rebased market basket in calculating the cost limits set forth in this notice. Actual aggregate cost-per-visit increases reflect changes in both the mix of visit types and the quantity and intensity of services per visit, as well as discretionary purchase price increases higher than reasonable costs. In contrast, the HHA market basket is designed to measure price to inflation

for inputs used to produce HHA service. Thus, we would not expect actual aggregate cost-per-visit increases to equal changes in an HHA market basket that reflects pure price increases for efficient purchases.

Comment: Nine commenters questioned whether HCFA had correctly interpreted the requirement under section 13564(a) of OBRA '93 that there be no changes in the previous per-visit HHA cost limits for cost reporting periods beginning on or after July 1, 1994 and before July 1, 1996. The commenters pointed out that, under our July 8, 1993 notice, the cost limits of HHAs with cost reporting periods beginning on or after July 1, 1993, and before July 1, 1994, were subject to monthly cost reporting period adjustment factors to allow for the effects of inflation on the cost limits of HHAs with different cost reporting periods. Subsequently, under our February 14, 1995 notice, we specified that each HHA's latest per-visit cost limit for a period beginning on or after July 1, 1993, and before July 1, 1994, was to remain in effect until its cost reporting period beginning on or after July 1, 1996. Thus, HHAs with cost reporting periods beginning on July 1, 1993, for example, would be subject to lower limits than HHAs with cost reporting periods that began any time after that date. Commenters asserted that this policy created continuing inequities and suggested several alternatives, including:

- Eliminate the monthly cost reporting period adjustment factors for all HHAs.

- Set the cost reporting period adjustment factor for all HHAs to the level that would have been in effect for an agency whose cost reporting period began on June 30, 1994, effectively equalizing payment to all HHAs at the highest possible level under the limits effective for cost reporting periods beginning on or after July 1, 1993, until the establishment of the new limits effective for cost reporting periods beginning on or after July 1, 1996.

- Amend OBRA '93 to allow for the use of the market basket inflation factors set forth in our July 8, 1993 notice with comment period.

Response: We recognize that the provisions of OBRA '93 produced differences in per-visit limits for HHAs depending on their cost reporting periods. However, we do not believe that the interpretations of OBRA '93 suggested by the commenter are within our authority, given the explicit language of section 13564 of OBRA '93, which precludes “any change” to the existing limits (except for those related

to the elimination of the A&G add-on for hospital-based HHAs). The Congress undoubtedly was aware that not all HHAs have the same cost reporting periods, but chose not to make any adjustments to the existing cost limits in setting forth the relevant provisions. In our view, none of the three specific alternatives raised by the commenters could be accomplished through rulemaking, but would require further legislative action.

Comment: Several commenters recommended that HCFA study the weighting and price proxies of the present market basket index.

Response: As discussed in detail below, in the process of developing a revised and rebased market basket, we have thoroughly examined the current market basket cost categories, weights, and price proxies. We have tabulated freestanding HHA 1993 Medicare cost report data, the latest available data that are relatively complete, in order to develop the cost structure of freestanding home health agencies. New cost categories based on the latest Medicare Cost Reports and other sources have been used and revised price proxies have been applied that more accurately represent reasonable price changes of the new cost categories.

The 1993-based weights reflect the latest available structure of costs for HHAs. The 1993-based market basket has 12 cost categories, only three of which replicate the previous, 1976-based market basket cost categories. Both the wages and salaries and employee benefit price proxies are occupational indexes and have relative weights specific to the home health industry. Price proxies reflect economy-wide as well as hospital wages. The occupational indexes each contain four occupational subcategories: professional and technical workers (including registered nurses, therapists, medical social workers and other professional/technical workers); managerial and supervisory workers; clerical workers; and service workers (which includes home health aides). The non-labor proxies include price series which represent specific cost categories such as telephones and postage expenses as well as more general categories, such as All Other Expenses.

We believe that the 1993-based market basket cost categories accurately reflect the structure of HHA costs, and that the price proxies accurately reflect the price changes in the goods and services purchased by prudent HHAs.

Comment: Several commenters recommended that HCFA include service-related measures in order to

make the market basket a better prognosticator of costs per visit.

Response: Under a case-mix system of payment, service-related measures may be useful in setting upper limits for particular illness levels for each of the categories of HHA visits, just as prospective payment system for hospitals uses different illness levels for various diagnostic groups. Under the current HHA payment system, however, different intensities of HHA services associated with patients' illness levels and needs for care are reflected in the mix of types of visits used and in the number and length of visits per week. The percent increase in costs per visit per unit of time are approximately the same for all categories of visits. Thus, we apply a uniform HHA market basket inflation adjustment, just as the hospital prospective payment system uses a single hospital market basket adjustment factor for all DRGs.

Comment: One commenter stated that the wage indices in the February 14, 1995 and July 8, 1993 notices should have reflected changes to the Metropolitan Statistical Areas (MSAs) that were included in the hospital prospective payment system proposed rule published on May 26, 1993 (58 FR 30222).

Response: Section 1861(v)(I)(L)(iii) of the Act specifies that in establishing the HHA cost limits, we use the area wage index applicable under section 1886(d)(3)(E) of the Act. The hospital wage index used in both our July 8, 1993 and February 14, 1995 notices was the index applicable on July 1, 1993, the effective date of the July 8, 1993 and February 14, 1995 cost limits notices. (Subsequently, section 13564(a) of OBRA '93 specified that there be no changes in the HHA costs limits, except those related to the elimination of the A&G add-on, for cost reporting periods beginning on or after July 1, 1994 and before July 1, 1996.) As noted in our May 26, 1993 proposed rule and confirmed in the September 1, 1993 hospital prospective payment system final rule, the revisions to MSA designations that were discussed in the May 26, 1993 proposed rule did not take effect until October 1, 1993 (58 FR 46292). Thus, for HHA payment purposes these MSA changes are now taking effect, under this notice, for cost reporting periods beginning on or after July 1, 1996.

III. Updating the Wage Index on a Budget-Neutral Basis

Section 4207(d)(2) of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90) (Public Law 101-508) requires that, in updating the wage

index, aggregate payments to HHAs will remain the same as they would have been if the wage index had not been updated. Therefore, overall payments to HHAs are not affected by changes in the wage index values.

To comply with the requirement of section 4207(d)(2) of OBRA '90 that updating the wage index be budget neutral, we determined that it is necessary to apply a budget neutrality adjustment factor of 0.91 to the labor-related portion of the cost limits. This adjustment ensures that aggregate payments to HHAs are not affected by the change to a wage index based on the hospital wage index published on September 1, 1995. That is, an adjustment of -9.1 percent in the labor-related portion of the limits results in the same program expenditures as if we had not updated the wage index (See the example in section VIII.A of this notice regarding the adjustment of cost limits by the wage index and the budget neutrality factor.)

IV. Update of Limits

The methodology used to develop the schedule of limits set forth in this notice is the same as that used in setting the limits effective July 1, 1993. We are continuing to use the latest settled cost report data from freestanding HHAs to develop the HHA cost limits. We have updated the cost limits to reflect the expected cost increases occurring between the cost reporting periods for the data contained in the data base and June 30, 1997.

A. Data Used

To develop the schedule of limits effective July 1, 1996, we extracted actual cost per-visit data from settled Medicare cost reports for periods beginning on or after June 1, 1991, and settled by October 1, 1995. The majority of the cost reports were from Federal fiscal year (FY) 1993. We then adjusted the data using the latest available market basket indexes to reflect expected cost increases occurring between the cost reporting periods contained in our data base and June 30, 1997.

In previous cost limits, HCFA used the market basket index to adjust the cost report data to the midpoint (December 31) of the first cost reporting period to which the limits applied (July 1). The present limits adjust the data to the end of the first cost reporting period to which the limits apply (June 30, 1997), a change that will enable fiscal intermediaries to calculate the applicable adjustment factors for HHAs with a cost reporting period of fewer than 12 months. Previously, the

intermediaries had to contact HCFA's central office for this adjustment.

We note that, under this notice, we are no longer providing for an add-on to the HHA cost limits for those HHAs that incur costs associated with the OSHA universal precaution requirements. This add-on is no longer necessary because these updated limits were computed using a data base that includes the costs of complying with the OSHA standards.

B. Wage Index

The wage index is used to adjust the labor-related portion of the limits to reflect differing wage levels among areas. In setting this schedule of limits, we used the FY 1996 hospital wage index, which is based on 1992 hospital wage data.

Each HHA's labor market area is determined based on the definitions of MSAs issued by the Office of Management and Budget (OMB). Section 1861(v)(1)(L) of the Act requires that we use the current hospital wage index (that is, the FY 1996 hospital wage index, which was published in the Federal Register on September 1, 1995 (60 FR 45883)) to establish the HHA cost limits. Therefore, this schedule of limits reflects the MSA definitions that currently are in effect under the hospital prospective payment system.

We are continuing to incorporate exceptions to the MSA classification system for certain New England counties that were identified in the July 1, 1992 notice (57 FR 29410). These exceptions have been recognized in setting hospital cost limits for cost reporting periods beginning on and after July 1, 1979 (45 FR 41218), and were authorized under section 601(g) of the Social Security Amendments of 1983 (Public Law 98-21). Section 601(g) of Public Law 98-21 requires that any hospital in New England that was classified as being in an urban area under the classification system in effect in 1979 will be considered urban for the purposes of the hospital prospective payment system. This provision is intended to ensure equitable treatment under the hospital prospective payment system. Under this authority, the following counties have been deemed to be urban areas for purposes of payment under the inpatient hospital prospective payment system:

- Litchfield County, CT in the Hartford, CT MSA.
- York County, ME and Sagadahoc County, ME in the Portland, ME MSA.
- Merrimack County, NH in the Boston-Brockton-Nashua, MA-NH MSA.
- Newport County, RI in the Providence Fall-Warwick, RI MSA.

We are continuing to grant these urban exceptions for the purpose of applying the HCFA hospital wage index to the HHA cost limits. These exceptions result in the same New England County Metropolitan Area (NECMA) definitions for hospitals, SNFs, and HHAs. In New England, MSAs are defined on town boundaries rather than on county lines but exclude parts of the four counties cited above that would be considered urban under the MSA definition. Under this notice, those four counties are urban under either definition, NECMA or MSA.

V. Provisions of the HHA Schedule of Limits

The schedule of limits set forth below was calculated using 112 percent of the mean per-visit costs of free-standing HHAs and is adjusted by the latest estimates in the market basket index.

The schedule of limits effective for cost reporting periods beginning on or after July 1, 1996 is based on the latest settled cost data available and provides for the following:

- A classification system based on whether an HHA is located within an MSA, a NECMA, or a non-MSA area. (See Tables 7a and 7b in section X of this notice for the listing of MSAs, NECMAs, and rural areas.)
- The use of a single schedule of limits for hospital-based and freestanding agencies. This single limit is based on the cost experience of freestanding agencies.
- The use of a market basket index, which was developed from the price of goods and services purchased by HHAs to account for the impact of changing wage and price levels on HHA costs. The market basket has been rebased and revised as described in section VI of this notice.
- The use of the current hospital wage index. The wage index is used to adjust the labor-related portion of the limits. The employee wage portion of the market basket index, including a proportionate share of contract services (64.226 percent), and the employee benefits portion (13.442 percent) are used to determine the labor component (77.668 percent) of all HHA per-visit costs used to set the limits.
- Separate treatment of the labor-related and nonlabor components of per-visit costs. The separate components of costs are calculated by obtaining actual HHA cost data for each agency for cost periods beginning on or after June 1, 1991 and settled before October 1, 1995, and increasing those data by the actual and projected increases in the HHA market basket index. We then separate each HHA's per-visit costs into

labor and nonlabor portions, and divide the labor portion by the wage index value for the agency's location to control for the effect of geographic variations in prevailing wage levels. Separate means are computed for the labor and nonlabor components of per-visit costs. For each comparison group, the resulting amounts are shown in Table 6 of section IX of this notice.

- The application of a cost-of-living adjustment to the nonlabor portion of the limit for HHAs located in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands.

- Limits that are determined for the per-visit cost of each type of home health service: skilled nursing care, physical therapy, speech pathology, occupational therapy, medical social services, and home health aide.

- Application of the limits in the aggregate after an HHA's actual costs are adjusted. An HHA's actual costs are adjusted for individual items of cost that are found to be excessive under Medicare principles of provider payment and for costs that are not included in the limitation amount. The limits are applied in the aggregate to the cost remaining after these adjustments are made. Payment is limited to the lower of the actual costs or the cost limits.

VI. Rebasing and Revising of the Home Health Agency Market Basket

A. Background

Effective for cost reporting periods beginning on or after July 1, 1980, HCFA developed and adopted a home health agency input price index (that is, the home health agency "market basket"). Although "market basket" technically describes the mix of goods and services used to produce home health care, this term is also commonly used to denote the input price index derived from that market basket. Accordingly, the term "market basket" used in this notice refers to the home health agency input price index.

The percentage change in the market basket reflects the average change in the price of goods and services purchased by home health agencies to furnish reasonable cost home health care services. HCFA first used the market basket to adjust home health agency cost limits by an amount that reflected the average increase in the prices of the goods and services used to furnish reasonable cost home health care. This approach linked the increase in the cost limits to the efficient utilization of resources. For background information on the home health agency market basket, see the February 15, 1980

Federal Register (45 FR 10451) and the February 14, 1995 Federal Register (60 FR 8392).

The home health agency market basket is a fixed-weight Laspeyres type price index constructed in three steps. First, a base period is selected and total base period expenditures are estimated for mutually exclusive and exhaustive spending categories based upon type of expenditure. Then the proportion of total costs that each category represents is determined. These proportions are called "cost" or "expenditure weights." The next step essential for developing an input price index is to match each expenditure category to an appropriate price/wage variable, called a price proxy. These proxy variables are drawn from a publicly available statistical series published on a consistent schedule, preferably at least quarterly. In the final step, the price level for each spending category is multiplied by the expenditure weight for that category. The sum of these products (that is, weights multiplied by proxied indexed levels) for all cost categories yields the composite index level in the market basket in a given year. Repeating the third step (that is, establishing a price proxy for each expenditure category) for other years will produce a time series of market basket index levels. Dividing one index level by an earlier index will produce rates of growth in the input price index.

The market basket is described as a fixed-weight index because it answers the question of how much more or less it would cost, at a later time, to purchase the same mix of goods and services that was purchased in the base period. The effects on total expenditures resulting from changes in the quantity or mix of goods and services purchased subsequent to the base period are by design not considered.

HCFA believes that it is desirable to rebase the market basket so the cost weights reflect changes in the mix of goods and services that HHAs purchase

(HHA inputs) in furnishing home health care. The current HHA cost weights are from calendar year 1976. To the extent feasible, the data used to rebase the home health agency market basket are from FY 1993. If data from other periods supplemented FY 1993 data, they were aged forward or backward for price changes.

B. Rebasing and Revising the Home Health Agency Market Basket

The terms "rebasing" and "revising", while often used interchangeably, actually denote different activities. Rebasing is the term used to define moving the base year for the structure of costs of an input price index (that is, for this notice we are moving the base year cost structure from calendar year 1976 to Federal fiscal year 1993). Revising is the term used to define changing data sources, cost categories, and/or price proxies used in the input price index.

HCFA has rebased and revised the home health agency market basket to:

- Reflect 1993 cost data, the latest available data on the structure of HHA costs, rather than 1976 cost data;
- Create additional cost categories; and
- Modify certain variables used as the price proxies for some of the cost categories, using improved price proxies that were not available when the current market basket was developed.

In developing the revised market basket, HCFA reviewed HHA expenditure data for the market basket cost categories. For each freestanding HHA, we reviewed the latest settled cost report whose cost reporting period began on or after June 1, 1991 and was settled by October 1, 1995. These reports primarily were from FY 1993. Earlier and later year cost data were aged forward or backward for price changes to FY 1993. Data on home health agency expenditures for nine major expense categories (wages and salaries, employee benefits, transportation, operation and

maintenance, administrative and general, insurance, fixed capital, movable capital, and a residual "all other") were tabulated. Expenditures for contract services were also tabulated from these Medicare cost reports. After totals for these main cost categories were calculated, we then determined the proportion of total costs that each category represents. The proportions represent the major rebased market basket weights.

Weights for the telephone, paper and printing, postage, and residual all other administrative and general subcategories were determined using the latest available (1987) U.S. Department of Commerce Bureau of Economic Analysis (BEA) Input-Output Table, from which data for other medical and health services were extracted. These data were aged from 1987 to 1993 using relative price changes. The BEA Input-Output database, which is updated at 5-year intervals, was most recently described in the Survey of Current Business article, "Benchmark Input-Output Accounts for the U.S. Economy, 1987" (April 1994).

This work resulted in the identification of 12 separate cost categories. The 1976-based home health agency market basket had nine separate cost categories. Detailed descriptions of each category and respective price proxy are provided in the Appendix to this notice. The differences between the major categories for the 1993-based index and those used for the current 1976-based index are summarized in Table 1 below. HCFA has allocated the Contracted Services weight to the Wages and Salaries and Employee Benefits cost categories in the 1976-based index in the same way as the 1993-based index for consistency and ease of comparison. See Table 2 for documentation of how HCRIS contract services' labor was allocated to three cost category components.

TABLE 1.—COMPARISON OF 1993 AND 1976 HOME HEALTH AGENCY MAJOR COST CATEGORIES AND WEIGHTS

Cost categories	Rebased 1993 Home Health Agency market basket	1976-based market basket, adjusted for consistency of contract labor with rebased 1993-based market basket
Wages and Salaries, including allocated Contract Services' Labor	64.226	70.724
Employee Benefits, including allocated Contract Services' Labor	13.442	8.577
All Other, including allocated Contract Services' Non-Labor to Other Administrative & General and Other Expenses	22.332	20.699
Total	100.000	100.000

The 1993-based cost categories and weights are listed in Table 2 below.

TABLE 2.—1993-BASED COST CATEGORIES, WEIGHTS, AND PRICE PROXIES

Cost Category	1993-based market basket weight	Price proxy
Compensation, including allocated Contract Services' Labor	77.668	
Wages and Salaries, including allocated Contract Services' Labor	64.226	HHA Occupational Wage Index.
Employee benefits, including allocated Contract Services' Labor	13.442	HHA Occupational Benefits Index.
Operations & Maintenance	0.832	CPI-U Fuel & Other Utilities.
Administrative & General, including allocated Contract Services' Non-Labor	9.569	
Telephone	0.725	CPI-U Telephone.
Paper & Printing	0.529	CPI-U Household Paper, Paper Products & Stationery Supplies.
Postage	0.724	CPI-U Postage.
Other Administrative & General, including allocated Contract services Non-Labor	7.591	CPI-U Services.
Transportation	3.405	CPI-U Private Transportation.
Capital-Related	3.204	
Insurance	0.560	CPI-U Household Insurance.
Fixed Capital	1.764	CPI-U Owner's Equivalent Rent.
Movable Capital	0.880	PPI Machinery & Equipment.
Other Expenses, including allocated Contract Services' Non-Labor	5.322	CPI-U All Items Less Food & Energy.
Total	100.000	

In the 1976-based market basket, the labor-related portion was 79.301 and the remaining share was 20.699. In the revised and rebased market basket, the labor-related share is 77.668. The labor-related share includes wages and salaries, employee benefits, and contracted services' labor. The nonlabor-related share is 22.332. The higher share of nonlabor-related cost in 1993 may reflect in part the changing cost structure associated with the post-prospective payment system case mix of home health agencies. Table 3 details the components of the labor-related share for the 1976-based and 1993-based market baskets.

TABLE 3.—LABOR-RELATED SHARE OF HOME HEALTH AGENCY MARKET BASKET

Cost category	1993-based market basket weight	1976-based market basket weight
Wages and Salaries, including Contract Services' Labor allocation	64.226	70.724
Employee Benefits, including Contract Services' Labor allocation	13.442	8.577
Contracted Services, Labor-Related share	(¹)	(¹)
Total Labor Related	77.668	79.301
Total Non-Labor Related	22.332	20.699

¹Included above.

After the 1993 cost weights for the rebased home health agency market basket were computed, we selected the most appropriate wage and price proxies currently available to monitor the rate of increase for each expenditure category. The indicators are based on Bureau of Labor Statistics (BLS) data and are grouped into one of the following BLS categories:

- Employment Cost Indexes—Employment Cost Indexes (ECIs) measure the rate of change in employee wage rates and employer costs for

employee benefits per hour worked. These indexes are fixed-weight indexes and strictly measure the change in wage rates and employee benefits per hour. They are not affected by shifts in employment mix. ECIs were not available when we developed the calendar year 1976-based home health agency market basket. ECIs are superior to average hourly earnings as price proxies for input price indexes for two reasons: (1) They measure pure price change, and (2) they are available by

occupational groups, not just by industry.

- Consumer Price Indexes—Consumer Price Indexes (CPIs) measure change in the prices of final goods and services bought by the typical consumer. Consumer price indexes were used when the expenditure was more similar to that of retail consumers in general rather than a purchase at the wholesale level, or if no appropriate Producer Price Index (PPI) was available.

• **Producer Price Indexes**—PPIs are used to measure price changes for goods sold in other than retail markets. For example, a PPI for movable equipment was used, rather than a CPI for equipment. PPIs in some cases are preferable price proxies for goods that home health agencies purchase as inputs utilized in the process of producing their outputs.

• **Average Hourly Earnings**—Average Hourly Earnings (AHEs) are used to measure the rate of change of earnings for various industries and, therefore, can reflect a changing occupational mix

within a particular industry. The AHE series is calculated by dividing gross payrolls by total hours, and it measures actual earnings rather than pure wage rates. It is a current-weight series rather than a fixed-weight index and thus reflects shifts in employment mix. An AHE rather than an ECI is used when there is no corresponding ECI category that is an appropriate measure of growth for a given labor category or when the ECI does not have sufficient length of history to be useful for our purpose. The 1993-based HHA input price index does

not use AHE as a price proxy, but the 1976-based index did.

Our price proxies for the rebased home health agency market basket are summarized in the Appendix to this notice. The forecasted rate of growth for the fiscal year, beginning July 1, 1996, for the rebased home health agency market basket is 3.1 percent, while the forecasted rate of growth for the 1976-based home health agency market basket is 3.3 percent. A comparison of the yearly changes from 1993–1998 for the 1976-based market basket and the 1993-based market basket is shown below.

TABLE 4—COMPARISON OF THE 1993-BASED MARKET BASKET AND THE 1976—MARKET BASKET, PERCENT CHANGE, 1993–1998

Fiscal years beginning July 1	Home Health Agency market basket, FY 1993 base	Home Health Agency market basket, CY 1976 base	Difference (1993-based minus 1976-based)
Historical:			
July 1992, FY 1993	3.4	3.8	(0.4)
July 1993, FY 1994	3.0	2.7	0.3
July 1994, FY 1995	2.9	3.2	(0.3)
Forecasted:			
July 1995, FY 1996	2.7	3.1	(0.4)
July 1996, FY 1997	3.1	3.3	(0.2)
July 1997, FY 1998	3.2	3.4	(0.2)
Historical Average: 1993–1995	3.1	3.2	(0.1)
Forecasted Average: 1996–1998	3.0	3.3	(0.3)

Source: DRI/McGraw Hill HCC, 1st QTR 1996;@USSIM/TREND25YR0296 @CISSIM/CONTROL961.
Released by HCFA, OACT, Office of National Health Statistics.

Note that the historical average rate of growth for 1993–1995 for the home health agency 1993-based market basket was only 0.1 percentage points less than that of the 1976-based market basket, an insignificant difference. HCFA believes that the 1993-based HHA market basket gives a more accurate measure of the annual increases in reasonable cost care because (1) The cost structure reflects 1993 rather than 1976 costs, and (2) superior new wage-price variables have been incorporated into the 1993-based index. The forecasted average annual rate of growth for 1996–1998 is 3.0 percent for the 1993-based market basket, and 3.3 percent for the 1976-based market basket. Given the complexities of forecasting, this difference is very small.

HCFA has developed a HHA Blended Wage and Salary Index and a HHA Blended Benefits Index. HCFA will use these blended indexes as price proxies for the wages and salary and the employee benefits portions of the market basket. In the 1976-based market

basket, the average hourly earnings in the hospital industry (nonsupervisory workers) was used as a price proxy for wages and salaries, and the supplements to wages and salaries per worker in nonagricultural establishments were used as a price proxy for employee benefits.

The new price proxies for these two cost categories are similar to those used in the prospective payment hospital market basket and the excluded hospital market basket, but with occupational weights reflecting the occupational mix in home health agencies. These proxies are a combination of internal and external proxies (health industry specific and economy-wide). HCFA has disaggregated the mix of home health agency workers into specific categories and applied a combination of internal and external price proxies in the HCFA HHA Occupational Wage and Salary and Benefits Indexes. The supply and demand relationships for certain professional-technical occupations such as registered nurses may be more

appropriately reflected in the blended indicators of compensation changes for professional and technical employees. The occupational composition of the HHA Occupational Wage and Salary Index and the HHA Occupational Benefits Index are shown in the Appendix to this notice.

VII. Methodology for Determining Cost-per-Visit Limits

A. Data

For this notice, the cost-per-visit limit values were determined by extracting settled actual cost-per-visit data from Medicare cost reports for periods beginning on or after June 30, 1991, and settled before October 1, 1995. We then adjusted the data using the latest available market basket factors to reflect expected cost increases occurring between the cost reporting periods contained in our data base and June 30, 1997. The following adjustment factors were used to compute the per-visit costs:

TABLE 5.—FACTORS FOR INFLATING DATA BASE DOLLARS TO JUNE 30, 1997
[Inflation Adjustment Factors]¹

Fiscal year end	1992	1993	1994
January 31 .....	.....	1.13729	1.10178
February 28 .....	.....	1.13412	1.09908
March 31 .....	.....	1.13096	1.09642
April 30 .....	.....	1.12782	1.09380
May 31 .....	.....	1.12473	1.09121
June 30	1.15976	1.12172	1.08863
July 31	1.15643	1.11878	1.08606
August 31	1.15316	1.11589	1.08349
September 30	1.14995	1.11301	1.08090
October 31	1.14678	1.11015	1.07830
November 30	1.14363	1.10731	1.07571
December 31	1.14047	1.10453	1.07316

¹ By multiplying nominal dollars for a given fiscal year end by its respective inflation adjustment factor will express those dollars in the dollar levels for June 30, 1997.

Sources: Input Price Index used to develop adjustment factors were obtained from DRI/McGraw-Hill for the period between 1989:4 and 1999:4. The forecasts are from DRI's 1st QTR 1996;@USSIM/TREND25YR 0296 @CISSIM/Control 961 forecast exercise which has historical data through 1995:4.

B. Cost Reporting Periods Consisting of Fewer Than 12 Months

HHAs may have cost reporting periods that are fewer than 12 months in duration. This may happen, for example, when a new provider enters the Medicare program after its selected fiscal year has already begun, or when a provider experiences a change of ownership before the end of the cost reporting period. As explained in section IV of this preamble, the data used in calculating the cost limits were updated to June 30, 1997. Therefore, the cost limits published in this notice are for a 12-month cost reporting period beginning July 1, 1996 and ending June 30, 1997. For 12-month cost reporting periods beginning after July 1, 1996 and before July 1, 1997, cost reporting year adjustment factors are provided in Table 8. However, when a cost reporting period consists of fewer than 12 months, adjustments must be made to the data that have been developed for use with 12-month cost reporting periods. In previous notices, we instructed intermediaries to contact HCFA for short period adjustment factors. In this notice, however, to promote the efficient dissemination of cost limits to providers with cost reporting periods of fewer than 12 months, we are publishing the following examples and tables to enable intermediaries to calculate the applicable adjustment factors.

Cost reporting periods of fewer than 12 months may not necessarily begin on the first of the month or end on the last day of the month. In order to simplify the process in calculating "short period" adjustment factors, if the short cost reporting period begins before the sixteenth of the month, we will consider the period have begun on the first of that month. If the start period begins on

or after the sixteenth of the month, it will be considered to have begun at the beginning of the next month. Also, if the short period ends before the sixteenth of the month, we will consider the period to have ended at the end of the preceding month; if the short period ends on or after the sixteenth of the month it will be considered to have ended at the end of that month.

Examples

1. After approval by its intermediary, an HHA changes its fiscal year end from June 30 to December 31. Therefore, the HHA had a short cost reporting period beginning on July 1, 1996 and ending on December 31, 1996. The cost limits that apply to this short period must be adjusted as follows:

Step 1—From Table 9, sum the index levels for the months of July, 1996 through December, 1996: 6.84863.

Step 2—Divide the results from Step 1 by the number of months in the short period.

$$6.84963 \div 6 = 1.141438$$

Step 3—From Table 9, sum the index levels for the months in the common period of July, 1996 through June, 1997.

$$13.79728$$

Step 4—Divide the results in Step 3 by the number of months in the common period.

$$13.79728 \div 12 = 1.149773$$

Step 5—Divide the results from Step 2 by the results from Step 4. This is the adjustment factor to be applied to the published limits

$$1.141438 \div 1.149773 = .992751$$

Step 6—Apply the results from Step 5 to the published cost limits.

- a. Urban Skilled Nursing Labor Portion

$$\$76.57 \times .992751 = \$76.01$$

- b. Urban Skilled Nursing Nonlabor Portion

$$\$21.62 \times .992751 = \$21.46.$$

2. A HHA with a fiscal year end of November 30, 1996 changes ownership on September 21, 1997. The HHA is required to file a terminated cost report for the period of December 1, 1996 to September 21, 1997. The cost limits that apply to this short period must be adjusted as follows:

Step 1—From Table 9, sum the index level for the month of December, 1996 through September, 1997.

$$11.61295$$

Step 2—Divide the results from Step 1 by the number of months in the short period.

$$11.61295 \div 10 = 1.161295$$

Step 3—From Table 9, sum the index levels for the months in the common period of July, 1996, through June, 1997.

$$13.79728$$

Step 4—Divide the results from Step 3 by the number of months in the common period.

$$13.79728 \div 12 = 1.149773$$

Step 5—Divide the results from Step 2 by the results from Step 4.

$$1.161295 \div 1.149773 = 1.010021$$

Step 6—Apply the results from Step 5 to the published cost limits.

- a. Urban Skilled Nursing Labor Portion

$$\$76.57 \times 1.010021 = \$77.34$$

- b. Urban Skilled Nursing Non-Labor Portion

$$\$21.62 \times 1.010021 = \$21.84$$

C. Standardization for Wage Levels

After adjustment by the market basket index, we divided each HHA's per-visit

costs into labor and nonlabor portions. The labor portion of costs (77.668 percent as determined by the market basket) represents the employee wage and benefit factor plus the contract services factor from the market basket. We then divided the labor portion of per-visit costs by the wage index applicable to the HHA's location to arrive at an adjusted labor cost.

D. Adjustment for "Outliers"

We transformed all per-visit cost data into their natural logarithms and grouped them by type of service and MSA, NECMA, or non-MSA location, in order to determine the mean cost and standard deviation for each group. We then eliminated all "outlier" costs, retaining only those per-visit costs within two standard deviations of the mean in each service.

E. Basic Service Limit

We calculate a basic service limit equal to 112 percent of the mean labor and nonlabor portions of the per-visit costs of freestanding HHAs for each type of service. (See Table 6 in section IX.)

VIII. Computing the Adjusted Limit

A. Adjustment of Cost Limits by Wage Index

To arrive at the adjusted limit, which is to be applied to each service furnished by an HHA, the HHA's intermediary first determines the adjusted labor-related component by multiplying the labor-related component of the limit by the appropriate wage index and by multiplying the adjusted labor-related component by the special labor adjustment for budget neutrality. (See example below and Tables 7a and 7b in section X of this notice.) The sum of the nonlabor component plus the labor-related component is the adjusted limit applicable to an HHA.

Example—Calculation of Adjusted Occupational Therapy Limit for a Freestanding HHA in Dallas, TX

Labor component (Table 6)	83.41
Wage index value (Table 7a)	0.9804
Labor portion	81.78
Special labor adjustment for budget neutrality	0.91
Adjusted labor portion	74.42
Nonlabor component (Table 6)	23.84
Adjusted occupational therapy limit	98.26

B. Adjustment for Reporting Year

If an HHA has a 12-month cost reporting period beginning on or after August 1, 1996, the adjusted per-visit limit for each service is again revised by an adjustment factor from Table 8 that corresponds to the month and year in which the cost reporting period begins. Each factor represents the compounded rate of monthly increase derived from the projected annual increase in the market basket index, and is used to account for inflation in costs that will occur after the date on which the limits become effective.

For example, if the HHA in the example above had a cost reporting period beginning January 1, 1997, its per-visit therapy limit would be further adjusted as follows:

Computation of Revised Limit for Occupational Therapy

Adjusted per-visit limit	98.26
Adjustment factor from Table 8	1.01524
Revised per-visit limit	99.76

In this example, the revised adjusted per-visit limit for occupational therapy applicable to this HHA for the cost reporting period beginning January 1, 1997, is \$99.76 per visit.

If an HHA uses a cost reporting period that is not 12 months in duration, a special calculation of the adjustment factor must be made. This results from

the fact that projections are computed to June 30, 1997. This calculation is done using the methodology described in section VII.B.

IX. Schedule of Limits

The schedule of limits set forth below applies to cost reporting periods beginning on or after July 1, 1996. The intermediaries will compute the adjusted limits using the wage index published in Tables 7a and 7b of section X and will notify each HHA they service of its applicable cost per-visit limit for each type of service. Each HHA's aggregate limit cannot be determined prospectively, but depends on each HHA's Medicare visits for each type of service for the cost reporting periods subject to this notice.

The HHA costs that are subject to the limits include the cost of medical supplies routinely furnished in conjunction with patient care. Durable medical equipment, orthotics, prosthetics, and other medical supplies directly identifiable as services to an individual patient are excluded from the per-visit costs and are paid without regard to this schedule of limits. (See Chapter IV of the Home Health Agency Manual (HCFA Pub. 11).)

The intermediary will determine the limit for each HHA by multiplying the number of Medicare visits for each type of service furnished by the HHA, by the respective per-visit cost limit. The sum of these amounts is compared to the HHA's total allowable cost.

Example: HHA X, a freestanding agency located in Richmond, VA, furnished 5,000 covered skilled nursing visits, 2,000 physical therapy visits, and 4,000 home health aide visits to Medicare beneficiaries during its 12-month cost reporting period beginning July 1, 1996. The aggregate cost limit for the HHA is calculated as follows:

DETERMINING THE AGGREGATE COST LIMIT

Type of visit	Visits	Nonlabor portion	Adjusted labor portion	Adjusted limit ¹	Aggregate limit
Skilled nursing	5,000	\$21.62	\$63.09	\$84.71	\$423,550
Physical therapy	2,000	23.59	69.09	92.65	185,360
Home health aide	4,000	10.56	30.60	41.16	164,640
Total Visits	11,000	.....	.....	.....	.....
Aggregate cost limit .....	.....	.....	.....	.....	773,5501

¹ Includes special labor adjustment of 0.91 for budget neutrality.

Before the limits are applied during settlement of the cost report, the HHA's actual costs are reduced by the amount of individual items of cost (for example,

administrative compensation and contract services) that are found to be excessive under the Medicare principles of provider payment. That is, the

intermediary reviews the various reported costs, taking into account all the Medicare payment principles; for example, the cost guidelines for

physical therapy furnished under the limitation on costs that are comparable home health agencies (see arrangements (see 42 CFR 413.106) and substantially out of line with those 42 CFR 413.9).

TABLE 6.—PER VISIT LIMITS FOR HOME HEALTH AGENCIES

Type of visit	Limit	Labor portion	Nonlabor portion ¹
MSA (NECMA) location:			
Skilled nursing care	98.19	76.57	21.62
Physical therapy	107.43	83.84	23.59
Speech pathology	107.99	84.11	23.88
Occupational therapy	107.25	83.41	23.84
Medical social services	142.05	110.59	31.46
Home health aide	47.70	37.14	10.56
Non-MSA location:			
Skilled nursing care	109.62	89.53	20.09
Physical therapy	119.65	97.61	22.04
Speech pathology	130.61	106.31	24.30
Occupational therapy	129.30	105.06	24.24
Medical social services	184.03	149.82	34.21
Home health aide	47.60	38.87	8.73

¹ Nonlabor portion of limits for HHA located in Alaska, Hawaii, Puerto Rico, and the Virgin Islands are increased by multiplying them by the following cost-of-living adjustment factors:

Location	Adjustment factor
Alaska	1.250
Hawaii:	
Oahu	1.225
Kauai	1.175
Maui, Lanai, and Molokai	1.200
Hawaii (Island)	1.150
Puerto Rico	1.100
Virgin Islands	1.125

X. Wage Indexes

TABLE 7A.—WAGE INDEX FOR URBAN AREAS

Urban area (constituent counties or county equivalents)	Wage index
0040 Abilene, TX	0.8546
Taylor, TX	
0060 Aguadilla, PR	0.4744
Aguada, PR	
Aguadilla, PR	
Moca, PR	
0080 Akron, OH	0.9558
Portage, OH	
Summit, OH	
0120 Albany, GA	0.8608
Dougherty, GA	
Lee, GA	
0160 Albany-Schenectady-Troy, NY	0.8818
Albany, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Schoharie, NY	
0200 Albuquerque, NM	0.9542
Bernalillo, NM	
Sandoval, NM	
Valencia, NM	
0220 Alexandria, LA	0.7917
Rapides, LA	
0240 Allentown-Bethlehem-Easton, PA	1.0198

TABLE 7A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Carbon, PA	
Lehigh, PA	
Northampton, PA	
0280 Altoona, PA	0.9007
Blair, PA	
0320 Amarillo, TX	0.8759
Potter, TX	
Randall, TX	
0380 AK Anchorage, AK	1.3373
Anchorage, AK	
0440 Ann Arbor, MI	1.2116
Lenawee, MI	
Livingston, MI	
Washtenaw, MI	
0450 Anniston, AL	0.8158
Calhoun, AL	
0460 Appleton-Oshkosh-Neenah, WI	0.8844
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
0470 Arecibo, PR	0.4498
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
0480 Asheville, NC	0.9218
Buncombe, NC	
Madison, NC	
0500 Athens, GA	0.9097
Clarke, GA	

TABLE 7A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Madison, GA	
Oconee, GA	
0520 *Atlanta, GA	1.0069
Barrow, GA	
Bartow, GA	
Carroll, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
DeKalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Pickens, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
0560 Atlantic City- Cape May, NJ	1.0935
Atlantic City, NJ	
Cape May, NJ	
0600 Augusta-Aiken, GA-SC	0.8955
Columbia, GA	
McDuffie, GA	
Richmond, GA	

TABLE 7A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Aiken, SC	
Edgefield, SC	
0640 Austin-San Marcos, TX	0.9255
Bastrop, TX	
Caldwell, TX	
Hays, TX	
Travis, TX	
Williamson, TX	
0680 Bakersfield, CA	1.0502
Kern, CA	
0720 *Baltimore, MD	0.9865
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
0733 Bangor, ME	0.9360
Penobscot, ME	
0743 Barnstable-Yarmouth, MA ...	1.3457
Barnstable, MA	
0760 Baton Rouge, LA	0.8670
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
0840 Beaumont-Port Arthur, TX	0.8603
Hardin, TX	
Jefferson, TX	
Orange, TX	
0860 Bellingham, WA	1.2681
Whatcom, WA	
0870 Benton Harbor, MI	0.8258
Berrien, MI	
0875 *Bergen-Passaic, NJ	1.1677
Bergen, NJ	
Passaic, NJ	
0880 Billings, MT	0.8705
Yellowstone, MT	
0920 Biloxi-Gulfport-Pascagoula, MS	0.8448
Hancock, MS	
Harrison, MS	
Jackson, MS	
0960 Binghamton, NY	0.9005
Broome, NY	
Tioga, NY	
1000 Birmingham, AL	0.9144
Blount, AL	
Jefferson, AL	
St. Clair, AL	
Shelby, AL	
1010 Bismarck, ND	0.8299
Burleigh, ND	
Morton, ND	
1020 Bloomington, IN	0.8429
Monroe, IN	
1040 Bloomington-Normal, IL	0.8740
McLean, IL	
1080 Boise City, ID	0.9051
Ada, ID	
Canyon, ID	
1123 *Boston-Brockton-Nashua-MA-NH	1.1684
Bristol, MA	
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	

TABLE 7A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Suffolk, MA	
Worcester, MA	
Hillsborough, NH	
Merrimack, NH	
Rockingham, NH	
Strafford, NH	
1125 Boulder-Longmont, CO	0.9780
Boulder, CO	
1145 Brazoria, TX	0.8814
Brazoria, TX	
1150 Bremerton, WA	1.0295
Kitsap, WA	
1240 Brownsville-Harlingen-San Benito, TX	0.8649
Cameron, TX	
1260 Bryan-College Station, TX	0.8987
Brazos, TX	
1280 *Buffalo-Niagara Falls, NY	0.9186
Erie, NY	
Niagara, NY	
1303 Burlington, VT	0.9252
Chittenden, VT	
Franklin, VT	
Grand Isle, VT	
1310 Caguas, PR	0.4706
Caguas, PR	
Cayey, PR	
Cidra, PR	
Gurabo, PR	
San Lorenzo, PR	
1320 Canton-Massillon, OH	0.8749
Carroll, OH	
Stark, OH	
1350 Casper, WY	0.8429
Natrona, WY	
1360 Cedar Rapids, IA	0.8359
Linn, IA	
1400 Champaign-Urbana, IL	0.8867
Champaign, IL	
1440 Charleston-North Charleston, SC	0.8928
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
1480 Charleston, WV	0.9498
Kanawha, WV	
Putnam, WV	
1520 *Charlotte-Gastonia-Rock Hill, NC-SC	0.9661
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Union, NC	
York, SC	
1540 Charlottesville, VA	0.9179
Albemarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
1560 Chattanooga, TN-GA	0.9129
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
1580 Cheyenne, WY	0.7935
Laramie, WY	
1600 *Chicago, IL	1.0632

TABLE 7A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Cook, IL	
DeKalb, IL	
DuPage, IL	
Grundy, IL	
Kane, IL	
Kendall, IL	
Lake, IL	
McHenry, IL	
Will, IL	
1620 Chico-Paradise, CA	1.0531
Butte, CA	
1640 *Cincinnati, OH-KY-IN	0.9418
Dearborn, IN	
Ohio, IN	
Boone, KY	
Campbell, KY	
Gallatin, KY	
Grant, KY	
Kenton, KY	
Pendleton, KY	
Brown, OH	
Clermont, OH	
Hamilton, OH	
Warren, OH	
1660 Clarksville-Hopkinsville, TN-KY	0.7542
Christian, KY	
Montgomery, TN	
1680 *Cleveland-Lorain-Elyria, OH	0.9835
Ashtabula, OH	
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Lorain, OH	
Medina, OH	
1720 Colorado Springs, CO	0.9294
El Paso, CO	
1740 Columbia, MO	0.9461
Boone, MO	
1760 Columbia, SC	0.9033
Lexington, SC	
Richland, SC	
1800 Columbus, GA-AL	0.7756
Russell, AL	
Chattanooga, GA	
Harris, GA	
Muscogee, GA	
1840 *Columbus, OH	0.9734
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
1880 Corpus Christi, TX	0.8941
Nueces, TX	
San Patricio, TX	
1900 Cumberland, MD-WV	0.8372
Allegany, MD	
Mineral, WV	
1920 *Dallas, TX	0.9804
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Henderson, TX	
Hunt, TX	
Kaufman, TX	
Rockwall, TX	

TABLE 7A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
1950 Danville, VA	0.8465
Danville City, VA	
Pittsylvania, VA	
1960 Davenport-Rock Island-Moline, IA-IL	0.8347
Scott, IA	
Henry, IL	
Rock Island, IL	
2000 Dayton-Springfield, OH	0.9428
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
2020 Daytona Beach, FL	0.8902
Flagler, FL	
Volusia, FL	
2030 Decatur, AL	0.8180
Lawrence, AL	
Morgan, AL	
2040 Decatur, IL	0.7790
Macon, IL	
2080 *Denver, CO	1.0447
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
2120 Des Moines, IA	0.8792
Dallas, IA	
Polk, IA	
Warren, IA	
2160 *Detroit, MI	1.0831
Lapeer, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
St. Clair, MI	
Wayne, MI	
2180 Dothan, AL	0.7751
Dale, AL	
Houston, AL	
2190 Dover, DE	0.8960
Kent, DE	
2200 Dubuque, IA	0.8054
Dubuque, IA	
2240 Duluth-Superior, MN-WI	0.9660
St. Louis, MN	
Douglas, WI	
2281 Dutchess County, NY	1.0754
Dutchess, NY	
2290 Eau Claire, WI	0.8660
Chippewa, WI	
Eau Claire, WI	
2320 El Paso, TX	0.9266
El Paso, TX	
2330 Elkhart-Goshen, IN	0.8764
Elkhart, IN	
2335 Elmira, NY	0.8460
Chemung, NY	
2340 Enid, OK	0.8170
Garfield, OK	
2360 Erie, PA	0.9196
Erie, PA	
2400 Eugene-Springfield, OR	1.1138
Lane, OR	
2440 Evansville-Henderson, IN-KY	0.8899
Posey, IN	
Vanderburgh, IN	
Warrick, IN	

TABLE 7A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Henderson, KY	
2520 Fargo-Moorhead, ND-MN ...	0.8912
Clay, MN	
Cass, ND	
2560 Fayetteville, NC	0.8843
Cumberland, NC	
2580 Fayetteville-Springdale-Rogers, AR	0.7090
Benton, AR	
Washington, AR	
2620 Flagstaff, AZ-UT	0.8619
Coconino, AZ	
Kane, UT	
2640 Flint, MI	1.0738
Genesee, MI	
2650 Florence, AL	0.7700
Colbert, AL	
Lauderdale, AL	
2655 Florence, SC	0.8522
Florence, SC	
2670 Fort Collins-Loveland, CO ...	1.0595
Larimer, CO	
2680 *Ft. Lauderdale, FL	1.0499
Broward, FL	
2700 Fort Myers-Cape Coral, FL	0.9666
Lee, FL	
2710 Fort Pierce-Port St. Lucie, FL	1.0401
Martin, FL	
St. Lucie, FL	
2720 Fort Smith, AR-OK	0.7588
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
2750 Fort Walton Beach, FL	0.8705
Okaloosa, FL	
2760 Fort Wayne, IN	0.8691
Adams, IN	
Allen, IN	
DeKalb, IN	
Huntington, IN	
Wells, IN	
Whitley, IN	
2800 *Forth Worth-Arlington, TX	1.0059
Hood, TX	
Johnson, TX	
Parker, TX	
Tarrant, TX	
2840 Fresno, CA	1.0522
Fresno, CA	
Madera, CA	
2880 Gadsden, AL	0.8568
Etowah, AL	
2900 Gainesville, FL	0.9007
Alachua, FL	
2920 Galveston-Texas City, TX ...	1.0304
Galveston, TX	
2960 Gary, IN	0.9517
Lake, IN	
Porter, IN	
2975 Glens Falls, NY	0.9276
Warren, NY	
Washington, NY	
2980 Goldsboro, NC	0.8165
Wayne, NC	
2985 Grand Forks, ND-MN	0.8946
Polk, MN	
Grand Forks, ND	
2995 Grand Junction, CO	0.8957
Mesa, CO	

TABLE 7A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
3000 Grand Rapids-Muskegon-Holland, MI	1.0055
Allegan, MI	
Kent, MI	
Muskegon, MI	
Ottawa, MI	
3040 Great Falls, MT	0.8913
Cascade, MT	
3060 Greeley, CO	0.9146
Weld, CO	
3080 Green Bay, WI	0.8910
Brown, WI	
3120 *Greensboro-Winston-Salem-High Point, NC	0.9160
Alamance, NC	
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
3150 Greenville, NC	0.9102
Pitt, NC	
3160 Greenville-Spartanburg-Anderson, SC	0.9047
Anderson, SC	
Cherokee, SC	
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
3180 Hagerstown, MD	0.9074
Washington, MD	
3200 Hamilton-Middletown, OH ...	0.8782
Butler, OH	
3240 Harrisburg-Lebanon-Carlisle, PA	0.9972
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
3283 *Hartford, CT	1.2391
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
3285 Hattiesburg, MS	0.7245
Forrest, MS	
Lamar, MS	
3290 Hickory-Morganton-Lenoir, NC	0.8677
Alexander, NC	
Burke, NC	
Caldwell, NC	
Catawba, NC	
3320 Honolulu, HI	1.1212
Honolulu, HI	
3350 Houma, LA	0.7596
Lafourche, LA	
Terrebonne, LA	
3360 *Houston, TX	0.9874
Chambers, TX	
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
3400 Huntington-Ashland, WV-KY-OH	0.8997
Boyd, KY	
Carter, KY	

TABLE 7A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Greenup, KY Lawrence, OH Cabell, WV Wayne, WV	
3440 Huntsville, AL	0.8113
Limestone, AL Madison, AL	
3480 *Indianapolis, IN	0.9757
Boone, IN Hamilton, IN Hancock, IN Hendricks, IN Johnson, IN Madison, IN Marion, IN Morgan, IN Shelby, IN	
3500 Iowa City, IA	0.9371
Johnson, IA	
3520 Jackson, MI	0.9132
Jackson, MI	
3560 Jackson, MS	0.7543
Hinds, MS Madison, MS Rankin, MS	
3580 Jackson, TN	0.8511
Madison, TN	
3600 Jacksonville, FL	0.8953
Clay, FL Duval, FL Nassau, FL St. Johns, FL	
3605 Jacksonville, NC	0.6926
Onslow, NC	
3610 Jamestown, NY	0.7535
Chautauqua, NY	
3620 Janesville-Beloit, WI	0.8786
Rock, WI	
3640 Jersey City, NJ	1.1050
Hudson, NJ	
3660 Johnson City-Kingsport-Bristol, TN-VA	0.8746
Carter, TN Hawkins, TN Sullivan, TN Unicoi, TN Washington, TN Bristol City, VA Scott, VA Washington, VA	
3680 Johnstown, PA	0.8948
Cambria, PA Somerset, PA	
3710 Joplin, MO	0.7923
Jasper, MO Newton, MO	
3720 Kalamazoo-Battlecreek, MI	1.0657
Calhoun, MI Kalamazoo, MI Van Buren, MI	
3740 Kankakee, IL	0.9114
Kankakee, IL	
3760 *Kansas City, KS-MO	0.9351
Johnson, KS Leavenworth, KS Miami, KS Wyandotte, KS Cass, MO Clay, MO Clinton, MO	

TABLE 7A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Jackson, MO Lafayette, MO Platte, MO Ray, MO	
3800 Kenosha, WI	0.8872
Kenosha, WI	
3810 Killeen-Temple, TX	1.0526
Bell, TX Coryell, TX	
3840 Knoxville, TN	0.8518
Anderson, TN Blount, TN Knox, TN Loudon, TN Sevier, TN Union, TN	
3850 Kokomo, IN	0.8834
Howard, IN Tipton, IN	
3870 La Crosse, WI-MN	0.8519
Houston, MN La Crosse, WI	
3880 Lafayette, LA	0.8443
Acadia, LA Lafayette, LA St. Landry, LA St. Martin, LA	
3920 Lafayette, IN	0.8328
Clinton, IN Tippecanoe, IN	
3960 Lake Charles, LA	0.8094
Calcasieu, LA	
3980 Lakeland-Winter Haven, FL	0.8879
Polk, FL	
4000 Lancaster, PA	0.9569
Lancaster, PA	
4040 Lansing-East Lansing, MI ...	1.0105
Clinton, MI Eaton, MI Ingham, MI	
4080 Laredo, TX	0.6834
Webb, TX	
4100 Las Cruces, NM	0.8861
Dona Ana, NM	
4120 *Las Vegas, NV-AZ	1.0934
Mohave, AZ Clark, NV Nye, NV	
4150 Lawrence, KS	0.8549
Douglas, KS	
4200 Lawton, OK	0.8594
Comanche, OK	
4243 Lewiston-Auburn, ME	0.9433
Androscoggin, ME	
4280 Lexington, KY	0.8348
Bourbon, KY Clark, KY Fayette, KY Jessamine, KY Madison, KY Scott, KY Woodford, KY	
4320 Lima, OH	0.8863
Allen, OH Auglaize, OH	
4360 Lincoln, NE	0.9093
Lancaster, NE	
4400 Little Rock-North Little Rock, AR	0.8527
Faulkner, AR	

TABLE 7A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Lonoke, AR Pulaski, AR Saline, AR	
4420 Longview-Marshall, TX	0.8727
Gregg, TX Harrison, TX Upshur, TX	
4480 *Los Angeles-Long Beach, CA	1.2491
Los Angeles, CA	
4520 Louisville, KY-IN	0.9327
Clark, IN Floyd, IN Harrison, IN Scott, IN Bullitt, KY	
Jefferson, KY Oldham, KY	
4600 Lubbock, TX	0.8443
Lubbock, TX	
4640 Lynchburg, VA	0.8319
Amherst, VA Bedford, VA Bedford City, VA Campbell, VA Lynchburg City, VA	
4680 Macon, GA	0.8991
Bibb, GA Houston, GA Jones, GA Peach, GA Twiggs, GA	
4720 Madison, WI	1.0055
Dane, WI	
4800 Mansfield, OH	0.8373
Crawford, OH Richland, OH	
4840 Mayaguez, PR	0.4644
Anasco, PR Cabo Rojo, PR Hormigueros, PR Mayaguez, PR Sabana Grande, PR San German, PR	
4880 McAllen-Edinburg-Mission, TX	0.8669
Hidalgo, TX	
4890 Medford-Ashland, OR	0.9944
Jackson, OR	
4900 Melbourne-Titusville-Palm Bay, FL	0.9323
Brevard, FL	
4920 *Memphis, TN-AR-MS	0.8399
Crittenden, AR DeSoto, MS Fayette, TN Shelby, TN Tipton, TN	
4940 Merced, CA	1.0877
Merced, CA	
5000 *Miami, FL	1.0163
Dade, FL	
5015 *Middlesex-Somerset-Hunterdon, NJ	1.0809
Hunterdon, NJ Middlesex, NJ Somerset, NJ	
5080 *Milwaukee-Waukesha, WI	0.9498
Milwaukee, WI Ozaukee, WI	

TABLE 7A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Washington, WI	
Waukesha, WI	
5120 *Minneapolis-St. Paul, MN—WI	1.0744
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Sherburne, MN	
Washington, MN	
Wright, MN	
Pierce, WI	
St. Croix, WI	
5160 Mobile, AL	0.7801
Baldwin, AL	
Mobile, AL	
5170 Modesto, CA	1.1161
Stanislaus, CA	
5190 *Monmouth-Ocean, NJ	1.0562
Monmouth, NJ	
Ocean, NJ	
5200 Monroe, LA	0.7900
Ouachita, LA	
5240 Montgomery, AL	0.7878
Autauga, AL	
Elmore, AL	
Montgomery, AL	
5280 Muncie, IN	0.9125
Delaware, IN	
5330 Myrtle Beach, SC	0.7961
Horry, SC	
5345 Naples, FL	0.9871
Collier, FL	
5360 *Nashville, TN	0.9266
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford, TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
5380 *Nassau-Suffolk, NY	1.3590
Nassau, NY	
Suffolk, NY	
5483 *New Haven-Bridgeport-Stamford-Danbury-Waterbury, CT	1.2534
Fairfield, CT	
New Haven, CT	
5523 New London-Norwich, CT ...	1.1899
New London, CT	
5560 *New Orleans, LA	0.9454
Jefferson, LA	
Orleans, LA	
Plaquemines, LA	
St. Bernard, LA	
St. Charles, LA	
St. James, LA	
St. John The Baptist, LA	
St. Tammany, LA	
5600 *New York, NY	1.3815
Bronx, NY	
Kings, NY	
New York, NY	
Putnam, NY	

TABLE 7A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
5640 *Newark, NJ	1.1407
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Warren, NJ	
5660 Newburgh, NY-PA	1.0619
Orange, NY	
Pike, PA	
5720 *Norfolk-Virginia Beach-Newport News, VA—NC	0.8411
Currituck, NC	
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
Isle of Wight, VA	
James City, VA	
Mathews, VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson City, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City, VA	
Williamsburg City, VA	
York, VA	
5775 *Oakland, CA	1.5202
Alameda, CA	
Contra Costa, CA	
5790 Ocala, FL	0.8942
Marion, FL	
5800 Odessa-Midland, TX	0.8753
Ector, TX	
Midland, TX	
5880 *Oklahoma City, OK	0.8358
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
5910 Olympia, WA	1.1109
Thurston, WA	
5920 Omaha, NE—IA	0.9794
Pottawattamie, IA	
Cass, NE	
Douglas, NE	
Sarpy, NE	
Washington, NE	
5945 *Orange County, CA	1.2299
Orange, CA	
5960 *Orlando, FL	0.9515
Lake, FL	
Orange, FL	
Osceola, FL	
Seminole, FL	
5990 Owensboro, KY	0.7498
Daviess, KY	
6015 Panama City, FL	0.8182
Bay, FL	
6020 Parkersburg-Marietta, WV—OH	0.7751
Washington, OH	
Wood, WV	
6080 Pensacola, FL	0.8183
Escambia, FL	

TABLE 7A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Santa Rosa, FL	
6120 Peoria-Pekin, IL	0.8619
Peoria, IL	
Tazewell, IL	
Woodford, IL	
6160 *Philadelphia, PA—NJ	1.1112
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Salem, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
6200 *Phoenix-Mesa, AZ	0.9808
Maricopa, AZ	
Pinal, AZ	
6240 Pine Bluff, AR	0.7985
Jefferson, AR	
6280 *Pittsburgh, PA	0.9743
Allegheny, PA	
Beaver, PA	
Butler, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
6323 Pittsfield, MA	1.0838
Berkshire, MA	
6360 Ponce, PR	0.4780
Guayanilla, PR	
Juana Diaz, PR	
Penuelas, PR	
Ponce, PR	
Villalba, PR	
Yauco, PR	
6403 Portland, ME	0.9744
Cumberland, ME	
Sagadahoc, ME	
York, ME	
6440 *Portland-Vancouver, OR—WA	1.1248
Clackamas, OR	
Columbia, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Clark, WA	
6483 Providence-Warwick, RI	1.1027
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	
6520 Provo-Orem, UT	0.9843
Utah, UT	
6560 Pueblo, CO	0.8508
Pueblo, CO	
6580 Punta Gorda, FL	0.9402
Charlotte, FL	
6600 Racine, WI	0.8704
Racine, WI	
6640 Raleigh-Durham-Chapel Hill, NC	0.9539
Chatham, NC	
Durham, NC	
Franklin, NC	
Johnston, NC	
Orange, NC	
Wake, NC	

TABLE 7A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
6660 Rapid City, SD	0.8267
Pennington, SD	
6680 Reading, PA	0.9570
Berks, PA	
6690 Redding, CA	1.1796
Shasta, CA	
6720 Reno, NV	1.1087
Washoe, NV	
6740 Richland-Kennewick-Pasco, WA	1.0011
Benton, WA	
Franklin, WA	
6760 Richmond-Petersburg, VA	0.9055
Charles City County, VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
6780 *Riverside-San Bernardino, CA	1.1616
Riverside, CA	
San Bernardino, CA	
6800 Roanoke, VA	0.8483
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
6820 Rochester, MN	1.0545
Olmsted, MN	
6840 *Rochester, NY	0.9585
Genesee, NY	
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
6880 Rockford, IL	0.8872
Boone, IL	
Ogle, IL	
Winnebago, IL	
6895 Rocky Mount, NC	0.8760
Edgecombe, NC	
Nash, NC	
6920 *Sacramento, CA	1.2539
El Dorado, CA	
Placer, CA	
Sacramento, CA	
6960 Saginaw-Bay City-Midland, MI	0.9489
Bay, MI	
Midland, MI	
Saginaw, MI	
6980 St. Cloud, MN	0.9549
Benton, MN	
Stearns, MN	
7000 St. Joseph, MO	0.8457
Andrews, MO	
Buchanan, MO	
7040 *St. Louis, MO-IL	0.8880
Clinton, IL	
Jersey, IL	
Madison, IL	

TABLE 7A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
Lincoln, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Warren, MO	
7080 Salem, OR	0.9590
Marion, OR	
Polk, OR	
7120 Salinas, CA	1.4263
Monterey, CA	
7160 *Salt Lake City-Ogden, UT	0.9681
Davis, UT	
Salt Lake, UT	
Weber, UT	
7200 San Angelo, TX	0.7777
Tom Green, TX	
7240 *San Antonio, TX	0.8414
Bexar, TX	
Comal, TX	
Guadalupe, TX	
Wilson, TX	
7320 *San Diego, CA	1.1844
San Diego, CA	
7360 *San Francisco, CA	1.4413
Marin, CA	
San Francisco, CA	
San Mateo, CA	
7400 *San Jose, CA	1.4429
Santa Clara, CA	
7440 *San Juan-Bayamon, PR	0.4514
Aguas Buenas, PR	
Barceloneta, PR	
Bayamon, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Ceiba, PR	
Comerio, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Morovis, PR	
Naguabo, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trujillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Yabucoa, PR	
7460 San Luis Obispo-Atascadero-Paso Robles, CA	1.1405
San Luis Obispo, CA	
7480 Santa Barbara-Santa Maria-Lompoc, CA	1.1136
Santa Barbara, CA	

TABLE 7A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
7485 Santa Cruz-Watsonville, CA	1.3944
Santa Cruz, CA	
7490 Santa Fe, NM	1.1108
Los Alamos, NM	
Santa Fe, NM	
7500 Santa Rosa, CA	1.2693
Sonoma, CA	
7510 Sarasota-Bradenton, FL	0.9737
Manatee, FL	
Sarasota, FL	
7520 Savannah, GA	0.8968
Bryan, GA	
Chatham, GA	
Effingham, GA	
7560 Scranton-Wilkes-Barre-Hazleton, PA	0.8724
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Wyoming, PA	
7600 *Seattle-Bellevue-Everett, WA	1.1305
Island, WA	
King, WA	
Snohomish, WA	
7610 Sharon, PA	0.8903
Mercer, PA	
7620 Sheboygan, WI	0.7981
Sheboygan, WI	
7640 Sherman-Denison, TX	0.8780
Grayson, TX	
7680 Shreveport-Bossier City, LA	0.9007
Bossier, LA	
Caddo, LA	
Webster, LA	
7720 Sioux City, IA-NE	0.8436
Woodbury, IA	
Dakota, NE	
7760 Sioux Falls, SD	0.8761
Lincoln, SD	
Minnehaha, SD	
7800 South Bend, IN	0.9475
St. Joseph, IN	
7840 Spokane, WA	1.0377
Spokane, WA	
7880 Springfield, IL	0.8940
Menard, IL	
Sangamon, IL	
7920 Springfield, MO	0.7896
Christian, MO	
Greene, MO	
Webster, MO	
8003 Springfield, MA	1.0517
Hampden, MA	
Hampshire, MA	
8050 State College, PA	1.0162
Centre, PA	
8080 Steubenville-Weirton, OH-WV	0.8455
Jefferson, OH	
Brooke, WV	
Hancock, WV	
8120 Stockton-Lodi, CA	1.1536
San Joaquin, CA	
8140 Sumter, SC	0.8344
Sumter, SC	
8160 Syracuse, NY	0.9531
Cayuga, NY	
Madison, NY	
Onondaga, NY	

TABLE 7A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Oswego, NY	
8200 Tacoma, WA	1.0828
Pierce, WA	
8240 Tallahassee, FL	0.8321
Gadsden, FL	
Leon, FL	
8280 *Tampa-St. Petersburg-Clearwater, FL	0.9262
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
8320 Terre Haute, IN	0.8672
Clay, IN	
Vermillion, IN	
Vigo, IN	
8360 Texarkana, AR-Texarkana, TX	0.8198
Miller, AR	
Bowie, TX	
8400 Toledo, OH	1.0424
Fulton, OH	
Lucas, OH	
Wood, OH	
8440 Topeka, KS	0.9735
Shawnee, KS	
8480 Trenton, NJ	1.0033
Mercer, NJ	
8520 Tucson, AZ	0.9289
Pima, AZ	
8560 Tulsa, OK	0.8245
Creek, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
8600 Tuscaloosa, AL	0.8090
Tuscaloosa, AL	
8640 Tyler, TX	0.9430
Smith, TX	
8680 Utica-Rome, NY	0.8514
Herkimer, NY	
Oneida, NY	
8720 Vallejo-Fairfield-Napa, CA ...	1.3483
Napa, CA	
Solano, CA	
8735 Ventura, CA	1.1924
Ventura, CA	
8750 Victoria, TX	0.8435
Victoria, TX	
8760 Vineland-Millville-Bridgeton, NJ	0.9966
Cumberland, NJ	
8780 Visalia-Tulare-Porterville, CA	1.0446
Tulare, CA	
8800 Waco, TX	0.7898
McLennan, TX	
8840 *Washington, DC-MD-VA-WV	1.1116
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Clarke, VA	
Culpepper, VA	

TABLE 7A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Fauquier, VA	
Fredericksburg City, VA	
King George, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Spotsylvania, VA	
Stafford, VA	
Warren, VA	
Berkeley, WV	
Jefferson, WV	
8920 Waterloo-Cedar Falls, IA	0.8600
Black Hawk, IA	
8940 Wausau, WI	1.0034
Marathon, WI	
8960 West Palm Beach-Boca Raton, FL	1.0217
Palm Beach, FL	
9000 Wheeling, OH-WV	0.7518
Belmont, OH	
Marshall, WV	
Ohio, WV	
9040 Wichita, KS	0.9562
Butler, KS	
Harvey, KS	
Sedgwick, KS	
9080 Wichita Falls, TX	0.7826
Archer, TX	
Wichita, TX	
9140 Williamsport, PA	0.8508
Lycoming, PA	
9160 Wilmington-Newark, DE-MD	1.1539
New Castle, DE	
Cecil, MD	
9200 Wilmington, NC	0.9299
New Hanover, NC	
Brunswick, NC	
9260 Yakima, WA	0.9951
Yakima, WA	
9270 Yolo, CA	1.1615
Yolo, CA	
9280 York, PA	0.9165
York, PA	
9320 Youngstown-Warren, OH	0.9555
Columbiana, OH	
Mahoning, OH	
Trumbull, OH	
9340 Yuba City, CA	1.0611
Sutter, CA	
Yuba, CA	
9360 Yuma, AZ	0.9769
Yuma, AZ	

*Large Urban Area

TABLE 7B.—WAGE INDEX FOR RURAL AREAS

Nonurban area	Wage index
Alabama	0.7164
Alaska	1.2034
Arizona	0.7995
Arkansas	0.6897
California	1.0096

TABLE 7B.—WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
Colorado	0.7988
Connecticut	1.3117
Delaware	0.9019
Florida	0.8668
Georgia	0.7721
Hawaii	0.9847
Idaho	0.8378
Illinois	0.7497
Indiana	0.8067
Iowa	0.7352
Kansas	0.7229
Kentucky	0.7650
Louisiana	0.7275
Maine	0.8425
Maryland	0.8463
Massachusetts	1.0577
Michigan	0.8744
Minnesota	0.8127
Mississippi	0.6697
Missouri	0.7186
Montana	0.8091
Nebraska	0.7219
Nevada	0.8788
New Hampshire	1.0013
New Jersey ¹	
New Mexico	0.8329
New York	0.8647
North Carolina	0.7999
North Dakota	0.7265
Ohio	0.8286
Oklahoma	0.6985
Oregon	0.9486
Pennsylvania	0.8521
Puerto Rico	0.4326
Rhode Island ¹	
South Carolina	0.7738
South Dakota	0.6987
Tennessee	0.7409
Texas	0.7316
Utah	0.8652
Vermont	0.9043
Virginia	0.7788
Washington	0.9775
West Virginia	0.8036
Wisconsin	0.8391
Wyoming	0.8013

¹ All counties within the State are classified urban.TABLE 8.—COST REPORTING YEAR ADJUSTMENT FACTOR¹

If the HHA cost reporting period begins	The adjustment factor is
August 1, 1996	1.00251
September 1, 1996	1.00505
October 1, 1996	1.00759
November 1, 1996	1.01012
December 1, 1997	1.01266
January 1, 1997	1.01524
February 1, 1997	1.01788
March 1, 1997	1.02056
April 1, 1997	1.02326
May 1, 1997	1.02599
June 1, 1997	1.02875

¹ Based on compounded projected market basket inflation rates.

These adjustment factors are subject to change based on later estimates of cost increases.

If for any reason we do not publish a new schedule of limits to be effective on July 1, 1997 or do not announce other changes in the current schedule by that date, the current limits will continue in effect. Intermediaries will be notified of the adjustment factors to be applied until a new schedule of limits or other provision is issued.

TABLE 9.—MONTHLY INDEX LEVELS FOR CALCULATING INFLATION FACTORS TO BE APPLIED TO HOME HEALTH AGENCY COST LIMITS

Month	Index level
July 1996	1.13366
August 1996	1.13700
September 1996	1.13999
October 1996	1.14299
November 1996	1.14600
December 1996	1.14899
January 1997	1.15199
February 1997	1.15500
March 1997	1.15700
April 1997	1.15900
May 1997	1.16100
June 1997	1.16466
July 1997	1.16832
August 1997	1.17200
September 1997	1.17499
October 1997	1.17799
November 1997	1.18100
December 1997	1.18466
January 1998	1.18832
February 1998	1.19200
March 1998	1.19433
April 1998	1.19666
May 1998	1.19900

Source: DR/McGraw-Hill HCC, 1st QTR 1996; @USSIM/TREND 25YR0296 @CISSIM/CONTROL961.

XI. Regulatory Impact Statement

For notices such as this, we generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless we certify that the notice will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all HHAs are treated as small entities.

As discussed below, the aggregate impact of this notice is relatively small, and we have no evidence that the economic impact on most HHAs will be significant. Moreover, this notice is necessary to implement the provisions of section 1861(v)(1)(L) of the Act; thus no alternatives to the provisions set forth in this notice are available. However, because this notice may have some effect on a large number of

providers, we are providing a voluntary regulatory flexibility analysis.

This notice with comment period sets forth a schedule of HHA cost limits for cost reporting periods beginning on or after July 1, 1996. The methodology used to develop the schedule of limits set forth in this notice is the same as that used in setting the limits effective July 1, 1993. (As discussed in section IV.A of this notice, we are no longer providing for an add-on to the HHA cost limits for those HHAs that incur costs associated with the OSHA universal precaution requirements, since these updated limits are computed using a data base that includes the costs of complying with the OSHA standards.) In accordance with section 1861(v)(1)(L)(i) of the Act, we are continuing to set the limits not to exceed 112 percent of the mean of the labor-related and nonlabor per-visit costs for freestanding HHAs. As required by section 1861(v)(1)(L)(iii) of the Act, we are using the most recent hospital wage index to calculate the HHA cost limits, that is, the hospital wage index effective for discharges on or after October 1, 1995, which is based on 1992 wage survey data. The wage index is used to adjust the labor-related portion of the limits to reflect differing wage levels among areas. As discussed in section II of this notice, we are applying a budget neutrality adjustment factor of 0.91 to the labor-related portion of the limits to ensure that aggregate payments to HHAs are not affected by the updating of the wage index.

We continue to use the latest settled cost report data to develop the HHA cost-per-visit limit values for each type of home health service: skilled nursing care, physical therapy, speech pathology, occupational therapy, medical social services, and home health aide. Thus, for this notice, we have updated the cost-per-visit limits by using actual cost-per-visit data from settled Medicare cost reports for periods beginning on or after June 1, 1991, and settled by October 1, 1995. The majority of the cost reports were from FY 1993. The data have been adjusted by the most recent market basket factors to reflect the expected cost increases occurring between the cost reporting periods for the data contained in the data base and June 30, 1997. The intermediary determines the aggregate cost limit for each HHA by multiplying the number of Medicare visits for each type of service furnished by the HHA by the respective per-visit cost limit. Each HHA's aggregate limit cannot be determined prospectively, but depends on each HHA's Medicare visits for each type of

service and actual costs for the cost reporting period subject to this notice.

The database used to calculate these limits consists of cost reporting data from 3,190 freestanding HHAs, compared with 2,992 freestanding HHAs used in calculating the limits in effect for cost reporting periods beginning on or after July 1, 1993. We estimate that the revised HHA cost limits implemented in this notice with public comment period will result in the following costs to the Medicare program:

TABLE 10.—HHA COST LIMITS [Medicare Program Costs]¹

Fiscal year	Costs (in millions)
1996	0
1997	10

¹ Figures are rounded to the nearest million.

The costs associated with the new HHA cost limits represent the difference between projected aggregate Medicare expenditures under the new limits and projected aggregate expenditures using the limits in effect for cost reporting periods beginning on or after July 1, 1993, updated by the market basket increases since those limits took effect. This notice does not provide for a permanent extension of the OBRA '93 provision that there be no changes in the home health agency cost limits for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996. Because this change would require statutory authority, President Clinton's FY 1997 Budget includes a proposal to do so.

We are unable to identify the effects of changes to the cost limits on individual HHAs. In general, we believe that most HHAs will experience small revenue increases under the new limits; the degree of that increase will vary depending on the proportion of an HHA's revenues that come from Medicare, the distribution of services provided by the HHA, and the HHA's ability to operate within the cost limits. Table 11 below illustrates the proportion of HHAs that are likely to be affected by the limits:

TABLE 11.—HHAS EXCEEDING THE COST LIMITS

	HHAs in database	HHAs exceeding the limits	Percent of HHAs exceeding the limits
Total HHAs	4987	1720	34.5

TABLE 11.—HHAS EXCEEDING THE COST LIMITS—Continued

	HHAs in database	HHAs exceeding the limits	Percent of HHAs exceeding the limits
Free-standing	3190	773	24.2
Hospital-based	1797	947	52.7

Section 1102(b) of the act requires the Secretary to prepare a regulatory impact analysis if a final notice may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital located outside a Metropolitan Statistical Area with fewer than 50 beds.

We are not preparing a rural impact statement because the Secretary has determined, and certifies, that this notice will not have a significant impact on a substantial number of rural hospitals.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

XII. Other Required Information

A. Waiver of Proposed Notice and 30-Day Delay in Effective Date

In adopting notices such as this, we ordinarily publish a proposed notice in the Federal Register with a 60-day period for public comment as required under section 1871(b)(1) of the Act. We also normally provide a delay of 30 days in the effective date for documents such as this. However, we may waive these procedures if we find good cause that prior notice and comment or a delay in the effective date are impracticable, unnecessary, or contrary to public interest.

Section 1861(v)(1)(L)(iii) of the Act requires that the Secretary establish revised HHA cost limits for cost reporting periods beginning on or after July 1, 1991 and annually thereafter (except for cost reporting periods beginning on or after July 1, 1994 and before July 1, 1996). As discussed in section III above, in accordance with the statute, we have used the same methodology to develop the schedule of limits that was used in setting the limits effective for cost reporting periods beginning on or after July 1, 1993. The cost limits have been updated by the appropriate market basket adjustment

factor to reflect the cost increases occurring between the cost reporting periods for the data contained in the data base and June 30, 1997. In addition, as required under section 1861(v)(1)(L)(iii) of the Act, we have updated the wage index using the most recent hospital wage index.

If HHAs are to receive timely the benefits of these new cost limits based on the updated wage index and market basket adjustment factors, it is necessary that these limits be published in time to take effect for cost reporting periods beginning on or after July 1, 1996. Because the methodology used to develop this schedule of limits is for the most part dictated by the statute and has been previously published for public comment, we believe that in this instance it would be impracticable, unnecessary, and contrary to the public interest to publish a proposed notice or to provide for a 30-day delay in the effective date of this notice. Therefore, we find good cause to waive publication of a proposed notice and the 30-day delay in the effective date. However, we are providing a 60-day period for public comment, as indicated at the beginning of this notice.

B. Paperwork Reduction Act

This final notice does not impose information collection requirements. Consequently, it does not need to be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

C. Public Comments

Because of the large number of items of correspondence we normally receive on a notice with comment period, we are not able to acknowledge or respond to them individually. However, we will consider all comments concerning the provisions of this notice that we receive by the date and time specified in the "DATES" section of this notice, and we will respond to those comments in a subsequent notice.

Appendix—Technical Features of the HHA Market Basket Index

As discussed in the preamble of this rule, we are rebasing and revising the home health agency market basket. This appendix describes the technical features of the 1993-based index that we are proposing for this notice. We present this description of the market basket in three steps:

- A synopsis of the structural differences between the 1976- and the 1993-based market baskets.
- A description of the methodology used to develop the cost category

weights in the 1993-based market basket.

- A description of the data sources used to measure price change for each component of the 1993-based market basket, making note of the differences from the price proxies used in the 1976-based market basket.

I. Synopsis of Structural Changes Adopted in the Rebased 1993 Home Health Agency Market Basket

Three major structural differences exist between the 1976-based and the 1993-based home health agency market baskets.

1. More recent home health agency expenditure data are being used in the revised and rebased home health agency market basket.

The 1976-based market basket contained cost shares that were derived from 1976 Medicare cost reports and other available health industry surveys. The 1993-based market basket uses data from the latest settled Medicare Cost Reports for Freestanding Home Health Agencies whose cost reporting periods began after June 1, 1991 and were settled by October 1, 1995 (one per HHA). These data were primarily reports from Federal fiscal year 1993; earlier and later data were aged forward and backward to Federal fiscal year 1993 using price changes. Additional information from the U.S. Department of Commerce Bureau of Economic Analysis (BEA) 1987 Input-Output Tables was used for some subcategories. It was aged to 1993 for relative price changes.

2. Some cost categories have been disaggregated and some cost categories have been combined. These category changes reflect the availability of data in the cost reports and in the BEA Input-Output Tables.

3. We will use Blended HHA Occupational Wage and Benefits Indexes. This parallels the use of Blended Wage and Salary and Benefits Indexes in the PPS and Excluded Hospital market baskets, but with adjustments for the occupational mix of home health agencies.

II. Methodology for Developing the Cost Category Weights

Cost category weights for the 1993-based market basket were developed in two stages. First, base weights for nine main categories (Wages and Salaries, Employee Benefits, Transportation, Operation and Maintenance, Administrative and General, Insurance, Fixed Capital, Movable Capital, and a residual All Other) were derived from the Home Health Agency Medicare Cost Reports described above. A weight for

Contract Service Labor was derived from the HHA Medicare Cost Reports, and allocated to (a) Wages & Salaries, (b) Employee Benefits, (c) Other Administrative and General, and (d) Other Expenses. Contract Services costs were allocated to the above four categories with proportionally higher weight given to (a) Wages and Salaries and (b) Employee Benefits to reflect that a substantial portion of contract services are from individual independent contractors with lower overhead than the average home health agency. Second, the weight for Administrative and General was divided into subcategories using cost shares from the 1987 Input-Output Table for the Other Medical and Health Services industry, produced by the U.S. Department of Commerce, Bureau of Economic Analysis, aged to 1993 using price changes. The Other Medical and Health Services industry is the residual of the Health Services industry less the Doctors and Dentists, Hospitals, and Nursing and Personal Care Facilities industries. It includes SIC 804, Other Health Practitioners; SIC 807, Medical and Dental Laboratories; SIC 808, Home Health Agencies; SIC 809 Health and Allied Services, not elsewhere classified; and SIC 074, Veterinary Services. The largest share of employment in these industries is in home health agencies.

Below we describe the source of the nine main category weights and their subcategories in the 1993-based market basket.

1. Wages and Salaries, including an allocation for contract services' labor: The wages and salaries cost category is one of the nine base weights derived from using the Medicare Cost Reports. Contract Services, which is also derived from the Medicare Cost Reports, is split among the (a) Wages and Salaries, (b) Employee Benefits, (c) Other Administrative and General, and (d) Other Expenses cost categories. An example of Contract Service Labor is registered nurses who are employed and paid by firms which contract for their work with home health agencies or a registered nurse who is an independent contractor and works out of his or her personal residence. The wages and salaries cost category was disaggregated into four occupational subcategories (professional and technical, executive and administrative, administrative support, home health aides, and all other service occupations) to reflect the mix of occupational inputs used by home health agencies. The 1993-based weights were developed from the Medicare Cost Reports. The 1976-based

market basket had a separate cost category for Contracted Services' Labor.

2. Employee Benefits, including an allocation for contract services' labor: The employee benefits cost category is one of the nine base weights derived from the Medicare cost reports. A share of contract services' labor was allocated to this cost category. Like wages and salaries, the employee benefit weight in the 1993-based market basket is a composite of four labor subcategories. These were developed from the Medicare cost reports.

3. Transportation: The weight for Transportation was derived from the Medicare Cost Reports. The 1976-based market basket had a similar cost category.

4. Operations and Maintenance: The weight for Operations and Maintenance was derived from the Medicare Cost Reports. The 1976-based market basket had Utilities and Miscellaneous Cost Categories which have been replaced.

5. Administrative and General, including an allocation for non-labor associated with contract labor services: The weight for Administrative and General was derived from the Medicare cost reports. The subcategories of Telephone, Paper and Printing, Postage, and residual Other Administrative and General expenses were derived from the 1987 BEA Input-Output Tables, moved forward to 1993 using price changes. A share of contract services non-labor expenses (implied other expenses) was allocated to the Other Administrative and General subcategory. The 1976-based market basket contained an Office Administration Costs category.

6. Capital-related: The weights for the subcategories for Insurance, Fixed Capital, and Movable Capital were derived from the Medicare cost reports. The 1976-based market basket did not contain insurance, fixed capital or movable capital as separate categories, but did contain a Miscellaneous Costs, an Office Administration Costs, a Rental and Leasing, and a Medical Nursing Supplies cost category. Capital-related costs include interest expenses.

7. Other Expenses: The weight for Other Expenses was derived from the Medicare Cost Reports. A share of contract services non-labor expenses (implied other expenses) was allocated to the Other Expenses cost category. The 1976-based market basket had a Miscellaneous Costs cost category.

III. Price Proxies Used To Measure Cost Category Growth

1. Wages and Salaries, including an allocation for contract services' labor: For measuring price growth in the 1993-based market basket, price proxies are

applied to the five occupational subcategories within the wages and salaries component, as is done in the hospital market baskets, weighted to reflect the home health agency occupational mix. The Professional and Technical occupational subcategory is represented by a blend of health industry and economy-wide price proxies. Therefore, there are five price proxies for four occupational subcategories (the Professional and Technical occupational subcategory has a blend of two). Table 4 at the end of this appendix describes the wages and salaries component of the market basket.

2. Employee Benefits, including an allocation for contract services' labor: For measuring price growth in the 1993-based market basket, price proxies are applied to the four occupational subcategories within the employee benefits component, as is done in the hospital market baskets, weighted to reflect the home health agency occupational mix. The Professional and Technical occupational subcategory is represented by a blend of health industry and economy-wide price proxies. Therefore there are five price proxies for four occupational subcategories (the Professional and Technical subcategory has a blend of two). Table 5 at the end of this appendix describes the employee benefits component of the market basket.

3. Operations and Maintenance: The percentage change in the price of Fuel and Other Utilities as measured by the Consumer Price Index was applied to this component. This is a revision from the 1976-based index in which the percentage change in the price of utilities was measured by a composite fuel and other utilities index.

4. Telephone: The percentage change in the price of Telephone Service as measured by the Consumer Price Index was applied to this component. This is a revision from the 1976-based index when the cost of telephone service was not specifically measured.

5. Paper and Printing: The percentage change in the price of Paper and Printing as measured by the Consumer Price Index for Household Paper Products and Stationery Supplies was applied to this component. This is a revision from the 1976-based index when the cost of paper and printing was not specifically measured.

6. Postage: The percentage change in the price of Postage as measured by the Consumer Price Index was applied to this component. This is a revision from the 1976-based index when the cost of postage was not specifically measured.

7. Other Administrative and General, including an allocation for non-labor

expenses associated with contract services: The percentage change in the price of services as measured by the Consumer Price Index was applied to this component. In the 1976-based market basket the CPI for Services was used as a proxy for Office Administration costs.

8. Insurance: The percentage change in the price of Household Insurance as measured by the Consumer Price Index was applied to this component. This is a revision from the 1976-based market basket in which the price of insurance was not specifically measured.

9. Transportation: The percentage change in the price of Transportation as measured by the Consumer Price Index was applied to this component. The

same proxy was used for Transportation in the 1976-based market basket.

10. Fixed capital: The percentage change in the price of Owner's Equivalent Rent as measured by the Consumer Price Index was applied to this component. The percentage change in the price of Residential Rent as measured by the Consumer Price Index was used as a proxy for Rental and Leasing in the 1976-based market basket.

11. Movable Capital: The percentage change in the price of Machinery and Equipment as measured by the Producer Price Index was applied to this component. In the 1976-based market basket the percentage change in the price of Medical Equipment and

Supplies as measured by the Consumer Price Index was applied to the Medical Nursing Supplies component.

12. Other Expenses, including an allocation for non-labor expenses associated with contract services: The percentage change in the price of All Items Less Food and Energy as measured by the Consumer Price Index was applied to this component. This is a revision from the 1976-based index, when the percentage change in the price of All Items as measured by the Consumer Price Index was applied to the Miscellaneous Costs component.

A comparison of price proxies used in the 1993-based and the 1976-based home health agency market baskets follows:

APPENDIX TABLE 1.—A COMPARISON OF PRICE PROXIES USED IN THE 1993–BASED AND 1976–BASED HOME HEALTH AGENCY MARKET BASKETS

Cost category	1993–Based price proxy	1976–Based price proxy
Compensation:		
Wages and Salaries	HHA Occupational Wage Index	AHE Hospitals (Private nonsupervisory workers).
Employee Benefits	HHA Occupational Benefits Index	BEA Supplements to Wages & Salaries per Worker (BLS); (BEA Aggregate Supplements/number of workers from BLS).
Operations and Maintenance	CPI-U Fuel & Other Utilities	Index composed of CPI-U Water & Sewage; IPD Fuel & Oil Coal (PCE); IPD Electricity (PCE); IPD Natural Gas (PCE).
Administrative and General .....	.....	CPI-U Services (category: Office Administration Costs).
Telephone	CPI-U Telephone	
Paper and Printing	CPI-U Household Paper, Paper Products & Stationery Supplies.	
Postage	CPI-U Postage	
Other Administrative and General	CPI-U Services	
Transportation	CPI-U Private Transportation	CPI-U Transportation.
Capital-Related:		
Insurance	CPI-U Household Insurance	
Fixed Capital	CPI-U Owner's Equivalent Rent	CPI-U Residential Rent category: Rental & Leasing.
Movable Capital	PPI Machinery & Equipment	CPI-U Nonprescription Medical Equipment & Supplies.
Other Expenses	CPI-U All Items Less Food & Energy	CPI-U All Items.
Contracted Services	Contained within Wages & Salaries, Employee Benefits, Other Administrative & General & Other Expenses cost categories; see those price proxies	Composite All Other HHA Cost Category Weights with associated price proxy variables.

We allocated the Contract Services' share of home health agency expenses among (a) Wages and Salaries, (b) Employee Benefits, (c) Other Administrative and General, and (d) Other Expenses. The split chosen is one of three alternatives that we examined. In Alternative A, we split the Contract Services cost share only between (a) Wages and Salaries and (b) Employee Benefits. In Alternative B, we split the Contract Services cost share among (a) Wages and Salaries, (b) Employee

Benefits, (c) Other Administrative and General, and (d) Other Expenses. In Alternative C, the option selected, we split the Contract Services cost share among (a) Wages and Salaries, (b) Employee Benefits, (c) Other Administrative and General, and (d) Other Expenses, but we gave proportionally more to (a) Wages and Salaries and (b) Employee Benefits, and less to (c) Other Administrative and General and (d) Other Expenses. This third middle-ground option recognizes

that personnel in Contract Services may be employees of a firm contracting with home health agencies or may be independent contractors, working out of their personal residences, with relatively small non-labor expenses.

Results of the three alternatives appear in Appendix Table 2, while a comparison of historical and forecasted percent changes are shown in Appendix Table 3.

APPENDIX TABLE 2.—THREE ALTERNATIVES FOR ALLOCATION OF CONTRACT SERVICES; COST SHARE

Cost category	Alternative A: Split of contract services' cost share between (a) wages and salaries and (b) employee benefits	Alternative B: Split of contract services' cost share among (a) wages and salaries, (b) employee benefits, (c) other administrative and general, and (d) other expenses	Alternative C: Split of contract services' cost share among (a) wages and salaries, (b) employee benefits, (c) other administrative and general, and (d) other expenses, with smaller allocation to (c) and (d) and larger allocation to (a) and (b) (selected)
Compensation	79.224	76.479	77.668
Wages & Salaries	65.512	63.243	64.226
Employee Benefits	13.712	13.327	13.442
Operations & Maintenance	0.832	0.832	0.832
Administrative & General	8.791	10.163	9.569
Telephone	0.725	0.725	0.725
Paper & Printing	0.529	0.529	0.529
Postage	0.724	0.724	0.724
Other Administrative & General	6.813	8.165	7.591
Transportation	3.405	3.405	3.405
Capital-Related	3.204	3.204	3.204
Insurance	0.560	0.560	0.560
Fixed Capital	1.764	1.764	1.764
Movable Capital	0.880	0.880	0.880
All Other Expenses	4.544	5.916	5.322
Total	100.000	100.000	100.000

APPENDIX TABLE 3.—A COMPARISON OF THREE ALTERNATIVES FOR ALLOCATION OF CONTRACT SERVICES' COST SHARE FOR THE 1993-BASED HOME HEALTH AGENCY MARKET BASKET, PERCENT CHANGE, 1993–1998

Fiscal Years beginning July 1	Alternative A: Split of Contract Services' cost share between (a) Wages and Salaries and (b) Employee Benefits	Alternative B: Split of Contract Services' cost share among (a) Wages and Salaries, (b) Employee Benefits, (c) Other Administrative and General, and (d) Other Expenses	Alternative C: Split of Contract Services' cost share among (a) Wages and Salaries, (b) Employee Benefits, (c) Other Administrative and General, and (d) Other Expenses, with smaller allocation to (c) and (d) and larger allocation to (a) and (b) (Selected)
Historical:			
July 1992, FY 1993	3.40	3.40	3.40
July 1993, FY 1994	3.00	3.00	3.00
July 1994, FY 1995	2.90	2.90	2.90
Forecasted:			
July 1995, FY 1996	2.70	2.70	2.70
July 1996, FY 1997	3.10	3.10	3.10
July 1997, FY 1998	3.20	3.20	3.20
Historical Average: 1993–1995	3.10	3.10	3.10
Forecasted Average: 1996–1998	3.00	3.00	3.00

Source: DRI/McGraw Hill HCC, 1st Qtr. 1996;@USSIM/TREND25 YR0296@CISSIM/CONTROL961.
Released by HCFA, OACT, Office of National Health Statistics.

Note that there is no difference in historical performance or forecasts among the three alternatives.

The components of the HHA Occupational Wages and Salaries and Occupational Benefit Indexes are listed below:

APPENDIX TABLE 4.— HCFA HHA OCCUPATIONAL WAGES AND SALARIES INDEX

Cost category	Weight	Price proxy.
Skilled Nursing & Therapists & Other Professional/Technical, Including an allocation for Contract Services' Labor.	45.758	50% ECI for Wages & Salaries in Private Industry for Professional, Specialty & Technical Workers and 50% ECI for Wages & Salaries for Civilian Hospital Workers.
Managerial/Supervisory, including an allocation for Contract Services' Labor.	5.527	ECO for Wages & Salaries in Private Industry for Executive, Administrative & Managerial Workers.
Clerical, including an allocation for Contract Services' Labor	15.019	ECI for Wages & Salaries in Private Industry for Administrative Support, Including Clerical Workers.
Service, including an allocation for Contract Services' Labor	33.696	ECI for Wages & Salaries in Private Industry Service Occupations

APPENDIX TABLE 4.— HCFA HHA OCCUPATIONAL WAGES AND SALARIES INDEX—Continued

Cost category	Weight	Price proxy.
Total	100.00	

The total weight for wages and salaries in the 1993-based Home Health Agency market basket is 64.226 percent.

APPENDIX TABLE 5.—HCFA HHA OCCUPATIONAL BENEFITS INDEX (EMPLOYEE BENEFITS COMPONENT OF THE 1993—BASED MARKET BASKET)

Cost category	Weight	Price proxy
Skilled Nursing & Therapists & Other Professional/Technical, including an allocation for Contract Services' Labor.	44.182	50% ECI for Benefits in Private Industry for Professional. Specialty & Technical Workers and 50% ECI for Benefits for Civilian Hospital Workers.
Managerial/Supervisory, including an allocation for Contract Services' Labor.	5.097	ECI for Benefits in Private Industry for Executive, Administrative & Managerial Workers.
Clerical, including an allocation for Contract Services' Labor	15.848	ECI for Benefits in Private Industry for Administrative Support, Including Clerical Workers.
Service, including an allocation for Contract Services' Labor	34.873	ECI for Benefits in Private Industry Service Occupations.
Total	100.00	

The total weight for employee benefits in the 1993-based Home Health Agency market basket is 13.442 percent.

Authority: Section 1861(v)(1)(L) of the Social Security Act (42 U.S.C.

1395x(v)(1)(L)); section 4207(d) of Pub. L. 101-508 (42 U.S.C. 1395x (note)).
(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance)

Dated: June 24, 1996.

Bruce C. Vladeck,
Administrator, Health Care Financing Administration.

Dated: June 26, 1996.

Donna E. Shalala,
Secretary.

[FR Doc. 96-16883 Filed 6-27-96; 4:08 pm]

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CFR CHECKLIST

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3 (1995 Compilation and Parts 100 and 101)	(869-028-00002-9)	22.00	¹ Jan. 1, 1996
4	(869-028-00003-7)	5.50	Jan. 1, 1996
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27-45	(869-028-00008-8)	11.00	Jan. 1, 1996
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900-999	(869-028-00016-9)	30.00	Jan. 1, 1996
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50-299	(869-028-00100-9)	14.00	Apr. 1, 1996
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500-599	(869-028-00102-5)	6.00	⁴ Apr. 1, 1990	700-789	(869-026-00157-0)	25.00	July 1, 1995
600-End	(869-026-00105-7)	8.00	Apr. 1, 1995	790-End	(869-026-00158-8)	15.00	July 1, 1995
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1-199	(869-026-00106-5)	37.00	Apr. 1, 1995	1, 1-1 to 1-10		13.00	³ July 1, 1984
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28 Parts:				3-6		14.00	³ July 1, 1984
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800-End	(869-026-00129-4)	22.00	July 1, 1995	90-139	(869-026-00177-4)	15.00	Oct. 1, 1995
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200-End	(869-026-00132-4)	24.00	July 1, 1995	200-499	(869-026-00181-2)	19.00	Oct. 1, 1995
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400-End	(869-026-00135-9)	37.00	July 5, 1995	20-39	(869-026-00184-7)	21.00	Oct. 1, 1995
35	(869-026-00136-7)	12.00	July 1, 1995	40-69	(869-026-00185-5)	14.00	Oct. 1, 1995
36 Parts				70-79	(869-026-00186-3)	24.00	Oct. 1, 1995
1-199	(869-026-00137-5)	15.00	July 1, 1995	80-End	(869-026-00187-1)	30.00	Oct. 1, 1995
200-End	(869-026-00138-3)	37.00	July 1, 1995	48 Chapters:			
37	(869-026-00139-1)	20.00	July 1, 1995	1 (Parts 1-51)	(869-026-00188-0)	39.00	Oct. 1, 1995
38 Parts:				1 (Parts 52-99)	(869-026-00189-8)	24.00	Oct. 1, 1995
0-17	(869-026-00140-5)	30.00	July 1, 1995	2 (Parts 201-251)	(869-026-00190-1)	17.00	Oct. 1, 1995
18-End	(869-026-00141-3)	30.00	July 1, 1995	2 (Parts 252-299)	(869-026-00191-0)	13.00	Oct. 1, 1995
39	(869-026-00142-1)	17.00	July 1, 1995	3-6	(869-026-00192-8)	23.00	Oct. 1, 1995
40 Parts:				7-14	(869-026-00193-6)	28.00	Oct. 1, 1995
1-51	(869-026-00143-0)	40.00	July 1, 1995	15-28	(869-026-00194-4)	31.00	Oct. 1, 1995
52	(869-026-00144-8)	39.00	July 1, 1995	29-End	(869-026-00195-2)	19.00	Oct. 1, 1995
53-59	(869-026-00145-6)	11.00	July 1, 1995	49 Parts:			
60	(869-026-00146-4)	36.00	July 1, 1995	1-99	(869-026-00196-1)	25.00	Oct. 1, 1995
61-71	(869-026-00147-2)	36.00	July 1, 1995	100-177	(869-026-00197-9)	34.00	Oct. 1, 1995
72-85	(869-026-00148-1)	41.00	July 1, 1995	178-199	(869-026-00198-7)	22.00	Oct. 1, 1995
86	(869-026-00149-9)	40.00	July 1, 1995	200-399	(869-026-00199-5)	30.00	Oct. 1, 1995
87-149	(869-026-00150-2)	41.00	July 1, 1995	400-999	(869-026-00200-2)	40.00	Oct. 1, 1995
150-189	(869-026-00151-1)	25.00	July 1, 1995	1000-1199	(869-026-00201-1)	18.00	Oct. 1, 1995
190-259	(869-026-00152-9)	17.00	July 1, 1995	1200-End	(869-026-00202-9)	15.00	Oct. 1, 1995
260-299	(869-026-00153-7)	40.00	July 1, 1995	50 Parts:			
300-399	(869-026-00154-5)	21.00	July 1, 1995	1-199	(869-026-00203-7)	26.00	Oct. 1, 1995
400-424	(869-026-00155-3)	26.00	July 1, 1995	200-599	(869-026-00204-5)	22.00	Oct. 1, 1995
425-699	(869-026-00156-1)	30.00	July 1, 1995	600-End	(869-026-00205-3)	27.00	Oct. 1, 1995
				CFR Index and Findings			
				Aids	(869-028-00051-7)	35.00	Jan. 1, 1996

Title	Stock Number	Price	Revision Date
Complete 1996 CFR set		883.00	1996
Microfiche CFR Edition:			
Subscription (mailed as issued)		264.00	1996
Individual copies		1.00	1996
Complete set (one-time mailing)		264.00	1995
Complete set (one-time mailing)		244.00	1994
Complete set (one-time mailing)		223.00	1993

¹Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

²The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

³The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

⁴No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1996. The CFR volume issued April 1, 1990, should be retained.

⁵No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1995. The CFR volume issued July 1, 1991, should be retained.

⁶No amendments to this volume were promulgated during the period April 1, 1994 to March 31, 1995. The CFR volume issued April 1, 1994, should be retained.

CFR ISSUANCES 1996

January—April 1996 Editions and Projected July, 1996 Editions

This list sets out the CFR issuances for the January–April 1996 editions and projects the publication plans for the **July, 1996** quarter. A projected schedule that will include the **October, 1996** quarter will appear in the first **Federal Register** issue of October.

For pricing information on available 1995–1996 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. The weekly CFR checklist and the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR titles and parts, revision date and price of each volume.

Normally, CFR volumes are revised according to the following schedule:

- Titles 1–16—January 1
- Titles 17–27—April 1
- Titles 28–41—July 1
- Titles 42–50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

Titles revised as of January 1, 1996:

Title	
CFR Index	200–End
1–2 (Revised as of Feb. 1, 1996)	10 Parts: 0–50 51–199
3 (Compilation)	200–399 400–499
4	500–End
5 Parts: 1–699 700–1199 1200–End	11 12 Parts: 1–199 200–219 220–299 300–499 500–599 600–End
6 [Reserved]	
7 Parts: 0–26 27–45 46–51 52 53–209 210–299 300–399 400–699 700–899 900–999 1000–1199 1200–1499 1500–1899 1900–1939 1940–1949 1950–1999 2000–End	13 (Revised as of Mar. 1, 1996) 14 Parts: 1–59 60–139 140–199 200–1199 1200–End 15 Parts: 0–299 300–799 800–End 16 Parts: 0–149 150–999 1000–End
8	
9 Parts: 1–199	

Titles revised as of April 1, 1996:

Title	
17 Parts: 1–199	200–239 240–End

18 Parts:
1–149
150–279
280–399
400–End

19 Parts:
1–140
141–199
200–End

20 Parts:
1–399
400–499
500–End

21 Parts:
1–99
100–169
170–199
200–299
300–499
500–599
600–799
800–1299
1300–End

22 Parts:
1–299
300–End

23

24 Parts:
0–199 (Revised May 1, 1996)

Projected July 1, 1996 editions:

Title	
28 Parts: 0–42 43–End	34 Parts: 1–299 300–399 400–End
29 Parts: 0–99 100–499 500–899 900–1899 1900–1910.999 1910.1000–End 1911–1925 1926 1927–End	35 36 Parts: 1–199 200–End 37 38 Parts: 0–17 18–End 39 40 Parts: 1–51 52 53–59 60 61–71 72–80 81–85 86 87–135 136–149 150–189 190–259 260–299 300–399 400–424
30 Parts: 1–199 200–699 700–End	
31 Parts: 0–199 200–End	
32 Parts: 1–190 191–399 400–629 630–699 (Cover only) 700–799 800–End	
33 Parts: 1–124 125–199 200–End	

200–219 (Revised May 1, 1996)
220–499 (Revised May 1, 1996)
500–699 (Revised May 1, 1996)
700–899 (Revised May 1, 1996)
900–1699 (Revised May 1, 1996)
1700–End (Revised May 1, 1996)

25

26 Parts:
1 (§§ 1.0–1–1.60)
1 (§§ 1.61–1.169)
1 (§§ 1.170–1.300)
1 (§§ 1.301–1.400)
1 (§§ 1.401–1.440)
1 (§§ 1.441–1.500)
1 (§§ 1.501–1.640)
1 (§§ 1.641–1.850)
1 (§§ 1.851–1.907)
1 (§§ 1.908–1.1000)
1 (§§ 1.1001–1.1400)
1 (§ 1.1401–End)
2–29
30–39
40–49
50–299
300–499
500–599 (Cover only)
600–End

27 Parts:
1–199
200–End

425–699
700–789
790–End

41 Parts:
Chs. 1–100
Ch. 101
Chs. 102–200
Ch. 201–End

TABLE OF EFFECTIVE DATES AND TIME PERIODS—JULY 1996

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these

dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
July 1	July 16	July 31	August 15	August 30	September 30
July 2	July 17	August 1	August 16	September 3	September 30
July 3	July 18	August 2	August 19	September 3	October 1
July 5	July 22	August 5	August 19	September 3	October 3
July 8	July 23	August 7	August 22	September 6	October 7
July 9	July 24	August 8	August 23	September 9	October 7
July 10	July 25	August 9	August 26	September 9	October 8
July 11	July 26	August 12	August 26	September 9	October 9
July 12	July 29	August 12	August 26	September 10	October 10
July 15	July 30	August 14	August 29	September 13	October 15
July 16	July 31	August 15	August 30	September 16	October 15
July 17	August 1	August 16	September 3	September 16	October 15
July 18	August 2	August 19	September 3	September 16	October 16
July 19	August 5	August 19	September 3	September 17	October 17
July 22	August 6	August 21	September 5	September 20	October 21
July 23	August 7	August 22	September 6	September 23	October 21
July 24	August 8	August 23	September 9	September 23	October 22
July 25	August 9	August 26	September 9	September 23	October 23
July 26	August 12	August 26	September 9	September 24	October 24
July 29	August 13	August 28	September 12	September 27	October 28
July 30	August 14	August 29	September 13	September 30	October 28
July 31	August 15	August 30	September 16	September 30	October 29
